



City of Miami Springs, Florida

The Miami Springs City Council held a **SPECIAL MEETING** in the Council Chambers at City Hall on Thursday, June 14, 2012, at 8:30 a.m.

1. Call to Order/Roll Call

The meeting was called to order at 8:36 a.m.

The following were present:

- Mayor Zavier M. Garcia
- Vice Mayor George V. Lob
- Councilwoman Jennifer Ator
- Councilman Bob Best

Also Present:

- City Manager Ronald K. Gorland
- Asst. City Mgr./Finance Director William Alonso
- City Attorney Jan K. Seiden
- Chief of Police Peter G. Baan
- Police Captain Jon Kahn
- Human Resources Director Loretta M. Boucher
- Human Resources Specialist Noemí Darías-Sanfiel
- City Clerk Magalí Valls
- Deputy City Clerk Suzanne S. Hitaffer

2. Invocation: Mayor Garcia offered the invocation.

Salute to the Flag: The audience participated.

3. Hearing on Disputed Impasse Issues Between the City and the Police Benevolent Association (PBA)

City Attorney Jan K. Seiden announced that he would participate as a de facto ruler should a question come up between the parties and he would make a judgment. The process will begin with the PBA going first and both sides will be given 45-minutes to make their presentation.

City Attorney Seiden explained that the PBA will designate speakers to have the floor and multiple speakers will be permitted as long as the time limit is not exceeded. The City will follow the PBA with their presentation and also be allowed 45-minutes with multiple speakers. There will be no citizen participation or comments allowed during the process because it is a semi quasi-judicial proceeding based on previously made legal arguments.

City Attorney Seiden added that there would be no rebuttal or cross-examination between the parties and following the conclusion of both presentations the Mayor and City Council members may ask questions and make statements. The City Council will then conduct deliberations and attempt to reach conclusions and a final decision on the impasse issues. If Council feels that additional time is needed to make a decision they are permitted to re-schedule and carry over the hearing, if necessary.

City Attorney Seiden commented that based on Council's decision by a motion, the actions will be memorialized in an Order so that there is a written document of the proceeding.

Attorney James C. Casey, with the law firm of Slesnick & Casey, LLP, representing the Dade County Police Benevolent Association (PBA), introduced his co-counsel Cristina Escobar, Dade County PBA President John Rivera, along with representatives Oscar Garcia and Jimmy Deal. He added that Peter Newman would be an additional civilian speaker on their behalf.

Attorney Casey explained that he had worked with the Miami Springs Police Department since 1986, along with his partner and various legal members of the Dade County PBA staff. He noted that the disputed impasse is the purpose of this hearing and there are three basic issues. They have been bargaining the contract since mid-2008 and the last time the police officers received a pay increase was October 2008.

Attorney Casey stated that the main issue is the cost sharing mechanism of the pension contribution; the second issue is the Deferred Retirement Option Plan (DROP) that allows employees to retire and receive benefits in excess of their retirement for a maximum period of five years. The third issue is related to drug testing and toxicology and the non-on duty circumstances when someone is not injured or when a vehicle is damaged while it is not under their control. He called upon Oscar Garcia to make a presentation about the pension contribution and the DROP.

Oscar Garcia, Police Officer with Miami Springs since September 8, 1997, stated that he worked three years as a dispatcher and the remaining time as a police officer. The main issue is the pension cost sharing mechanism and it is important to understand that it has been altered since it was put into effect in 1993. On March 12, 1999, Florida Statute 185 was passed that defines the minimum standards and they do not reflect their pension; at this point they are paying 16.9%, which is the highest contribution rate in the State of Florida and fourteen other states.

Officer Garcia stated that some police officers have been divorced because of this contribution, some have lost their properties, some cannot make child support payments and some cannot afford to place their kids in summer camp. He said that this had been a problem for twelve years and nothing is being done to fix the problem that is equivalent to a cancer. He said that they are only asking the City to be fair; a contribution of 15% was recommended, but this is still way more than they can afford to pay and the monies allocated for their pension cannot be touched because they do not meet minimum standards.

Officer Garcia said that now is the time for Council to make a difference and the Police Department and citizens of the City are waiting for that decision. He implored Council to do the right thing.

As far as the DROP, Officer Garcia explained that it is a benefit and an incentive for officers to retire. The DROP system is set up so that someone with 20 years of service is eligible to enter the system with benefits paid at 70% and they can work until the 28-1/4 year that would allow them to leave at 100%. Someone who plans to take a 5-year drop must enter the plan by their 25th anniversary and every year after that they would lose one year of eligibility up to the 30th year. There is an eight year span to make a decision and the incentive is for people to leave employment at a lower rate.

Officer Garcia commented that the proposed change would allow someone to enter the DROP at any time and if this happens, the person could stay longer, be paid more money and increase the amount that the pension fund has to pay out. He explained that this is a burden on the pension fund and they do not want this. There are only three individuals in the Police Department that would benefit from this change and the other 40 would not. He urged Council to make a decision based on what is in the interest of the entire department.

Regarding the toxicology and alcohol test, Officer Garcia explained that police officers are subject to drug testing and they understand that the City is a drug free work place and officers should be held accountable for their actions, but there should be a fair policy. He cited a situation when a police vehicle was parked in front of an officer's house when they were off-duty and the tires were flattened. He said that the officer was subjected to a drug test and they feel that it is not fair. He explained another incident occurred over a weekend when an officer was testing a taser gun that accidentally fired off the probes and when they returned to work they were required to be tested for drugs.

Officer Garcia commented that when an officer goes to court in his personal vehicle and is injured, he or she does not get Workers Compensation and this is not fair; they are only asking for fairness, not to alter the policy. He said that it is of the utmost importance that Council considers the issues and the totality of the circumstances. He said that the City is receiving funds from the red light cameras that can be used to offset the cost of the additional benefits.

Officer Garcia reiterated that it is time for Council to make the tough decisions. They understand that there are budget constraints and they are not asking for a raise, a cost of living increase or take home cars; they are asking Council to fix something that is broken. The pension contribution must be adjusted to some level; it can be done in phases and it is something that cannot be ignored.

PBA Attorney Cristina Escobar stated that Article 38 in the collective bargaining agreement addresses the toxicology requirements for the Department and it incorporates the Drug Free Workplace policy of the City, which is Administrative Order 94-7. The PBA is asking the City to comply, and to stay within the parameters of that policy, as they are completely proponents of a Drug Free Workplace. Under the policy itself, there are certain limitations and parameters for the City to consider. She explained certain situations when drug testing would apply under reasonable suspicion.

Attorney Escobar explained that there were certain situations as mentioned by Officer Garcia and Attorney Casey where an officer, while at home and off-duty, was trying to put on their taser when it accidentally went off and there was no injury or damage. The officer was required to take a urine test. Another situation involved an off-duty officer who was parked and his tires were slashed and when it was reported to the Department they were told that they had to be tested. She stated that these cases do not fit within the parameters.

Attorney Escobar further explained that the City has claimed that Workers Compensation would not pay without the testing, but Workers Compensation only comes into play when there is an injury and these were situations where there was no injury to anyone. She said that someone might think that it is not be a big deal for an officer to take the test, but it is demeaning and an undue burden on the officers who are here to serve the City.

Former law enforcement officer and PBA member Peter Newman, of 340 Cardinal Street, spoke on behalf of the Police Officers and as a 30-year resident of the City. He said that when the Police Department is called, an officer usually responds within minutes and they are asked to perform a job everyday that most people would not do because it involves their safety. He said that they stand the chance of not coming home to their families at night and there is a wall at Tropical Park with 137 names of police officers that have given their lives serving the community.

Mr. Newman asked Council to seriously consider the concerns of the Police Officers who are good people that the City has invested a lot of funds in and they should be treated fair. He implored Council to make the best decision.

PBA Attorney James Casey referred to Exhibit 7 in the packet and displayed a poster board showing the pension contributions since 1993, when the cost sharing mechanism went into effect. The average employee contribution is 7.65% over the course of the timeframe from September 1993 to September 2012.

Attorney Casey stated Council's decision today would only last for the next 3-1/2 months when the contract year ends. He said that if the numbers are correct, each point reduction in the pension contribution is worth \$26,000 and the maximum cost to the City would be \$78,000 if it is retroactive to October 1, 2011. Going forward prospectively with a reduction of 3 points on the pension contribution bringing it down to 13.9%, this would cost approximately \$22,700 for the remaining 3-1/2 months.

Attorney Casey said that in three months, they would start bargaining again, probably about the same issues because the pension contribution is an important issue to the officers. He explained that Council is here today under Chapter 447, which is the public sector collectively bargaining statute that is run by the Public Employees Relations Commission. As a legislative body, Council's duty is to make a decision that will last for the next 3-1/2 months on the three specific issues. Council has to take such action as they deem appropriate to be in the public interest, including the interest of the public employees in resolving the disputed issues, and they are looking for fairness.

Attorney Casey explained that each point reduction is worth \$26,000 per year or \$78,000 for three points, which breaks down to \$6,500 per month or \$3,000 per pay period and this is what they are asking for in order to be economically fair to the City. In terms of the budget deficit, the Special Master's determination is shown on pages 21 and 22, where a series of thirteen aspects are listed in which Assistant City Manager/Finance Director William Alonso testified as to why there is a budget deficit in the City.

Attorney Casey noted that Mr. Alonso testified that the red light camera revenue was predicted at \$100,000 and there would be an elimination of longevity payments totaling \$41,500.00, and other miscellaneous reductions for a total savings of \$383,000. Mr. Alonso testified to a \$457,325.00 deficit at the Special Magistrate hearing and what occurred is that over time, the numbers did not take effect. He distributed copies of a worksheet for this exhibit.

Attorney Casey stated that in February 2012, the longevity payments were reinstated and in March of 2012, two police vehicles were purchased to the tune of \$56,177.76. The City Manager stated that his reorganization plan would save \$117,000 and Mr. Alonso had stated that a pay-out that was budgeted for the Assistant City Manager in case he was not appointed City Manager was \$116,000. These savings reduced the deficit to approximately \$126,000.00, according to Attorney Casey.

In November 2011, the City projected that the red light camera revenue would be \$100,000 and the gross revenue through May 31, 2012 is actually \$484,000 and the net amount to the City is \$161,000. He noted that of the 5,471 infractions this year, 3,066 were first notice payments and the remaining 2,675 violators are going to court and at some point they will be paying funds averaging \$75.00 per ticket, after overhead. He explained that the City had received \$168,950.00 and based upon a conservative projection for the next three months, there is \$150,000 projected revenue, for a total budget surplus of \$92,000 for the year.

Attorney Casey stated that the money exists to cover the \$78,000 to reduce the pension contribution of the employees.

Attorney Casey explained that the City will say that they do not have to abide by the 1999 Statute, because the City's procedure and the cost sharing mechanism were somehow grandfathered in. The PBA's position is that the changes last year in the 185 Plan and in the Florida Retirement System also had a grandfather clause, but the grandfather clause is interpreted to be status quo until such time as the parties bargain a new contract incorporating and meeting the minimum standards and the cost sharing mechanism in the Statute, which was at 5%. The PBA is proposing to reduce 3 points down from 16.9% to 13.9% and they would like it to be retroactive back to October 1, 2011.

In regard to the DROP, Chief Baan, Captain Kahn and Lieutenant Walker are the officers that are not in the bargaining unit and the City has become the union for those three officers, according to Attorney Casey. The only ones that will benefit are the three Officers who are currently not in the DROP because none of the Officers on board, after they reach 100%, can increase their pension benefit by 3.5% every year they stay on with the City.

In closing, Attorney Casey stated that he would like Council to consider the issues, ask questions and they will clarify their position. Fairness is the only thing they are looking for and equitability is what they want for the employees who deserve a magnanimous review of these issues so that the PBA position will go forward and they can begin bargaining a new position of some sort of equality.

PBA President John Rivera said that there is uniqueness about Miami Springs and the position they are currently in. There are impasse situations in other cities and his officers in those respective cities are very demanding, but in Miami Springs the officers want to work with the City and this is refreshing. They come as friends and not as adversaries. They want Council to understand that there are situations that will require decisions that need to make sense.

Mr. Rivera stated that to have a pension system where only two or three people benefit, does not make sense. The workers that are making the contact with the citizens and constituents should not be treated worse than those who sit behind desks. The Officers should want to come to work with a smile and the desire to provide the service for the people; this is how Council wins as elected officials and the City, residents, businesses and visitors also win. He urged Council to consider the fairness factor.

Mr. Rivera clarified that he was an architect of the original DROP plan and he is a recipient. The DROP is a win for the City, the employee and the taxpayers, but it only becomes a "win, win, win" when it is fair for everybody across the board. In addition, part of the plan is that it is known at a defined moment when someone is going to leave the City so that it can be planned financially. To allow it to continue open-ended is like a blank check, because it cannot be determined how much money is going to be. This is one of the things that drained the Florida Retirement System.

Six months ago Officer Jeff Collins displayed what the Police Officers can face at a moment's notice when it is least expected, according to Mr. Rivera. There is no such thing as a routine call for the men and women in the Department who are brave enough to wear a badge. They are not better than other employees, but they are different and they should be treated differently.

Mr. Rivera expressed his opinion about the toxicology testing being intrusive. He said that he understands the Drug Free Workplace, he is Commissioner for the Criminal Justice Standards and Training and he de-certifies police officers when they do wrong. The understanding is that the officers should not be using firearms when they are under the influence of drugs. He commended the City for its Drug Free Workplace, but noted that the Fire Department is contracted by the City and they do not have that same policy.

In closing, Mr. Rivera thanked Council for their attention and he said that they have been partners for years. He commended the Police Officers for not wanting to be adversary about the issues and wanting to be partners so that the City can be the best in every situation.

Attorney Jim Crosland representing the Administration wanted to clarify that Mr. Casey is painting a picture that it is only going to cost the City for the remaining of the fiscal year, and this is not accurate. Council's decision today will establish the new status quo if the PBA is given what they are asking for and the benefit continues until a new bargaining agreement is negotiated or they reach another impasse. The point is that it is not a cost factor for the next three months, it will continue in the future.

Attorney Crosland explained that in the bargaining, a number of agreements were reached with the PBA. The parties did bargain in good faith and all of the proposals were things that the PBA asked for and the City granted in the negotiations, although they are not legally before Council today.

The main issue is the employee pension contribution and it is the City's position that there will be no change in the contribution system at this time, according to Attorney Crosland. He stated that the pension system is "A" rated and it is 96% funded. The bottom line is that the pension system is very well funded and it is very dangerous to alter it. In large part, the reason the system is solid is because of the contribution system and the goal of the Administration is to preserve that for the City employees and citizens.

Attorney Crosland referred to other pension systems, including the City of Miami and Hollywood that experienced difficulties because of years of expensive employee benefits and City contributions. In order to resolve the issues a referendum was held and the electorate voted to alter the pension system and reduce benefits for all City employees, including Police, Fire and General employees.

Attorney Crosland explained that Mr. Casey would have Council believe that the only real impact of a 3 point reduction is \$22,700 because it is only for three months remaining in the fiscal year. If this change is made, the financial impact will not stop and those increased costs will continue forever unless there is another change.

Attorney Crosland stated that the City Manager will tell Council that the City is facing an \$800,000 deficit for the upcoming fiscal year and considering an additional \$80,000 for pension contributions will bring the budget gap to almost \$900,000 that must be dealt with. Aside from the identifiable costs, if the pension system is altered now it will destroy the City's ability to maintain the current system under the law. The fact is that the current system is valid and legal because it was enacted prior to 1999 when the minimum benefit provisions were adopted.

Attorney Crosland said that during the negotiations, the union representatives consistently said that the City's current employee contribution arrangements are unlawful, but he argued that they are not because they were in place before the Statute changed. The PBA argued that the City would receive a letter from the State Division of Retirement informing the Administration that the pension contribution is illegal and it has been two years since that time and there has been no letter received.

Attorney Crosland stated that the City's Pension Attorney is well regarded throughout the State and he was invited to attend a meeting to explain the issues and discuss the pension contribution. The Pension Attorney agreed that the pension system is legal because the current provision was enacted in 1993, and every year the State Division of Retirement issues a letter to the City approving the pension system. He noted that if the State did not feel that the current arrangements were not in compliance they would have confirmed that and they would have withheld the 185 monies.

Attorney Crosland explained that if the pension plan were to lose its grandfather status, it could potentially cost the City millions of dollars in contributions over the years and lower the financial stability of the plan. He stated that there are different pension systems and perhaps some arrangement can be worked out in the future, but the reason the parties have not reached an agreement is because of this one issue. He would like to close this out for this fiscal year and continue discussion in future negotiations with no promises attached.

In regard to the DROP eligibility, Attorney Crosland stated that the PBA's argument is that it is only being done to benefit the Chief and two other Senior Staff Officers. He explained that under the law, changes cannot be made for uniform police officers regarding the pension system based on whether they are in the bargaining unit or not; the changes must be the same. Officer Garcia talked about the DROP as being an incentive, and that is exactly what it is supposed to be and under the current provision, the three Senior Officers cannot enter the DROP and they can stay working here forever.

Attorney Crosland advised Council that if they approve the Administration's recommendations for the DROP it would give incentive to those three Officers to leave within five years, and it would contribute to upward mobility within the Department. This would apply to everyone in the bargaining unit who will eventually be eligible for that provision, and there cannot be discrimination between bargaining and non-bargaining unit employees.

Attorney Crosland added that the City Manager will confirm that he needs a few years to plan for organizational development and the City's position is that eliminating time restrictions for the DROP will benefit everyone in the Police Department in the long run.

Attorney Crosland stated that the Administration is proposing no change to the toxicology and drug testing and the PBA is proposing a change due to the fact that there was only one Police Officer who discharged their taser at home. He explained that the City is a participant in the Drug Free Workplace Act and it provides a discount in regard to Workers Compensation. The PBA wants to carve out certain situations that would not require testing, while all other City employees are subject to after accident toxicology testing. He said that the Police Officers should also be subject as well and the PBA counsel has said that the City's reluctance to agree to this is a disguised way to impose random drug testing, which is not true; it only applies when there are accidents involving dangerous weapons.

In conclusion, Attorney Crosland recommended that Council should, through a motion and vote, approve the Administration's package, which is no change to the employee pension contribution requirements, to amend the DROP eligibility requirements, and to leave the toxicology and drug testing requirements the same. He cannot understand how Police Officers of all people could oppose drug testing.

City Manager Ronald K. Gorland thanked the PBA negotiating team and union representatives for working so hard with the Administration over the last three years to come to an agreement, although it may not seem to have been very productive since it leads to the current impasse, but the fact is that only three items remain unresolved. He was part of the negotiating team and can honestly say that they all were engaged in the give and take necessary to accomplish an agreement and that every effort was made by both sides and that they are at a true impasse.

City Manager Gorland reminded everyone that the primary issue that both parties had to deal with during this period is not their making; the downward spiraling economy impacted everyone, including the City. Mr. Crosland covered in detail the three remaining issues and the reasons the Administration cannot compromise further. The City's financial condition must be kept in mind in order to make sure there is no misunderstanding regarding the financial capability at this time.

City Manager Gorland explained the history of the City's financial condition since he joined the City eight years ago as Assistant City Manager when the reserves were down to a deficit of \$300,000 and the millage rate was at 8.7440. He said that the new Administration worked successfully with Council to turn the City around in just a few years, rebuilding the reserves to \$8.4MM in FY 2009. The impact of a declining economy resulted in a reduction of the City's reserves to the current \$4.9MM. He explained that this leaves little funds for aging infrastructure and revitalization and the cash reserves might have to be used to balance the budget.

According to Mr. Gorland, the City Council and the Administration worked hard to minimize the economic impact on the ability to deliver core services, especially the Police Department. This meant implementation of many of the classic actions available and all cost reduction programs such as employment freezes, no merit increases, personnel and capital expenditure reductions. These actions impacted City personnel except for the PBA bargaining unit members. During this period, the City reduced its full-time non-PBA employees from 84 in FY2010 to 79 today, and increased the uniform Police personnel by two from 41 to 43 Police Officers, according to Mr. Gorland.

City Manager Gorland added that during the current fiscal year, the City imposed pay increase caps, eliminated cost of living adjustments, eliminated merit increases and reduced the pay of assistant directors and higher positions by 3%. Longevity pay was also eliminated, but reinstated months later. The City's capital expenditure plan was cut back to essential expenditures and cost beneficial programs.

The City's current budget situation is a shortfall of approximately \$816,000, according to Mr. Gorland. Part of the problem is that the City's projected ad valorem tax revenues will only be \$5.6MM and this is approximately the same amount that was received eight years ago in FY2004, and was a direct result of the drop in property values. The only way to close a gap of this magnitude is a combination of further reductions in non-PBA bargaining personnel, pay and benefit reductions and further capital expenditure reductions, or a millage increase. It could be argued that the PBA bargaining unit members should share in the burden as their peers are doing in many local communities, but they are not being asked to do this.

City Manager Gorland stated that 71% of the City's budget is associated with personnel and there is no way not to negatively impact the personnel in closing the \$816,000 budget shortfall. He noted that not one penny had been taken from the pay scales of the PBA bargaining unit members in spite of all the cost reductions, nor have they been asked to make any staff reductions. He added that this is amazing when considering the reductions that were imposed on police in many other cities.

City Manager Gorland said that he wished that the City was in a better financial condition and they could agree to more of the PBA demands without placing the City in financial stress, but that is not within the current capability. Under the circumstances, it seems like enough that the City is not asking the PBA bargaining unit members to incur any of the across the board reductions imposed on the City's non-PBA bargaining unit personnel.

Mr. Gorland stated that at some point the economy would turn around and the City would once again return to a position of fiscal strength when the PBA demands could be considered more favorably. The Police are highly valued and greatly respected in the community and he does not like that they are at an impasse. Unfortunately, this is not the time to make any further concessions related to the impasse.

City Attorney Seiden advised Council that they could ask questions of any of the presenters at this time or they could enter into deliberations and discussion amongst Council.

(Mayor Garcia called for a five-minute recess)

Vice Mayor Lob asked Mr. Casey if he was made aware of the shortfalls related to Workers Compensation and Mr. Casey responded that he was not aware of any shortfalls.

Vice Mayor Lob commented that the City is in the self-insured program and there was a shortfall of more than \$100,000 because of claims for various people who were hurt on the job. He asked Assistant City Manager/Finance Director William Alonso if he had a better estimate.

Assistant City Manager/Finance Director William Alonso stated that Vice Mayor Lob's estimate was correct and that the reason for the increase was due to the Heart and Lung bill.

Vice Mayor Lob commented that the Workers Compensation increase was an increase that the City normally does not have and it would negate the \$92,000 estimated by Mr. Casey. He asked for more clarification from Oscar Garcia about a statement he made that pension monies could not be touched because the City does not meet minimum standards.

Attorney Casey explained that the Statute provides that certain criteria be met, such as a certain amount of overtime and disability payments are to be included in the pension plan. These are two major areas in which the minimum standards have not been met with the current pension plan. There is \$500,000 in an insurance trust fund that cannot be used to enhance benefits until the minimum standards are met.

Mayor Garcia wanted clarification from Mr. Casey in regard to the Magistrate's decision and how it affects the current pension system if the percentage is capped at 15%.

Mr. Crosland said that if Council were to grant what the PBA is asking that would destroy the current pension plan in the sense of the current legal ability to continue what is being done now. If Council were to agree with the Special Magistrate's recommendation it would destroy the pension plan as well. Any change in the employee contribution requirements from what is in place right now would destroy the ability to keep the 1993 provisions and in the worst case scenario, the State will say that the employee contributions must be capped at 5%.

Mayor Garcia asked if Council were to agree to 15% if the State could then mandate 5%.

Attorney Crosland agreed that the State mandating 5% could be a possibility, although he could not guarantee that would happen and any change in the percentage would destroy the City's legal position to continue what it is doing now.

PBA Attorney Casey said that when Mr. Crosland uses the word "destroy" he is talking about changing the cost sharing mechanism; the pension plan will remain 96% funded. He said that it has remained unchanged since 1999, and they will continue to bargain until it gets changed.

Mayor Garcia asked City Attorney Seiden to explain the City's side of the argument.

City Attorney Jan K. Seiden said that as he understands the argument, based on what Pension Attorney Cypen has said, the current pension system is valid and is not subject to the current legislation that would affect contributions based on its grandfather status. Since the system is grandfathered in that means that it cannot be attacked, but if one word or if Council were to accept the 15%, it is likely to happen that the State will require the City to comply with the 185 plan requirements. The cap for contributions by the union is 5% and if that applies the City would have the balance of the contributions or 29%.

To answer Mayor Garcia's question, City Attorney Seiden clarified that 5% is the mandated Statute amount or the cap. Any change that is made in the pension contribution would cause the City to lose the ability to not be subject to the law since it has a grandfathered system that went into place before the Statute went into effect.

Attorney Crosland said that William Alonso provided him with a cost breakdown and a 5% cap would mean an additional 12% contribution for the City, for a total cost of \$300,000 more per year.

Assistant City Manager/Finance Director William Alonso clarified that the City is currently paying \$442,000, and an additional \$312,000 would bring the total contribution to approximately \$754,000.

City Attorney Jan K. Seiden stated that the recent newspaper articles show the situations that exist and many of the pension systems are being damaged severely because of these types of conditions. The argument is that it is an extraordinary hardship for the Police Officers to have to contribute additional monies so they have less money to live on day-to-day. To be fair the other side of the argument must be considered and that is they are contributing their money and they will get it back including the investment income. Council represents the City's 14,000 residents and they must vote on what is appropriate for the citizens.

Mayor Garcia said that in speaking with the residents, they have said that they do not want the quality of the policing to be jeopardized, and it has not diminished. The current pension system is the wrong one and he would like to do what needs to be done to fix it. He realizes that it is a lot of money, but the residents have a choice to maintain the police force and keep the Police Officers from leaving the Department.

Councilman Best stated that he is troubled with the decision that Council is faced with and it makes sense to him that the City's pension plan is 96% funded. In this particular case, he does not feel that the labor force is hurt by moving forward with the City's plan. The first issue relative to the employee pension contribution is the foremost issue and there is a ripple effect across the country that has reached Miami Springs at some small degree. He agrees with the Mayor that the pension matter would have to be addressed sooner than later or it will break everyone.

Councilman Best feels that the rank and file is well compensated for what they do and the question is whether or not to change the pension contribution that would affect the grandfathering of what is currently in place. On the second issue, relative to the DROP, he believes that the benefit should be the same for everyone. In regard to the toxicology issue, he does not know that it is that intrusive to require a test in the case of an inappropriately discharged taser or handgun. He feels that the City's position is good.

Vice Mayor Lob inquired if the drug testing policy applies also to General Employees if something happens outside the workplace.

City Manager Gorland responded that it applies to 100% of the workforce, even if an incident happens outside of the workplace.

Human Resources Director/Risk Manager Loretta Boucher stated that the officer that was asked to take the drug test discharged their taser gun. If hurt at home he would be covered under Workers Compensation since a piece of City equipment was used improperly. Regarding the car that was damaged in a parking lot, she is not aware of sending anyone for drug testing and she is not aware of any slashed tires. Any time someone is hurt when it involves city equipment they are sent for testing and it does not apply if someone falls down while off duty at home. She emphasized that the testing only applies when it is a job related incident and if someone is hurt going to court they are covered because they are on duty.

Councilwoman Ator stated that she has a question related to the DROP. There was testimony given on behalf of the PBA that it affects three people and it is bad for the remaining 40 people; it sounds like it really impacts all 43 people.

Attorney Crosland said that the proposal is to give the benefit to all the officers in the bargaining unit; not just the three people whose names were mentioned. It would apply to them as well because the pension statute governs everyone who is a uniformed police officer and there cannot be discrimination.

To answer the Mayor's question, Attorney Crosland said that if Council approves the proposal it would result in a rewording of the pension ordinance that has already been drafted.

Attorney Seiden agreed that anything that is approved would have to be incorporated into the ordinance.

Councilwoman Ator stated that she participated in the Good Government Initiative with public officials from all over south Florida and one of the issues they dealt with was about budgets and pensions. She spoke with other elected officials who said that their cities were drowning in pension costs, while this does not apply to Miami Springs because the pension plan is 96% funded.

Councilwoman Ator explained that she is a lawyer that specializes in employment and she has experience in these matters and understands the problems that obviously need to be solved. Council must look at changing the dynamics of the pension system and consider how it can be done. The Police Officers are saying that they are contributing too much and they cannot pay their bills and the Administration is saying that there is no way that the City can afford to pay \$800,000 per year.

Councilwoman Ator emphasized that during her time on Council she has criticized the Administration for spending money because it is not there and they should be financially responsible. As a Councilwoman, she cannot be any less than financially responsible for the City. During the last budget process, the Chief of Police said that he would give up three police cars in order not to impose a pay cut and the Department ended up getting the cars and there were pay cuts, which is unacceptable. She is not in a position to agree to any changes until she goes through the next budget process because right now the funds are not available.

Councilwoman Ator referred to the possibility of outsourcing Public Works and said that this is going to be another issue involving the budget deficit. She cannot do anything other than adopt the City's recommendation on the pension contribution. The DROP position impacts everyone equally.

In regard to the toxicology issue, Councilwoman Ator said that she completely understands the testing being tied to the Workers Compensation insurance. She writes employment manuals and is familiar with drug testing policies, and she does not think it is onerous to be drug tested outside the workplace when it involves City property and there is an accident.

Councilwoman Ator stated that she would like to resolve the issues going forward, but this is not the day to adopt the proposed changes. From a legal perspective, adopting a 15% contribution could lead to the 5% cap because it would destroy the grandfather status the City enjoys now.

Vice Mayor Lob commented that everyone agrees that the pension contribution is not fair to the officers, he feels for them and some are his friends. The current pension system cannot continue; pension plans across the nation are being reworked and the City's pension system should be adjusted in order to be fair to everyone, including the employees and the citizens. He agrees that the City is not in a position to accept any changes in the current system because the funds are not available. Even though there are reserve funds, this is not a one-time expenditure and the expense will occur every year.

Vice Mayor Lob would like Council to look at other pension systems and come up with a solution that satisfies everyone. He would like to remain partners with the Police Officers to work out a long-term solution and it cannot be done at this meeting.

Vice Mayor Lob explained that if the DROP is an incentive for employees to retire, he would like to know how the change would affect the incentive.

Attorney Crosland responded that as far as the bargaining unit employees, the change will loosen up the DROP requirements. The reality is that it is the opposite of what the PBA Attorney is arguing because he says it is a mechanism by which the three senior Staff people can get all the money and keep working. The DROP incentive is for an employee to retire within five years and that will open up mobility within the Department for employees to move up to those positions.

Mayor Garcia stated that the three Senior Staff members are not eligible to enter the DROP and for the record he is only concerned with the positions and the dollar amount and not the names of the employees who fill those positions. He said that after 20 years the pension benefit is 70% of the pay and after 28 years it becomes 100%. He asked what happens after 28 years and if someone could make more than 100%.

Attorney Casey clarified that bargaining unit employees cannot make more than 100%. The status of the three Senior Staff members allows them to continue receiving 3.5% annually with no maximum and there is no incentive for them to enter the DROP.

City Attorney Jan K. Seiden clarified that currently the three Senior Staff members cannot enter the DROP.

Attorney Crosland stated that under the current DROP system there is no possibility of the three Senior Staff members exercising the option and that is the problem.

To answer the Mayor's question, Attorney Casey explained that the three senior officers had the right to enter the DROP between 20 and 28 years and they chose not to because they knew they were eligible to receive pension benefits over 100%, while the bargaining unit members do not have that benefit. There is an incentive for the rank and file to enter the DROP or else they will begin losing money and it is important to understand the distinction.

Attorney Crosland said that the essential benefit of entering the DROP is that instead of leaving the employment of the City, the pension funds are put into a separate account and the employee continues receiving a paycheck without paying the pension contribution.

City Attorney Seiden said that being part of the DROP is the incentive and right now the three senior officers cannot be in the plan. Right now they can stay with the employment of the City for as long as they want and allowing them to enter the DROP gives them the incentive to retire. He does not see this as disadvantageous to the City or the Union.

Mayor Garcia said that he wanted to know the financial implications to the pension.

Assistant City Manager/Finance Director William Alonso stated that there is no financial impact to the pension plan because a person who enters the DROP is basically retired; the only difference is that they keep working for up to five years. On the City's side, since there are no more pension contributions, in this particular case, the three individuals would save the City approximately \$66,000 annually.

Attorney Casey reiterated that the three individuals had the option to enter the DROP at twenty years, they chose not to do so and now they want to make it available to themselves after the fact. He feels that this is disingenuous; they were all treated equally at the beginning, they did not enter and now they must live with their decision.

Councilwoman Ator does not feel that the real issue is entering the DROP because the three officers earn the additional 3.5% every year and that is the real issue.

Attorney Crosland stated that the three senior officers receive 3.5% because their status falls under the old pension plan before it was changed.

Attorney Seiden explained to the Mayor that the granting of the amendment would give an incentive and the option to retire, and without it the three officers could stay forever.

To answer Vice Mayor Lob's question, Attorney Crosland stated that the incentive to enter the DROP is that the employee continues to receive their regular paycheck for up to five years and they receive their pension benefit in a separate fund, which is two payments. After five years, the employee must retire.

Vice Mayor Lob felt that the purpose of the DROP is to give employees the incentive to retire earlier and if the employees made the decision not to enter the program between 20 and 28 years, it was their decision; they chose not to take advantage of the incentive and decided to continue working. He reiterated that the DROP is an incentive to retire between 20 and 28 years, and the incentive would be lost if an employee can enter the DROP at any time.

City Manager Ronald K. Gorland clarified that because of the 100% cap for the bargaining unit employees, if they choose not to enter the plan before 28 years, they will be contributing to a pension plan and they will not get back one dime; this is the incentive to enter the plan.

Mayor Garcia asked Officer Garcia about the 96% funding on the pension plan.

Officer Garcia clarified that the fact that the pension plan is 96% funded has nothing to do with the issues that had been discussed during this meeting. He said that the reason the plan is well funded is because of the pension board policies and the ability to invest funds within the pension system.

Officer Garcia stated that they want to fix the way that the funds are being allocated to the pension system. Currently, the City is paying approximately \$447,000 per year and the hardworking Police Officers are paying the same amount, plus \$47,934.00 that is allocated to offset the cost of the pension that was grandfathered in since 1997. When the 1999 pension system went into effect, the City's plan did not meet the minimum standards and since there were not enough funds to implement the minimum standards set forth in Statute 185.07, the monies were to be allocated into a reserve fund until such funds become available to implement the minimum. The minimum standards must be implemented first and the State of Florida has not addressed this issue because it has to go through the collective bargaining process.

Mayor Garcia asked Officer Garcia to comment on Councilwoman Ator's position that the issue is really 3.5% and not the DROP.

Officer Garcia commented that 3.5% applies to the pre-1983 managerial employees who are the only Police Department employees that can exceed 100%. He said that the law was changed and the reason for this is because the pension system must be amortized for forty years in order to be able to plan ahead, and that is why the pension system is 96% funded. For every year those employees who exceed 100% and continue working they get an additional 3.5%. If they are allowed the option to enter the DROP they could stay another 30 years before they enter the DROP and continue earning another 3.5% every year. By implementing a change it would mean that every employee could work up to the 28th year because the incentive would be to reach 100% and then enter the DROP for five years.

Officer Garcia clarified that the Police Officers have until their 25th year to participate in the DROP for five years and after 25 years they lose one year eligibility. For example, if someone decides to enter the DROP in their 27th year they can only participate for three years because they cannot go past 30 years. The City's proposal would remove that incentive and that would allow everyone to reach 100% and then enter the DROP for five years, which would affect the pension system.

Councilwoman Ator continued to explain that the problem is the 3.5%, not the DROP, which is part of the 1983 pension law that obviously will need to be addressed when the entire pension system is addressed.

Mayor Garcia asked Assistant City Manager/Finance Director William Alonso which position on the DROP would have a greater effect on the pension system and the City.

Mr. Alonso replied that from the City's point of view, there is a benefit every time an employee enters the DROP and currently there are 17 employees participating in the plan, which reduces the City's pension contribution for next year.

To answer the Mayor's question, Mr. Alonso explained that there is more than \$20MM in the Police pension plan and the funds for the people who are retiring are already in the plan to pay for their retirement. The pension plan does not lose money when people retire from the system.

Councilwoman Ator stated that the 3.5% is an issue with the pension; it is not an issue with the DROP. She reiterated that the pension system needs to be fixed.

Vice Mayor Lob said that apparently it is only an issue for three people, because once an employee reaches 100% they will be paying into the pension system and not benefiting from it.

City Attorney Jan K. Seiden interjected by saying that Vice Mayor Lob's statement was not accurate. There are two sides and if Council does not agree to the amendment, then the three top Officers in the Department that earn 3.5% every year have no ability, nor an incentive to retire and they will work for as long as they want. Secondly, if this is enacted, one of the impacts on the rank and file is that it will open up a window for everybody from now on to expand the time past 28 years and work up to 100% and then enter the DROP.

Officer Garcia said that an employee needs to make a decision on their 25th anniversary whether they want to leave at 100% or take five years in the DROP. Even if the person waits until the 28th year to enter the DROP they could still participate for one year and nine months. It is unfair to make the change to allow an employee to reach 100% and then enter the DROP because it does not work to the benefit of the overall Department.

Mayor Garcia asked about the situation with the toxicology testing and if the policy could be made more clear.

City Attorney Seiden explained that if a police car is sitting in a parking lot overnight and the tires or vehicle is damaged while the Officer is sleeping, the Human Resources Director/Risk Manager clarified that under those situations there would be no drug testing. If an Officer gets into their vehicle and gets into an accident or damages a tire while operating it there would be a drug test required.

Officer Garcia clarified that an incident did occur with a Police Officer who has a take home car and in the morning when he found that the car had been vandalized overnight it was reported to his Supervisor and the Officer was subject to a drug test.

City Attorney Seiden could not recall the incident, but could not say that it never happened. He said that it is not something that is normally done because there must be some causal effect.

Councilman Best questioned the whether or not the incident happened and if it was reported.

Officer Garcia stated that the incident was reported and the person who actually vandalized the Police car was arrested, and the Police Officer was still subjected to a drug test. He explained that the incident was a couple of years ago.

Attorney Crosland said that if someone is not in the vehicle and it is at their home, the intent under the current policy is not to drug test someone, as previously stated by the Human Resources Director. He cannot dispute what happened two or three years ago, but it is not the intent of the policy and it does not need to be changed. He explained that the real issue is the discharge of a weapon and if that were to happen, it is a valid use of the drug testing policy. He clarified that all City employees are subject to after accident testing.

Attorney Escobar added that the policy is in place and the language is provided and should be enforced, but it has to be on reasonable suspicion while on duty. The Officer has to report a discharged firearm but there does not always have to be a drug test unless there is a reasonable belief that drugs are involved. They are asking to look at the language and specifically apply it as it is stated.

City Attorney Seiden referred to the information that was provided in the booklet under the second tab, outlining the PBA position and the City position for all three issues. Council may vote on each one individually or move the PBA slate or the City's slate.

Attorney Casey clarified that he would like Council to vote on each individual issue.

City Attorney Jan K. Seiden explained that Council needs three affirmative votes if they are going to vote to approve something and failing to do this will in effect be a denial.

ISSUE 1: PENSION CONTRIBUTION COST SHARING MECHANISM

Councilman Best moved to adopt the City's status quo position for Issue 1. Councilwoman Ator seconded the motion, which carried 3-1 with Mayor Garcia casting the dissenting vote.

ISSUE 2: PENSION DROP PROGRAM

Vice Mayor Lob moved to adopt the PBA's position. Mayor Garcia passed the gavel and seconded the motion, which failed 2-2 with Vice Mayor Lob and Mayor Garcia voting "aye" and Councilman Best and Councilwoman Ator voting "no."

City Attorney Seiden stated that the 2-2 vote is effectively a denial to adopt the PBA's position.

Councilwoman Ator moved to adopt the City's position on Issue 2. Councilman Best seconded the motion, with Councilman Best and Councilwoman Ator voting "aye" and Vice Mayor Lob and Mayor Garcia voting "no".

City Attorney Seiden said that as a result of the vote, the pension DROP program would remain status quo and Attorney Crosland agreed.

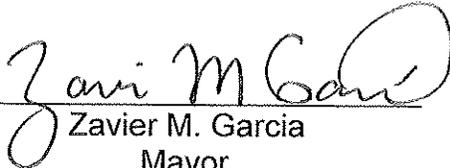
ISSUE 3: TOXICOLOGY & ALCOHOL TESTING

Councilwoman Ator moved to adopt the City's position. Vice Mayor Lob seconded the motion, which carried 4-0 on roll call vote.

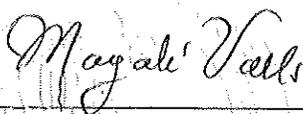
City Attorney Seiden said that he will prepare an order for the Mayor's signature in accordance with the votes that were taken. He thanked Council for their time and participation.

4. Adjourn

There being no further business to be discussed the meeting was adjourned at 11:27 a.m.


Zavier M. Garcia
Mayor

ATTEST:


Magali Valls, CMC
City Clerk



Approved as written during meeting of: 6-25-2012.

Transcription assistance provided by Suzanne S. Hitaffer.