

## **Fire Commission Meeting**

### **Immokalee Fire Control District Special Board Meeting March 7, 2013**

These Minutes are a summary of the meeting. Any further information can be obtained by the tape. The minutes will follow the order of the Agenda.

Present Commissioners: Anderson, Heath, Keen, and Rice; Chief Greenburg, Board Attorney Kenneth Thompson, Labor Law Attorney Laura Donlon is on the speaker phone

Ann Carver, Alma R. Valladares, Jason Burr, Members of the Public. Commissioner Olesky arrived at 6:11pm.

- 1) The meeting was called to order by Commissioner Anderson at 6:08pm
- 2) The pledge of allegiance was led by Commissioner Anderson
- 3) Moment of silence was led by Commissioner Anderson
- 4) Re-negotiations of Salary and Benefits for Chief Candidate Paul Anderson: Commissioner Anderson mentioned that we are here to negotiate the terms from the last meeting. The company issues that were brought up were the retirement issues. You can't rejoin the FRS system after being employed. The other issue was the medical; you can't have coverage without yourself. Commissioner Keen mentioned that she wants to make a motion to move on to the next candidate due to trust issues. She made the motion and wants to know if anyone else would second or not? Candidate Anderson mentioned that he doesn't think it's a trust issue, in the agreement was that if the money isn't there in October then, it doesn't happened. Commissioner Anderson mentioned if anyone wants to second for discussion. Again, any further discussion? Commissioner Heath seconded the motion. Candidate Anderson mentioned that he thought he had already been offered employment and we came to a tentative agreement and we were just looking at other options for the benefit package. Commissioner Anderson commented that Commissioner Olesky is now present at the meeting at 6:11pm. Commissioner Rice mentioned to speak against the motion due to the fact that we had a rating schedule and we did select candidate number 1 and until we come to an agreement with this candidate. Commissioner Anderson mentioned to Commissioner Olesky just to recap on what's going on; Commissioner Keen motioned to move to the next candidate due to trust issues with his previous comments about his current pay. It's seconded for discussion. Candidate Anderson wants to know what the trust issues are. He would like to speak on behalf of that. Commissioner Keen mentioned that the information she got was from his application and the other from Clermont. Candidate Anderson mentioned that on the pay issue, they were just given a 2% pay increase from Clermont so that raised his base pay and in the pay from the city that's included is compensation from a college degree paid by the state not the city. Commissioner Keen mentioned again that the trust issue was that he knew that the job was offered at \$115,000 and he already asked for \$11,000 more. Candidate Anderson mentioned that he already has brought things to the table and has presented things to the board to increase revenue and increase the budget. Also, that he's committed to this fire district and wouldn't do anything to jeopardize this district financially or otherwise. Commissioner Keen mentioned that those are her issues that need to be voted on or whatever the board wants to do. Commissioner Anderson motioned for all in favor to dismiss the 1<sup>st</sup> candidate and move on to the 2<sup>nd</sup> candidate.

Commissioner Keen and Heath were in favor of the motion. Commissioners Olesky, Anderson and Rice opposed the motion. Motion fails three to two.

Commissioner Anderson mentioned that they previously discussed the \$90,000 salary with taxes, insurance, it took us at \$114,595 plus the vehicle, uniforms, sick, vacation; we are looking at well over \$115,000. Candidate Anderson mentioned looking at the samples from the last meeting. He was under the impression that they were just going to renegotiate what happens from here to September 30<sup>th</sup>. He didn't think there was an issue with October 1<sup>st</sup>. What he has to propose now is in leaving Clermont and he could keep his insurance for at least 6 months. Commissioner Anderson mentioned that the issue is the insurance. We could cover the family and not Candidate Anderson. Candidate Anderson mentioned that he will pay for his own insurance and even in October it would still be negotiable. Commissioner Anderson mentioned that \$94,000 is above and beyond the \$90,000, once the insurance kicks in we will be at \$117,644 = \$132,841, just so that everyone is aware of this. Candidate Anderson mentioned that if the Immokalee insurance wouldn't have to kick in October. We had already agreed that the total package was \$127,000 even with the insurance it would be reduced and we wouldn't go over that amount we had agreed upon. Chief Greenberg mentioned that for the BCBS policy 70% of the employees enter into the BCBS, he would defer into the BCBS plan. On the outside, the open enrollment would have to say, "lose of coverage". Candidate Anderson mentioned to renegotiate or purchase his own policy. He will keep his insurance as long as he needs to. What is left after FRS and taxes would go into the salary for him to pay for his own insurance. Also, that he doesn't plan to leave and he wants to come in on a good note and wants the board to have confidence in him. He knows this is an issue \$115,000 for the full package, take out the insurance. He is confident that he could do the job for this district. This district can be financially sound again, mentioned that Chief Greenberg has done an amazing job in getting that started. He has some proposals that he will present to the board within 6 months. Even writing the budget for additional revenue, he would find ways to save money. He believes he can make it work. Commissioner Rice mentioned that Candidate Anderson shared his willingness to work with the department and he commends him for that. It would be \$94,000 + taxes + FRS and that he would pay for his insurance and we would top it off at \$115,000.

Attorney Thompson asked for a recess break for the copies to come in.

Commissioner Anderson asked for a Break at 6:43. The meeting was reconvened at 7:04pm.

Attorney Thompson mentioned that just so the record is clear, during the recess they handed to Commissioners the proposed contract marked up and there will be corrections made during the recess that we will be discussing later. During the recess, Attorney Donlon and I talked about the marked topic on page 2, paragraph 4, Employment Benefits, that has been changed somewhat as it relates to medical benefits. He is just reading: However, and as a material inducement to enter into this contract, the Employee (Paul Anderson) has elected to decline participation in the plan and continue coverage at his sole expense under a prior employer's plan. On vacation time there was to be 80 hrs; 40 hrs starting on the 1<sup>st</sup> day of April and 40 hrs on the 1<sup>st</sup> of October during the terms of this Agreement. On the sick time, the employer will provide 48 hrs of sick leave which will accrue at rate of 4 hrs per month in terms of this Agreement. Again, these are just highlights for the record as we go through. On the vehicle, employees' family members are not permitted to drive or be transported in the vehicles, except in the event of dire emergency. Also, a cell phone will be provided. The employer shall make all statutorily required contributions and the Employee shall be subject to statutorily required deductions. On Termination, contracts terminate on a year to year basis and you will have to renegotiate if you go beyond the year.

By Employer for cause, you had agreed on three months basic compensation, excluding benefits or prerequisites permitted by Florida Statute. Those are issues that the board should address.

Attorney Donnell asked if the board has changes to be made like the 90 days, we can certainly add it in there. Make sure we have it documented properly. Attorney Thompson also mentioned that the only changes to the documents are the health insurance. These are just the highlights of some of the areas you would want to consider.

Commissioner Anderson asked about the Supplemental Compensation. Chief Greenberg answered that it's a program provided by the State of Florida. If you have an Associate or Bachelors Degree you are required to provide paperwork with that and the money is reimbursed by the State. It's the equivalent of \$1380 for a Bachelors and \$680 for an Associate Degree. Attorney Donlon mentioned that on page 2, on comment 1.1 Supplemental Compensation, the district pays the supplemental compensation but then reimbursed back by the State. Candidate Anderson mentioned that he has a Bachelor's Degree.

Commissioner Anderson asked if anyone has any concerns of the proposal that Paul Anderson had given them of \$115,000 with the salary, that leaves it at \$93,000 or \$94,000 and some change in order to make it \$115,000 even, with zero insurance, FRS for \$14,000 + taxes. Commissioner Keen asked in the event that we were required to cover the Chief, (Candidate Anderson) with medical expenses, would there be a reduction in salary? Attorney Donlon mentioned that we can do that given what the penalty would be if the Chief, (Candidate Anderson) were to go to one of the health exchanges, she could add something to that effect.

Candidate Anderson mentioned that there are two items on page 4, Termination by Employer for Cause, one of the stipulations it's it violates any employer policy. Any other general employee, if they violate the policies, they are disciplined, not terminated. There's progressive discipline.

Certainly if he violates a policy it should be dealt with just like any other employee but I don't know that immediate termination instead of progressive discipline is appropriate or fair. Commissioner Rice asked if that could be changed to subject to reprimand or the board's termination depending on the severity of the violation. Candidate Anderson mentioned that maybe it could say after progressive discipline. Commissioner Anderson mentioned that maybe this question could be for the Labor Attorney or Attorney Thompson. Could that wording, "violates any Employer policy" be removed but then be reworded maybe with that paragraph that "a violation of Employer policy" would be subject to progressive discipline upon the will of the board? Attorney Donlon mentioned that the board can determine what terms it wants when terminating an employee for cause and she understands the employee concern wanting progressive discipline. She would caution the board not to tie their hands to progressive discipline in every instance. The difference between the paragraph where it says, "termination for cause", you are contrasting it against "with a termination without cause" and we were looking at the wind cause termination. The importance of the difference between the two is under the "wind cause or for cause termination" for whatever reason the board ultimately decides to look at the paragraph, the Chief would not receive any severance pay and the result of the termination. In the termination "without cause", that's where the severance pay provision comes in and so for that reason, it would be difficult to in the "for cause" provision to provide something that's flexible in terms of discipline up to termination because it doesn't necessarily change the outcome in terms of violating any policy. Attorney Thompson mentioned that this is not uncommon language but it deals in protecting the board and as a matter of course if the Fire Chief "for cause" it's very hard to prove. I don't think it's mandatory but if the board wants to do it, he feels comfortable with Attorney Donlons' recommendation.

Candidate Anderson mentioned that he has a concern over that because just based on history here, obviously this is a different board but if it came down to it with any employer policy, that opens it up to as simple as not shaving. If there is a policy that says that he has to call in sick by 7:00am and he calls in at 7:10, then he's violated that policy and will be terminated. Commissioner Anderson mentioned to just leave the policy as it is for now. Also, asked if the \$90,000 salary is without incentives. Candidate Anderson agreed that it was without incentives. One of the things was the possibilities of reducing the salary and getting the incentive pay. The incentive pay in the budget is over by \$1500. There is other money in the budget that will compensate for that amount. Also, what about the other clause of "if violates any employer policy"? Commissioner Anderson doesn't know how that could be changed. In his mind, progressive discipline is one thing but he can't speak for the rest of the board members. Commissioner Keen mentioned that the policy says, "it may" and that doesn't mean that it's going to happen. Commissioner Rice mentioned that we have to work together. Commissioner Olesky asked to add something to the contract and no micro managing by the board. Commissioner Rice mentioned that there was nothing in the contract mentioning a review of 30/60/90 as we indicated before and wanted to know if that could be put in the contract. Chief Greenberg mentioned that the review could be added to the contract, there wouldn't be a problem with that. Commissioner Anderson mentioned that for the one year contract, would it be 60/120 days or 30/60/90 days? I would go with the 60/120/180 days. We can do it that way for the first year. Commissioner Olesky agreed with that. Commissioner Rice mentioned that he wouldn't have a problem with that.

Attorney Thompson asked Commissioner Anderson if they would go down the list of items that are on the contract.

Commissioner Anderson began mentioning the items to Candidate Anderson starting with number 1: Terms of Employment living within the 25 mile radius. Are there any concerns or questions? Candidate Anderson said no. On the employee accepts employment starting on March 25, 2013: Are there any issues with that? Candidate Anderson said no.

2: Duties of Employment – Specific Duties, Other Duties of the Employee, Place of Employment, Hours of Employment, Engaging in Other Employment, are there any issues with these items?

3: Compensation of Employee – Basic Compensation will be the \$94,000 and are we all in agreement with the \$115,197 or 115,000 with the total compensation? Commissioner Olesky agrees with the \$115,197. Commissioner Anderson mentioned that we will leave it at the \$94,000 salary.

4: Employee Benefits - Vacation, Sick, Holidays, Disability, Life Insurance, Bereavement Leave, Uniforms, Vehicle, Communication Devices or Pension, are there any issues with these items? Candidate Anderson said no to all of these items.

5: Reimbursement of Employee Expenses – Education and Tuition Reimbursement are there any issues with these items? Candidate Anderson said no.

6: Employee Obligations and Qualifications are there any issues with these items? Candidate Anderson said no.

7: Indemnification and Morality – Indemnification of Employee Losses, Indemnification Limitation, Morality Clause, are there any issues with those items? Candidate Anderson said no.

8: Termination of Employment – By Employer for Cause, is there any issues with that? Candidate Anderson mentioned that he was unclear whether the severance was the 20 weeks allowed by statute or reduced to 3 months? Commissioner Keen mentioned that it was reduced to 3 months. Candidate Anderson said no.

9: General Provisions – Notices and Entire Agreement are there any issues with that? Candidate Anderson said no. On Arbitration, Attorney fees and costs, Governing Law, Partial Invalidity, Payment of Monies due Deceased Employee, Waiver, Employees' Acknowledgment, Contingent upon Board Ratification, are there any issues with these items? Candidate Anderson said no. Attorney Donlon mention to use alternate language that provides the board some of the protection. What if we said, "violates any employer policy that's severity of which would subject another employee to termination". Chief Greenberg mentioned that severity of instance has in the past overridden progressive discipline. Candidate Anderson agreed to the language that Attorney Donlon suggested. Attorney Donlon asked if the board was also comfortable with the language she suggested. The entire Board of Commissioners agreed.

Attorney Thompson asked if the board had discussed the review period with Candidate Anderson. Commissioner Anderson mentioned that the board had already decided it would go with the 60/120/180 days review. Candidate Anderson mentioned that he is fine with that. Also, if he isn't doing his job then that would be "for cause". If we would have difference of opinion then that's something else. As the contract is written now that would fall within the "for cause". Chief Greenberg mentioned that they have discussed 60/120/180 and then 30 days prior to the end of the contract. Attorney Donlon asked if the Performance Review is a formal review, in formal discussion or how is it done? Commissioner Anderson mentioned that the board has done individual reviews. Chief Greenberg mentioned that they have done formal in the past with the previous Chief. Attorney Thompson asked Attorney Donlon if this should be in the contract or just a policy approved by the board. Attorney Donlon mentioned that it's not a bad idea to have some provisions in the contract as to when the reviews will occur. Attorney Thompson recommends that the board adopt this conversation at the next board meeting as policy versus placing it in the contract and put in the contract subject to policy. Commissioner Anderson asked if there are any further questions.

Chief Greenberg mentioned that for the record she calculated the \$115,000. The basic compensation is \$93,840.92. Attorney Thompson asked that we adopt the amended contract that the Chief which has the language changed with amount of \$93,840. Chief Greenberg mentioned that the Attorney Donlon has to make the revisions of what we just talked about. Attorney Donlon mentioned that she has the changes made and will email it now.

Commissioner Anderson mentioned that we are taking a 5 minute recess starting at 8:04. Commissioner Anderson reconvened the meeting at 8:21pm. Attorney Thompson mentioned that he presented a clean copy of the contract and all the changes have been made. Chief Greenberg mentioned that the change is on Section 8, Paragraph 1. Commissioner Anderson mentioned that the change says, "violates any employer policy the severity of which would subject another employee to termination". He motioned for the change as written.

Commissioner Olesky seconded the motion. Commissioner Rice and Heath approved and Commissioner Keen opposed. Motion carried 4 to 1. Commissioner Anderson executed the signature of the new Chief Paul Anderson. Everyone congratulated the new Chief Paul Anderson. Commissioner Anderson mentioned that the next board meeting is on March 21, 2013 at 6pm. Meeting is adjourned at 8:26 pm.

Minutes typed by Alma Rosa Valladares