

**CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM  
MINUTES OF MEETING HELD  
March 16, 2017**

Summarized Minutes of the regular meeting of the City of Fort Pierce Retirement and Benefit System March 16, 2017 2:00 p.m., in the 2<sup>nd</sup> Floor Conference Room at City Hall.

Present:

Commissioner Tom Perona, Chairperson	City Commission Member
Keith Stephens, Vice -Chairperson	U.A. General Manager
Johnna Morris	Director of Finance
Rodney Nieves	Police Officer Member
Caleta Scott	General Member
Nina Penick	U.A. Board Appointee
Attorney Jim Walker	Attorney for the Retirement Board, Advisory
Christina Paz	Retirement Clerk

Guests:

Brad Lee Armstrong	Gabriel Roeder Smith & Company
Kevin Doty, Esq.	Attorney for Robert Creswell
Iola Mosley, Esq.	City Assistant Attorney

Absent:

Commissioner Reginald Sessions	City Commission Member
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Recording:

Queen Thompkins	Executive Assistant to the Director of Finance
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**ITEM NO. 1 & 2 ~ ROLL CALL**

**Comm. Tom Perona** called the meeting to order at 2:02 p.m., the first item on the agenda being the “*Roll Call*”.

**ITEM NO. 3 ~ COMMENTS FROM THE PUBLIC**

**Comm. Perona**, the next item on the agenda was comments from the public. There were no comments from the public.

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**ITEM NO. 4 ~ APPROVAL OF SUMMARIZED MINUTES OF MARCH 16, 2017.**

**Comm. Perona**, the next item was the approval of the summarized minutes of March 16, 2017 and asked if there was a motion to approve the minutes.

**A motion was made by Ms. Caleta Scott and seconded by Mr. Rodney Nieves to approve the summarized minutes of March 16, 2017.**

**All those in favor of the motion signified by saying aye. A poll was done of each Board member. There was no opposition and the motion was carried unanimously.**

**ITEM NO. 5 ~ ATTORNEY'S REPORT**

**Attorney Jim Walker** said there's only one thing he wanted to bring to the attention of the Board. If you remember Cody Chapman and Weston Lewis remarks at the last meeting; on Page 11 of the minutes Mr. Lewis said, "I want to touch on a couple of points Brad made that were very good. Our capital market expectations from the last year came down and on Page 7 our expected return for the broad U.S. Equity Asset Class is 6.85%. That is if you were 100% invested in U.S. Equity; your return is 6.85%. How does that fold into this thinking of your expected return on the total portfolio where there is less risky type instrument when there is 8%? I'm not pounding the table for you all to reduce your expected rate but that is a trend that we have noticed with our other clients. The last NASRA survey that we last observed in 2015 was 7.6% and that shows a decline over the past few years coming down where the median 5 years ago was 8%. Now we are closer to Brad's 7.5%." It sounded as if he was rather suggesting in a roundabout fashion that we needed to amend or modify our investment policy. I got with him on that to see whether it was thought any such amendment was necessary. The short answer is no. Our investment policy provides as follows, "For primary long term investment objective for the total fund is to earn an annualized investment return which exceeds the CPI inflation rate by at least 5%", and that's basically it; the CPI + 5%. He did not feel it necessary that we amend our investment policy. I'm merely bringing that to the Board's attention that our present policy's language appears to be entirely compatible with current developments of the market, notwithstanding the long term expectations, at least for now appear to be dipping down at 8% or close to 7.5%. Our own policy is worded in a way that it's broad enough to cover that. That really the only thing I wanted to bring to the Board's attention. I would be happy to answer any questions.

**Comm. Perona** said, so the 8% is not set in stone, it's basically a function of the CPI?

**Mr. Walker** said plus 5%.

**Mr. Stephens** asked if it moves.

**Mr. Brad Armstrong** said since the election, inflation has been steadily month by month on the rise, so the 12-month increased and February 2017 over February 2016 was 2.74%. It's a

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coincidence that the report that I'm going to talk about using 2.75%. What Weston talked about last month certainly was the current state.

**Mr. Walker** said, to answer the question, yes it moves. For instance if the CPI is 2%, that's 2% + 5% ; that's a minimal objective. Our minimum is CPI + 5%.

**Mr. Stephens** asked where does 8% comes in; why have we always said 8% if it moves. He said he was always told it was 8%.

**Mr. Walker** said that's a traditional industry standard throughout the pension industry. It's generally what they look at and Brad pointed out last week our policy is worded a little differently.

**Comm. Perona** asked if it was more like a benchmark.

**Mr. Armstrong** said it's more of a benchmark.

**Comm. Perona** said the 8% just tells you, here's the standardize one that we set and it has nothing to do with our minimum requirement.

**Mr. Walker** said we haven't set that as a standard. This plan is not set 8%.

**Mr. Armstrong** said we are going to talk about something different today.

**Comm. Perona** said okay, and thank you for bringing that up because it seems there are a lot of Retirement Systems that are looking at the numbers in expectations over the last few years.

**ITEM NO. 6 ~ OLD BUSINESS**

**a. DISCUSSION ON BOARD MEMBERS/DROP PARTICIPANTS**

**Comm. Perona** asked Mr. Walker if he would like to move on to the next section.

**Mr. Walker** said yes. There was a discussion at the last meeting; the question had previously come up about whether a member's ability to serve on the Board is impacted; elected member when he or she formally retires ceases to become a member of the System, but nevertheless remains active in the employment group in question as part of the DROP Program. The question is whether that certain circumstance affects the ability of the member to continue serving on the Board. That was researched; the matter was presented to the Board with a recommendation that this was thought to be a job for the Board in construing what was thought to be some ambiguous language in the code on that. I was instructed to prepare some draft language that would hopefully embody the sense that came out of that discussion. That has been done in the form of a proposed amendment to our Board Rule 1c definitions which would amend that the term "Retirement Board Member" for purposes of the Code Section 13.76 to provide that Retirement

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Board member shall include employees who are members of the Retirement System or who are actively employed as participants in the DROP program.

**Comm. Perona** asked if there were any comments.

**Ms. Morris** asked if we want to open the allowance for any DROP member or if it needs to say if it's a Board member who elects to go into the DROP, because the terms are three years for any elected person. A person is already in the DROP, you are making it mandatory that you become a certified trustee now and to make that investment to the individual who is not currently part of the Board; who we know is leaving in a five year period, I think would be a waste of resources and time.

**Mr. Walker** said he agrees completely. The amendment is a definition of the term "Retirement Board Member." It therefore applies to someone who is already a sitting member of the Board.

**Comm. Perona** said once you are on the Board through employment and you elect DROP, you can continue on until you are no longer employed. That's really what I want to accomplish personally. I understand what you are saying Johnna and I agree wholeheartedly.

**Mr. Nieves** said he also agrees with Ms. Morris; to make that investment and not know if the person is going to be here with us; a month, a year.

**Comm. Perona** said what we are trying to do is not exclude those people but in your particular situation, you were an employed member of the Retirement System, duly elected and appointed, and then you entered DROP. In that moment and time we didn't think it was right to terminate your Board position just because you entered the DROP position. So, if you are on this Board prior to the DROP, you are able to stay on it until you are out of DROP which is the maximum of five years or your term comes up. If that's what we are accomplishing, I'm good with that. He asked Mr. Walker if he had direction, does it need to come back in the form of a formal amendment.

**Mr. Walker** said no, if it was presented in the form of a formal amendment, it would require a motion of approval at this meeting as well as the next one and the two meetings has taken place.

**Comm. Perona** asked for a motion of approval of the Board Rule on Board Members/DROP Participants. **A motion was made by Ms. Caleta Scott and seconded by Ms. Johnna Morris to approve the Board Rule.**

**All those in favor of the motion signified by saying aye. A poll was done of each Board member. There was no opposition and the motion was carried unanimously.**

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**ITEM NO. 7 ~ PUBLIC HEARINGS ON BENEFIT APPLICATIONS**

**a. REHEARING OF BENEFITS CALCULATION OF ROBERT CRESWELL**

**Comm. Perona** said he is not accustomed to doing quasi-judicial hearings, but regardless, we are prepared today to hear this rehearing. Comm. Perona asked if there were any Board members who needed to recuse themselves in any form before the hearing starts.

**Ms. Morris** said she does.

**Comm. Perona** asked her to state her reasons.

**Ms. Morris** said she may have to be called for testimony on behalf of the City.

**Mr. Stephens** said he would like to bring it to the Board's attention that Mr. Creswell did call him and left him a message; he called him back but no discussion was made concerning the rehearing. He wasn't able to meet with Mr. Creswell before the Board meeting.

**Comm. Perona** said he met with Mr. Creswell during an open door period on the issue which he brought me up to date on what we will be hearing today. Since then, this Board has made policies to make that something we wouldn't do.

**Mr. Nieves** said he spoke with Mr. Creswell approximately five or six months ago. Mr. Creswell discussed with him in person what he would be bringing before the Board before it even hit the agenda.

**Ms. Scott** said in her capacity as Deputy City Clerk she spoke with Mr. Creswell but did not get into much detail concerning the rehearing.

**Comm. Perona** asked Mr. Walker if he had a Board statement before the rehearing proceeds.

**Mr. Walker** said this proceeding conducted under the rule procedure provided in Section 13-172 and it is my understanding that each party is initially permitted to give an opening statement, and he or she understands the issue or issues to be and the facts that will be presented.

**Comm. Perona** thanked Mr. Walker and opened the public hearing on Mr. Creswell on the rehearing of our benefits. He asked the petitioner, Mr. Creswell and Mr. Doty if they had an opening statement.

**Mr. Doty** said he has no intentions to present any evidence or any testimony other than to ask the Board what documents they've seen. I don't know what documents have been provided to this Board about this issue, so I'm not sure what you have or haven't seen, but I don't have an opening statement per say other than to say that I would like to discuss what we are here about

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today; this is a factual and in fact intensive issue. I would like to apprise the Board of those facts going back to 1992 when my client, Mr. Creswell, started with the City of Fort Pierce.

**Comm. Perona** said before we do that, he would like for all the witnesses and the petitioner to be sworn in for the record.

**Mr. Doty** said he wasn't going to call Mr. Creswell.

**Comm. Perona** said if he's going to offer any testimony as you said, I would rather him sworn in.

**Ms. Caleta Scott** asked them to raise their hands and state your name; Mr. Creswell, do you swear or affirm that the testimony you are about to give is the truth, whole truth, and nothing but the truth?

**Mr. Creswell** said yes.

**Mr. Doty** said he didn't hear what Mr. Walker had said earlier and asked him to repeat it.

**Mr. Walker** said he was pointing out that the procedures that this proceeding is subject to are govern by Code Section 13-172 for claims procedure and also suggest that each party have the ability to present a brief statement where he or she might be able to describe the issues that the Board will want to consider and to additionally identify any facts that he or she anticipates being presented and supportive of perspective positions on those issues.

**Mr. Doty** said thank you. For the Board's consideration, the letter of February 23, 2017 from Ms. Morris to me, fairly and accurately describes the issue. I don't know if the Board has seen the letter.

**Comm. Perona** said for the record, he would like to identify everything as an exhibit. If you want to, make the letter as an exhibit; we all have that copy.

**Mr. Doty** said okay. I would like to go over the facts of Mr. Creswell's employment with the City of Fort Pierce. He started in 1992. He is still employed by the City of Fort Pierce; although he is in DROP, he has not determined a final date to leave the City but he is still employed. During that period of employment, Mr. Creswell was activated for active duty two times. The first period was during 2003 to 2004. The second period of time was 2008 to 2011. In 2008 one of his superiors told him that he was being laid off, despite being activated, and we all know that is a "no-no". An agreement was reached with then City Manager, David Recor and the Civil Service Appeals Board action that I filed on Mr. Creswell's behalf was settled. The settlement resulted in a letter dated July 13, 2009; I ask that a copy of this be made for the record. Mr. Recor said, on behalf of the City, no. When you get off of active duty, you can return to the City of Fort Pierce.

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**Comm. Perona** said the Secretary has both of these letters. We are talking about the first letter of February 23<sup>rd</sup> from Ms. Morris; the other Exhibit 2 would be the letter from Mr. Recor.

**Mr. Doty** said during Mr. Creswell's activation of 2003 to 2004, the City paid him differential pay and deducted the retirement pay. He returned to work at the City invested with those benefits. In 2008 to 2011, and this is the period of time we are here about today; the City withheld from his paycheck the retirement benefits. He was paid the differential pay and his health benefits, his retirement benefits, and everything else was fully funded out of his paycheck. He was released from active duty on September 13, 2011 because there was in place, a furlough budget purposes at the time. He wasn't allowed to report to work until October 3, 2011. It wasn't until June of 2015, almost 4 years later that the City came back to Mr. Creswell and said they improperly funded our retirement and here is your contributions back. The City directed deposited those contributions made over those 3 years into his account. On my advice, Mr. Creswell sent a check to the City of Fort Pierce in the exact same amount, and I think we sent it to Mr. Walker's office. It wasn't accepted, but the point is, on the two periods of activation, 2003 to 2004 and 2008 to 2011, the City did everything identically. It wasn't until almost 4 years later that the City said no, here's your contributions back and this is what we are here about today. I have read the memo from the City Attorney, sent to Ms. Morris and some of this is factually not correct. This memo does not address the issues we are here about today. The City is estopped to do what they are doing when after almost 4 years; after he returned off of active duty, he relied on that; the contributions were made beginning of 2008 and continued to 2011. The City says almost 4 years later, no, you can't have those benefits. The City took the benefits beginning of 2008; that's almost 8 years before the check was returned. I would like to go through the memo and point out certain things that are factually not correct. The memo doesn't outline any of the history I just outlined.

**Comm. Perona** asked Mr. Doty to identify that memo one more time.

**Mr. Doty** said it's the memo dated February 23, 2017 by Attorney Iola Mosley.

**Mr. Walker** asked Mr. Doty to clarify exactly what benefits he's talking about.

**Mr. Doty** asked Mr. Walker if he was referring to the deposit from the City.

**Mr. Walker** said no. He asked Mr. Doty what retirement benefits he was speaking of that Mr. Creswell should be getting.

**Mr. Doty** said credit for the three years he was on active duty.

**Mr. Walker** asked if he was referring to the military time when Mr. Creswell was on active duty.

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**Mr. Doty** said that is correct. He was credited with the time for the first activation in 2003 and 2004. The City took the retirement benefits beginning of 2008 for that activation and continued to take them through 2011 and 4 years later, tells Mr. Creswell that he's not entitled to those benefits. The first paragraph in the memo talks about the purpose of the USERRA which is the Uniform Services Employment and Reemployment Rights Act. Basically the first page is just a recitation of what the Act says. The last paragraph on Page 1, "The City's pension program is based on a contributory system"; I don't dispute that, but I do want to point out that he contributed for those three years. In fact, the City took those contributions. When we go to Page 2, we're talking about a timely compliance; it's factually not correct. It says the Municipal Code Chapter 13 Article II Sections 13-27 requires that the petitioner notify the financial officer within 1 year of his return to service that he elects to receive his pension benefit during the time he collected a military pension benefit. That's interesting, but kind of irrelevant. Remember that the City took the contributions beginning in 2008 and didn't say anything to Mr. Creswell about it until 2015. It says the petitioner did not do that. He did do it. This Board is supposed to be somewhat independent of the City but, the only way to contact this Board is through the City Manager or through one of the Board members. There isn't a separate employee we can go to. I agree on the next page, Page 3 where it says Applicability of Florida Law and it cites Section 115 Florida Statutes; that's a correct recitation law but it leaves out some things that I will get to, particularly as it pertains to the rights and benefits of an employee in the State. USERRA is a federal law and a State, County, or Municipality cannot do anything contravening, but a City can be more liberal; so can a State, so can a County. In Chapter 115, and I will get to it in a minute, the City, from taking the contributions in 2008 through 2011 were simply following State Law. It goes on to say Fort Pierce City Ordinance Provisions; the returning employee must make an application for his retirement benefits within one year of release of honorable military services. I will point out to you that again, the contributions were made in 2008 to 2011 and it wasn't until 4 years later that Mr. Creswell is being told that those benefits were improperly taken. He was never put on notice until 2015 that the City wasn't going to credit him with those 3 years of service. It says, "The Petitioner has not complied with the requirements of the city ordinance regarding timely notification, benefit election, or buy-back of benefits provisions". Again, it wasn't until 2015 that the City even brought the issue up. He was never on notice. From 2008 to 2015 that there was a problem with his benefits and he was relying on those 3 years of benefits. In Chapter 115.12 of the Florida Statutes, it says during such leave of absence, shall be entitled to receive all seniority rights, efficiency ratings, promotional status, and retirement privileges. The period of active military services shall for purposes of computation to determine whether such person may be entitled to retirement under laws of the State be deemed continuous service in the office of said official while absent on leave without pay. Said official shall not be required to make any contributions to any retirement fund. However, in Chapter 115.14, all employees of the State, several Counties of the State, municipalities, and subdivision of the State shall granted leave of absence under terms of this law. Upon such leave of absence, employee shall enjoy the same rights and privileges as are hereby granted to officials of the Law. I think the Board now understands what the dilemma is. Mr. Creswell probably doesn't have a choice, if we are not successful here, but to take the issue to court. I don't want to do that; it's unnecessary. The City weighed any issue it had by holding those monies from 2008 to 2015, or beginning in 2008 to

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2011 and waiting until almost 4 years later to raise the issue again. It's an estoppel argument. If a mistake was made, the City should, in fairness, take responsibility for its mistake. Mr. Creswell vested with the Army beginning in 1996. If the Board or Attorney wants to ask Mr. Creswell any question, he's under oath to answer any question.

**Mr. Stephens** asked to verify some things.

**Mr. Walker** said it is his recommendation that if there are any examinations of the proponent that it be the first privilege of the City's Attorney and then members of the Board.

**Comm. Perona** asked Attorney Mosley if she had any questions.

**Attorney Mosley** said yes. A couple of brief questions; Mr. Creswell you made a request or notified the financial officer of your decision to retire and collect your pension benefits on March 2013.

**Mr. Creswell** said in 2013 he sent an email to Gloria Johnson to ask a question.

**Attorney Mosley** said that question involved the retirement benefits.

**Mr. Creswell** said that is correct.

**Attorney Mosley** said at that point you notified Ms. Johnson that you were electing to collect your retirement benefits for the years you were in service, right?

**Mr. Creswell** said he asked Ms. Johnson that question and she sent me back that memo you had, yes. There was never a response after that.

**Attorney Mosley** said the pay that you received; I think your attorney mentioned differential pay? That differential pay was basically an amount which was the difference between what you earned in the military and what you earned in your civilian job, correct?

**Mr. Creswell** said correct.

**Attorney Mosley** said you didn't get a full paycheck for the City, correct?

**Mr. Creswell** said no, he did not.

**Attorney Mosley** said you got the difference between military pay and civilian pay.

**Mr. Creswell** said correct. I also received vacation, sick time; they deducted my health insurance.

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**Attorney Mosley** said the pay that you received was the differential between military and civilian pay, correct?

**Mr. Creswell** said yes.

**Attorney Mosley** asked Mr. Creswell if he notified the military that he was electing to receive your civilian pension between 2008 and 2011.

**Mr. Creswell** said he was looking at the State Statute 115.12.

**Attorney Mosley** said she doesn't want to be rude or interrupt Mr. Creswell, but what she's asking him is whether or not you actually notified the military that you were electing to take your civilian pension between years 2008 and 2011. Have you done that?

**Mr. Creswell** said no. He didn't know the military should have told him on his exit.

**Attorney Mosley** said she has no further questions.

**Comm. Perona** asked Mr. Doty if he had any questions.

**Mr. Doty** said he didn't.

**Comm. Perona** asked if there were any questions from the Board.

**Mr. Stephens** said Mr. Creswell said he was vested. I'm assuming you had 20 good years.

**Mr. Creswell** said he had 20 good years.

**Mr. Stephens** said for the education of the Board, everybody in the Reserves is active duty to be able to retire in the military have to have 20 good years. Those years run concurrently. You are in the Reserves the whole time you are working somewhere. The whole years are counted. Every year you are afforded 30 days. As I see in the documents said double-dip. Does that mean you go back for 20 years and take those days back? I'm asking for educational purpose.

**Comm. Perona** said he understands that, but we are trying to get through each component. We are going to deliberate on just what is being presented to us right now. We have heard opening statement, we have heard testimony. The Petitioner will probably rest and then the City will present their part. At the end of all this, if you have issues that can bring to light, I will concur.

**Mr. Stephens** asked Mr. Creswell in 1996 if he had 20 good years.

**Mr. Creswell** said it was in 2000 he had 20 good years. I got my 20 year letter in 2000.

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**Mr. Doty** said because we are making a record he probably needs to ask Mr. Creswell a couple of questions.

**Comm. Perona** said he can.

**Mr. Doty** asked Mr. Creswell, as he outlined the facts to the Board, did he do so accurately.

**Mr. Creswell** said other than a couple of dates. Attorney brought up the memo back in 2013 and in 1996 when I got my letter. I came to the City in 1992 but for those 2 years, 1992 to 1994, I worked for Ryder when they were City contracted out to the garage. I didn't become a City employee until November 1, 1994.

**Mr. Doty** asked, during 2003 and 2004 when you were activated by the Army, did the City fund your retirement benefits?

**Mr. Creswell** said yes.

**Mr. Doty** asked if the City paid him differential.

**Mr. Creswell** said yes.

**Mr. Doty** asked if the City funded Mr. Creswell's vacation and all the other benefits.

**Mr. Creswell** said yes.

**Mr. Doty** asked during the period of time between 2008 and 2011 when you were activated the second time, did the City take from your differential pay your retirement benefits and the health benefits and the other benefits that comes with being a City employee?

**Mr. Creswell** said yes.

**Mr. Doty** asked was it in June of 2015 that the City direct deposited back, your contributions to the Retirement System.

**Mr. Creswell** said yes.

**Mr. Doty** asked if the amount Mr. Creswell was refunded in 2015 \$1,340.23.

**Mr. Creswell** said yes.

**Mr. Doty** said that's all he has.

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**Attorney Mosley** said she have a couple of follow-up questions for Mr. Creswell. That money was paid to you during the period that you were in the military?

**Mr. Creswell** said yes.

**Attorney** asked prior to your returning to your position with the City in 2011, the amount you quoted was \$1,340.23. What did the amount represent?

**Mr. Creswell** said his contribution to the retirement fund.

**Attorney Mosley** asked if it was for the three years.

**Mr. Creswell** said yes.

**Attorney Mosley** asked if this was based on the differential.

**Mr. Creswell** said yes.

**Attorney Mosley** said she has no further questions.

**Comm. Perona** asked Mr. Doty if the Petitioner rest.

**Mr. Doty** said yes.

**Ms. Scott** asked Mr. Creswell if he was notified that you were going to have the money direct deposited. Did you receive any correspondence from anyone?

**Mr. Creswell** said yes. There was a memo in 2013 that the money would be returned to him. In 2015 the money was returned to him.

**Mr. Walker** said he has some questions. Mr. Creswell, it is my understanding that the military has, in fact, credited you with retirement credit for your military time.

**Mr. Creswell** said yes.

**Mr. Walker** said what you are asking the Board to do is to now give you additional credit for that military time.

**Mr. Creswell** said he is asking the Board to do what they did in 2003 and 2004, by the Florida State Statute.

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**Mr. Walker** said you are asking the Board to, in addition to your City time, you are asking the Board to also give you credit for the military time for which the military has already credited you. Is that correct?

**Mr. Creswell** said correct on Mr. Walker's understanding but, they did deduct it. When I left, I was in the Retirement System for the 3 years.

**Comm. Perona** asked if anyone had further questions.

**Attorney Mosley** said she has argumentative response to the initial statements made by the attorney, which really aren't evidence but they are for your consideration. In the discussion of differential pay, I think it is mentioned that the City is required to make up differential pay under Florida Statute. That's just not true. The City is not required to do that. That was something worked out in connection with an unrelated matter. However, there is no requirement under State Law, which is my basic point. In terms of USERRA, in this case we are looking at what the requirements of the Federal Law are with regard to pension rights or pension benefits that persons are entitled to when they retire. In this case the City has, under Section 13-27 of our Code, under Section 13-28 of our Code; there are certain conditions that are based on the provisions of the Uniformed Services Employment and Reemployment Rights Act that a person has to meet prior to the time that he can collect those civilian benefits that would be accruing during the time that he is in active service. For the purpose of USERRA, a person is really looked at as an employee. However, there is an interruption of that employee's time with the City. USERRA seeks to level the playing field. It doesn't create additional rights that other people are not entitled to. It levels the playing field so that military personnel that are returning are treated like other employees. The pension program that we have is a contributory system. Under the provisions of USERRA, an employee who leaves to go into active service has an obligation upon returned to civilian service to reimburse those costs that every employee in the City has to make. The City Ordinance is not far outside the parameters of Florida State Law. Every Statute that has been quoted here today, starting with Florida Statute 115.12; the first portion of the Statute deals with rights during leave, but the Statute concludes with, "The employing authority shall adhere to all the provisions contained in the Uniformed Services Employment and Reemployment Rights Act, which is what we are doing when we are requiring the employee to pay his fair share of those pension benefits. The second Statute under 115.14 talk about supplemental pay. It says an employee in authority may supplement but is not required to after the first 30 days. It says that the agency continues to provide health insurance and other existing benefits as required by the Uniformed Services Employment and Reemployment Rights Act. The time period for contribution begins accrue on the date of reemployment and for 5 years thereafter. The employee is permitted to make up those payments to the Pension Plan that would constitute repayment. In this case, we have a differential; \$1,340.23, which if applied, would be great. That does not make up for the amount that an employee would pay on the pay grade that Mr. Creswell is in. That would not make up for the differential. It would be a part of it, but it doesn't make up for the entire pay differential. There is another provision, and I don't remember hearing much about this, but it has to do with credit for military service. Under Title 5, which

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basically governs Civil Service, there's a discussion for pension pay for military leave. Basically, it says that you have to comply with this Section, notifying the military that during this period of time, I want to take my civilian pension rather than my military pension. There are forms and provisions that are to be filled out; that the military gives you when you exit. I don't know if that was done in this case. The word "double-dipping" is a way to say that you cannot collect, you have to elect. You are either going to take our pension or you take the pension amount that you will get under the military. You don't get both. I did not make up the rule, I cannot change the rule, and none of us have the power to unilaterally change the Federal requirement. That is a requirement and as I have asked, that has not been done to date. The other question that came up was whether or not Mr. Creswell applied within one year of release. He's released in 2011 and he notifies the Financial Director or the Office of Finance in 2013. Clearly that is longer than one year. There was question as to whether or not there was notice. The City Ordinances are there for you to read. They provide notice. There is no requirement under City Codes, under State Law, or Federal Law that says that the employer has to notify the employee and tell him what it clearly says in the Ordinances, the Statute, and the Federal Law. Based on that, I think that the issue of estoppel simply falls. We are estopped because we failed notice. Notice is already there. Under USERRA, it is his obligation to contact the civilian employer and say that he wants to get his pension or I'm returning to work. It's not incumbent upon us to notify him or to ask when he's returning. It's his benefit, so the duty is on him and not on the City. Factually Mr. Creswell never complies with the requirements of City, State, or Federal Law. Failure to comply with procedural aspects of this matter resulted in his not receiving the benefit that he is requesting. You have to follow steps and Mr. Creswell simply didn't do that.

**Comm. Perona** asked Mr. Doty if he would like to redirect.

**Mr. Doty** asked Attorney Mosley if she was finished.

**Attorney Mosley** said she would like to ask Ms. Morris some questions. Attorney asked Ms. Morris to explain the contributions that Mr. Creswell did make that were refunded.

**Ms. Morris** said it is her understanding that during 2009 to 2011 Mr. Creswell's contributions were being deducted from the supplemental pay that he was being paid. He was paid a supplemental pay of \$187 bi-weekly.

**Attorney Mosley** asked if that amount was prorated based on that \$187.

**Ms. Morris** said yes. It was the differential between what he was receiving and his military contribution and the pay that he was receiving from the City at that time. To make him whole as to what he would have been receiving had he been continuously working for the City, there was a differential of \$187 bi-weekly that the City paid to him.

**Attorney Mosley** said when a person is electing to obtain a credit for their military time, who are they required to notify?

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**Ms. Morris** said they are required to notify the Finance Department; either out retirement clerk or the Director of Finance to let them know that that is the option.

**Attorney Mosley** asked was the Department notified notified first?

**Ms. Morris** said prior to 2013, no.

**Attorney Mosley** asked if the Department was notified in 2013.

**Ms. Morris** said yes.

**Attorney Mosley** asked when did Mr. Creswell return from service.

**Ms. Morris** said 2011.

**Attorney Mosley** asked is a person permitted to receive a pension benefit when they have received credit for military time.

**Ms. Morris** said, as our Ordinance reads, no, which as you stated earlier as in compliance with USERRA, it clearly states that if an employee is receiving time for credited service in the military for the same time, they are not entitled and we follow our Code which is in the provisions of Section 13-27 No. 4, that clearly states that as it relates to the time or wanting credit for that intervening time, it's the responsibility of the employee to let us know. We do not know if they are going to elect to get the credit for that service time. That's why we give them a year to notify us if that's what they are going to do. You have to notify us first and then you still have to contribute.

**Attorney Mosley** said based on the testimony that Mr. Creswell received retirement credit for his military leave, at this time is he in accordance with our Ordinances; is he eligible to receive pension benefits for those years that he is claiming.

**Ms. Morris** said no, and that's based on our Ordinance Section 13-27, No. 4.

**Attorney Mosley** said she didn't have any further question.

**Mr. Doty** asked to inquire.

**Comm. Perona** said yes.

**Mr. Doty** said to Ms. Morris that she testified contributions were taken out of Mr. Creswell's pay and properly made by the City during that period of time. We can agree that Mr. Creswell got off of active duty in 2011; it's fair to say that at that time Mr. Creswell had already made the

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contributions to the Retirement System that he would have been expected to make in that one year notification period. In effect, there's really nothing to notice, correct?

**Ms. Morris** said no. Contributions on his supplement pay were being deducted erroneously. When the error was captured, Mr. Creswell was notified and the refund was returned back to him and explained that in accordance to our Ordinance, which also states when an employee goes into the military, the pension should be suspended. When it was realized, Mr. Creswell was returned the portion of that contribution.

**Mr. Doty** said that really wasn't his question. You will agree with me; will you not that on the date of his separation and report back to the City of Fort Pierce, contributions had already been made on his behalf?

**Ms. Morris** said on his supplemental pay, yes.

**Mr. Doty** said in fact, we can also agree, the first time this issue came up was in 2013 in a memo from Ms. Johnson, correct?

**Ms. Morris** said yes.

**Mr. Doty** said to Ms. Morris she will agree with him that in the two year period between the time he separated from the Army and Ms. Johnson's memo, there was nothing to report was there? There was no notice about additional contributions to be made, right?

**Ms. Morris** asked Mr. Doty to restate that.

**Mr. Doty** said we can agree on the dates; 2011 is the date of separation and he comes back to the City.

**Ms. Morris** said yes.

**Mr. Doty** said they can agree that Ms. Johnson's memo is dated May of 2013, correct?

**Ms. Morris** said she doesn't have that memo; she knows Ms. Johnson addressed a memo to him.

**Mr. Doty** asked if Ms. Morris will agree with him that is a two year period of time.

**Ms. Morris** said yes.

**Mr. Doty** said the date of separation from the Army and 2013 he thought his contributions were safe.

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**Attorney Mosley** said she needs to object that statement because it calls for speculation on the part of Ms. Morris.

**Mr. Doty** said he will rephrase that. Counselor asked you about this one year notification requirement that he was intending to make his contribution, right?

**Ms. Morris** said yes.

**Mr. Doty** said we can agree that that wasn't made by Mr. Creswell, right?

**Ms. Morris** said yes.

**Mr. Doty** said until 2013, nobody at the City told him that they were going to return his contributions.

**Ms. Morris** said that is correct.

**Mr. Doty** said a one year notification period that you testified to is irrelevant.

**Ms. Morris** said it is her understanding that one year you are referring to is Mr. Creswell wanting the military credit time for those years, not the supplemental only; he wants complete military time for those years.

**Mr. Doty** as it pertains to the issue right here today, and that is whether Mr. Creswell is entitled to those three years, because by virtue of having made his contributions during those three years of active duty, that really doesn't have anything to do with anything, right?

**Ms. Morris** said she would say different.

**Mr. Doty** said he has no further questions.

**Mr. Walker** said for purposes of clarifying the issue here before the Board, he has some questions for Ms. Morris. The three years that Mr. Creswell was gone in the military, that three year period, the purchase of the City's retirement pension, has he received credit for that?

**Ms. Morris** said no.

**Mr. Walker** asked if Mr. Creswell has been restored to a position that is equivalent to the position that he would have been for purposes of the City had he never left.

**Ms. Morris** said yes.

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**Mr. Walker** said as we sit here, it's as if Mr. Creswell had been continuously employed by the City from day one and whenever it was when he first came here, up to the present time.

**Ms. Morris** said yes.

**Mr. Walker** asked Ms. Morris if it is her understanding that the question being put to the Board is not whether he is getting that three year credit for the City's purposes, because you told me that he is, but whether he should in addition get another three year credit this time for the military when he has already received it for the City.

**Ms. Morris** said that is true.

**Mr. Walker** said he has no further questions.

**Mr. Stephens** asked if Mr. Creswell received retirement credit for the three years he was on military leave.

**Ms. Morris** said he didn't receive retirement credit; he got service years credit, meaning it didn't break to make him vested.

**ITEM NO. 8 ~NEW BUSINESS**

**a. ACTUARY UPDATE FROM BRAD ARMSTRONG**

**ITEM NO. 9 ~ CONSENT OF AGENDA**

**Comm. Perona**, the next item is the Consent Agenda.

**A motion was made by Ms. Scott and seconded by Mr. Stephens to approve the refund of member contributions.**

**All those in favor of the motion signified by saying aye. A role call was done; there were no oppositions and the motion carried unanimously.**

**ITEM NO. 10 ~ CONSIDERATION OF ABSENCES**

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**Comm. Perona** acknowledged the excused absence of Comm. Reginald Sessions. **A motion was made by Ms. Scott and seconded by Ms. Morris to approve the excused absence of Comm. Sessions.**

**All those in favor of the motion signified by saying aye. A roll call was done; there were no oppositions and the motion carried unanimously.**

**ITEM NO. 10 ~ BOARD MEMBER COMMENTS**

**ITEM NO. 12 ~ ADJOURNMENT**

The next item was next month's meeting. The next meeting is scheduled for April 20, 2017 at 2:00 p.m.

**All those in favor of the motion signified by saying aye. There was no opposition and the motion carried unanimously.**

The meeting was adjourned the meeting at 4:50 p.m.

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer

\_\_\_\_\_  
Chairperson

Note: These minutes are not verbatim, only important issues and motions are reproduced in writing for the benefit of the Fort Pierce Retirement and Benefit System members. The recording itself is the official record for the meeting. The meeting tape/cd is available.