JACKSONVILLE CITY COUNCIL

TRUE COMMISSION
PERFORMANCE COMMITTEE MEETING MINUTES
January 18, 2013
9:30 a.m.

City Council Conference Room B
Suite 425, City Hall
117 W. Duval Street

Attendance: Committee Members Ted Wendler (Chair), Joe Andrews, Tom Martin, Greg Radlinski, Danny Becton, Marcella Lowe and Patti Anania
Excused: Daniel Blanchard

Also: Jeff Clements – Council Research Division; Terry Wood – General Employees' Pension Plan board member; Curtis Lee; Bill Vanaman - JSO

The meeting was called to order at 9:30 p.m. by Chairman Wendler. Commissioner Greg Radlinski gave an overview of the Florida Supreme Court ruling released yesterday in the case of Rick Scott et al. vs. George Williams et al., a case resulting from the State's decisions to require state employees to begin making employee contributions to the Florida Retirement System and to eliminate the cost of living adjustment (COLA) from the pension benefit plan. Mr. Radlinski said that the court did not specifically rule on the question of whether the state could reduce retirement benefits for current retirees – that question was not presented to the court in this case. The court also did not deal with the impact of collective bargaining on the state's ability to change pension benefits because neither party raised that issue either. Overall the ruling is not very helpful in answering questions that the committee has discussed in the context of thinking about potential changes to the City's pension plans. The court did rule that a public employer could change some future benefits for employees still in their working years, which is at least a small part of the overall equation.

Terry Wood, former City Council member and currently a member of the General Employees' Pension Plan (GEPP) Board of Trustees and the Jacksonville Retired Employees Association board of directors, gave historical perspective about how various aspects of the pension have changed over time. He noted that the employees in the GEPP were granted the automatic COLA by the City Council at least in part because employees were not given raises for three consecutive years. The police and fire pension plan was amended to add the DROP plan option in part because of the nature of the leave plan in place in the 1970s and 1980s, which allowed employees to accrue unlimited amounts of personal leave and to be paid for that leave in a lump sum when the employee retired, often at a huge cost to the departmental budgets that were not foreseen and budgeted for. The DROP plan gave the police and fire departments more certainty about when employees would be retiring so the City could budget appropriately to pay out the accumulated leave and would have a better idea of when managerial positions would become vacant and need to be filled. Mr. Wood stated that certain benefits were adopted for particular reasons, and that employees felt that pension enhancements had been made to compensate for other City actions, so they are naturally protective of those features and reluctant to give up what they feel was part of a larger quid pro quo with the City.

Mr. Wood recounted that when he was chairman of the Finance Committee in the 1980s, a group of leading citizens (some of the leaders of the consolidation movement) came to him and urged him to fund the pension with an employer's contribution of 20% every year, whether it was actuarially required or not, as a means to build up the fund and ensure its financial viability through the inevitable ups and downs of the investment markets. The City did that for many years until the state's actuary pointed out to the mayor at the time that the City was "overfunding" the pension unnecessarily. The city treasurer and the mayor created a "pension excess contribution" (PEC) account as an account within the pension fund that identified these "overpayments" without City Council action or approval. Mayors later used the PEC to make the City's required employer contribution, allowing property taxes to be reduced by relieving the General Fund of the need to pay the pension contributions in those years. The PEC was also excluded from the funds' assets for purposes of making the actuarial calculations, although the funds were in fact invested within the corpus of the pension assets. He believes that diversion of funds and reduction of General Fund contributions to the plans is in part responsible for the funding shortfall the pension funds are now experiencing.

Curtis Lee, a former pension fund manager in New York, distributed a chronology of events of a lawsuit he and Concerned Taxpayers of Duval County have filed against the City and the Police and Fire Pension Fund Board of Trustees alleging violations of Florida's Government in the Sunshine Law and of the state statute prohibiting collective bargaining agreements from exceeding a term of 3 years. The case was originally filed in June 2011 and amended and re-filed in August of that year at the judge's direction. The suit alleges that the City and Police and Fire Pension Fund (PFPF) violated the Government in the Sunshine Law by negotiating public employee retirement benefits in private meetings that were not properly noticed as required by state law, and that the 30-year settlement agreement between the City and the PFPF constitutes a collective bargaining agreement which violates the state law limiting collective bargaining contracts to a maximum of 3 years. The trial date is set for May 6, 2013.

Mr. Lee explained that he and Concerned Taxpayers hope to prove that Sunshine Law violations took place in the negotiation of the 30-year agreement because that would allow the courts to invalidate the results of that agreement and open the door to make immediate changes in the police and fire pension plan. He believes it is highly unlikely that the courts would nullify any benefits already earned, but it could put pension matters clearly on the bargaining table for the City and the unions to discuss directly without the PFPF's intervention. Mr. Lee also noted that there is a 2010 lawsuit filed by the Jacksonville Association of Fire Fighters against the City over the status of the 30-year agreement which seeks to clarify that the PFPF is the bargaining agent for the unions, but no action has occurred on that case in several years.

Commissioner Radlinski pointed out that the annual cost of living adjustment (COLA) in both the General Employees and Police and Fire pensions are codified in the City's Ordinance Code, which will require that the code be amended as well if changes are to be made to either pension plan. He noted that collective bargaining is in the hands of the Mayor until either an agreement has been reached with the unions, or until a bargaining impasse has been reached. In either of those cases, the matter goes to City Council for final resolution.

Commissioner Becton asked about accountability for poor pension fund investment performance, which seems to him to be part of the problem with the PFPF's funding problem. Curtis Lee said that the City puts in 80% of the PFPF's funds and the employees 10%, but the 5-member board of trustees that sets the investment policies is dominated by the union interests (as evidenced by the fact that board votes are almost always unanimous – the City's representatives almost invariably vote as the union representatives do). He believes there are substantial savings to be had through reductions in PFPF administrative costs and that investment returns could be improved substantially, in part through investment in less expensive index funds that perform as well or better than more expensive actively managed funds. Terry Wood noted that when a person is appointed to serve on a pension board of trustees, that appointee takes an oath to uphold a fiduciary responsibility to the pension plan. They do not represent the City's or the unions' interests, but the plan members' interests in a secure retirement.

Sergeant Bill Vanaman of the Sheriff's Office, sitting in as a public observer, felt that the current funding problem is not the fault of individual current employees or the PFPF's investment strategies, but is largely the result of past mayors giving property tax relief by not making sufficient employer contributions into the plans. If there had not been a separate PEC fund and if those dollars were not used to supplant General Funds for making the employer contribution and had been kept in the fund and allowed to grow and compound over the years, the pension fund wouldn't be in the condition it is today. The group discussed the PFPF's investment returns and cost of investing. Curtis Lee does not believe that the "pension holidays" have had much effect on the current funding ratio. He believes that the unfunded liability of $1.3 billion is much greater than could be accounted for by the approximately $200 million in PEC fund uses.

The committee's next meeting will be on February 7th at 3:00 p.m.

There being no further business, the meeting was adjourned at 10:50 a.m.

Jeff Clements, Chief
Council Research Division
630-1405

Posted 1.22.13
12:00 p.m.