

**Cortez Fire Protection District**  
**Special Pension Board meeting minutes**  
**August 8, 2012**

*(A special meeting of the Pension Board of Directors of the Cortez Fire Protection District was scheduled at the Regular Board of Directors meeting on July 11, 2012 and was noticed in the Legal Section of the Cortez Journal, the paper of record, on Thursday, August 2, 2012.)*

**Call to order**

President Nic McDonald called the meeting to order at 5:10 p.m. in the meeting room at Station #1. The roll was taken and the board members present were Nic McDonald, Matt Lindsay, Jim Bridgewater, Lori Johnson, Kent Lindsay, Orly Lucero and Keenan Ertel. Administrative assistant Wendy Mimiaga, Asst. Chief Balke and Chief Vandevoorde were also present for the meeting.

**Public Comment**

John Garcia commented that he was told there was a chance of someone getting a year of service, it is outside the bylaws. He also inquired if Brandon Johnson put his required time in according to the bylaws to receive a pension. President McDonald stated that Mr. Johnson was given a year to seek employment with the district. The year he was given, he did not get 36 hours of training.

Ms. Johnson clarified that Mr. Johnson (Brandon) was already a full time employee, but was changed from salary to hourly. The Chief (Eberle) and the Board of Directors made the decision that he could not continue as a volunteer while being a full time employee. The department would have had to pay him overtime for the hours he put in as a volunteer (according to FSLA), so they decided to buy out (and pay the pension board) the remaining year so he could qualify for a ten (10) year pension.

Mr. Ertel explained that this was a specific situation that the board had to address, while complying with state and federal employment laws. He went on to explain that Mr. Johnson had already given up five (5) years of volunteer time with the Dolores Fire Department to work for the Cortez Fire Protection District as the fire inspector, and the board decided to buy out his last year so he could have some retirement benefit for all his years of service.

Mr. Bridgewater further explained that the actuarial, Frank Dobis, was contacted to determine the amount it would cost the District to buy out the one year for Mr. Johnson. Mr. Dobis did the calculation and the District paid the pension fund \$1,909.00. *(note: this was voted on by the Pension Board of Directors on November 12, 2008 at a special pension board meeting. Mr. Johnson then submitted for retirement, as a volunteer, at the next regularly scheduled pension board meeting on January, 14, 2009.)*

Mr. Garcia asked if the pension fund that is in place was solely for volunteers, and what could happen to the fund with the pensions for the full time firefighters. It was answered that yes it is only for the volunteers, and the fund has to be maintained until all the retired volunteers are gone. This fund does not cover the full time firefighter pensions.

Ms. Johnson stated that the board is only looking into this to allow the volunteers, who are just shy of the ten (10) years needed for retirement, the chance to move up through the process and become a paid full time firefighter without losing their vested interest. Mr. Garcia pointed out that they would still not have the thirty-six hours of training per year that is required.

A comment was made that if this is going to benefit the firefighters in our district to move up, then we need to look at it. Mr. Ertel stated that our reserves have been given the first preference for these

positions, but they will have to meet the requirements. And there is only one individual at this particular time that this could possibly apply to. Mr. Bridgewater interjected that this is only being considered for those who are leaving the volunteer ranks solely to become a full time paid career firefighter with the district, and would not be considered for any other reason.

**Correspondence**

There was no correspondence.

**Old business**

There was no old business.

**New Business**

**A. Proposed changes to pension by-laws** – Matt Lindsay made a motion to go into executive session, Kent Lindsay seconded. Ms. Mimiaga stated that this would not be a legal executive session as it did not fall within any of the legal guidelines as outlined in the state statute (C.R.S. 24-6-402 (4) (a-g)). It was argued that it was a personnel issue. *(A personnel issue pertains to an individual, not, as in this case, a change to an issue covering personnel in the by-laws.)* Discussion ensued. Mr. Bridgewater stated that there is a motion and a second on the floor and a vote should be called. The motion failed on the following vote:

Bridgewater	Johnson	Ertel	Lindsay, K.	Lindsay, M.	Lucero	McDonald
no	no	no	yes	yes	no	yes

Mr. McDonald explained that at the last Board of Directors meeting, the board moved forward with the SAFER grant and thus the hiring of six full time firefighters. An individual had commented that he would like to apply for one of the positions, but he was close, a year, of being eligible for his volunteer pension, and if there was a way to remedy the situation so he did not lose his nine years of service. Mr. McDonald stated that it was given to the pension board to look into the options, and to determine if an amendment to the by-laws needed to be made.

Mr. McDonald, Mr. Lindsay (Matt) and Ms. Mimiaga had been looking into the verbiage for a possible amendment to the by-laws. *(All of which was included in the packet and had been sent via e-mail to each board member.)* Ms. Mimiaga stated that an actual amount or calculation should not be included in the amendment, but it should be stated that it would be determined by the actuarial on a case by case basis since there are many factors that need to be taken into consideration.

Mr. McDonald brought up the scenario, what if the employee had ten years of volunteer service (with or without one year due to buy-out), retired as a volunteer, turned fifty years of age and wanted to draw his volunteer pension that he was eligible for. Mr. McDonald thought that they could not legally draw the volunteer pension since they are an employee of the district and paying into the FPPA pension. It was explained that the volunteer pension fund and the employee (FPPA) pension fund are two totally separate funds.

Mr. Lindsay (Kent) said “State law says ‘a volunteer firefighter shall not receive a retirement pension for service in a fire department while the firefighter is an active member of that department.’ No ifs, ands or buts about it.” *(note: This was read from C.R.S. 31-30-1122 (1), but left off the beginning of the sentence ‘Except as provided in section 31-30-1132, a volunteer firefighter shall not receive.....’*

*C.R.S. 31-30-1132 Retired firefighter – return to active service – benefits, does allow for a retire firefighter to come back to active service, however “such person shall not receive service credit for the purpose of increasing such pension”. C.R.S. Section 31 Article 30 Part 11 is the Volunteer Firefighter Pension Act and only relates to the volunteers and their pension. The reserve members on the department that are retired volunteers and collect a volunteer pension are not active volunteers. See attachments to minutes.)*

Mr. Lindsay then went on to say that this is conflicting and we need to put state law into our pension by-laws. *(note: The Cortez Fire Protection District Volunteer Firefighter Pension Fund By-Laws are a very basic set of by-laws that have been mostly drafted directly from the state statues. The training requirement has been changed in the by-laws, but still falls under the state minimum requirement of thirty six hours.)*

He also inquired if he as the treasure of this board was he bonded? Ms. Mimiaga replied that he and all the district members of the Board of Directors are most definetly bonded as required, \$1,000 per each director and \$5,000 for the treasurer, and the bond is filed with the Department of Local Government in January of each year. He then inquired if we filed the actuarial study with the state. It was replied that the actuarial study is only needed on the state level to submit for the state matching funds for the pension fund, and is submitted with the application for the state contribution. The Department of Local Government wants to know our payout level, if it is more than the state recommended maximum level of \$300 per month for twenty years of service, the state contribution will be decreased, and if the district made a contribution to the fund, if they did not, neither will the state.

Mr. Ertel said the decision we need to make is if this is worth pursuing, to sell a year of retirement to someone in this position, or are we creating a bigger problem.

Mr. McDonald stated he thought we would be creating more problems. That he did not think we should change the by-laws. Each individual has a decision to make, if they want to be a volunteer or a full time employee of the district.

Mr. Lindsay (Matt) added that there are three options, do nothing, do it for one person and then the board could look into each individual case as they arise, or they could amend the by-laws, which could cause problems in the future.

Mr. Lindsay (Matt) also stated that he did not think a retired volunteer that became a fulltime firefighter with the district should be able to draw his volunteer pension. That it should be put on hold and he should not receive the benefit check until he was done with the fulltime job. Mr. Bridgewater responded that you cannot limit an individuals’ ability to draw a pension. You cannot tell them if, where or when they can work. Mr. Lindsay was concerned that an individual would be receiving two checks from the same place at the same time. That you should do one or the other, but you should not be able to do both. That it is a conflict of interest to receive a pension check and a pay check from the same place. *(note: The volunteer pension funds and the district funds are two separate accounts and entities, and in no way are they ever comingled.)* Mr. Ertel reiterated that once an individual retired as a volunteer, and met the requirements for drawing the pension benefit, he was entitled to that benefit, regardless of where he chose to take a full time job. And if he could use his training and experience, and qualified for a job as fulltime firefighter with the district, he has every right to work there, and collect the pension he is also entitled to. Ms. Johnson added that you would be penalizing the individual for this volunteer service if you told him he could not draw the pension he was entitled to.

Mr. Bridgewater stated that the state is specific about the training hours, and he doesn’t see any way around it. As a fulltime employee, a firefighter cannot come back in to get their volunteer training hours. Discussion ensued, and the issue was brought up again concerning Brandon Johnson, the former fire inspector, and the board buying out his tenth year of volunteer service. Mr. Ertel stated

that when Chief Eberle came to the department, he discovered that Mr. Johnson was a full time employee and a volunteer firefighter which was in violation of FLSA, therefore the board took action to not violate federal law.

Keenan Ertel made a motion to table the issue indefinitely and drop from the board's discussion due to the requirements of the State to allow a volunteer to buy a year of service to qualify for a pension, Orly Lucero seconded. The motion passed as follows:

Bridgewater	Johnson	Ertel	Lindsay, K.	Lindsay, M.	Lucero	McDonald
yes	yes	yes	yes	yes	yes	yes

**B. Board approval to confer with attorney on legal depositories** – A situation has come up in working with Mike McAndrew at Edward Jones, that the company is inquiring where in the state statutes does it allow for a pension fund to be held by Edward Jones, that it is considered a legal depository by the state. The question came up with a neighboring fire district, Dolores, and Mr. McAndrew felt this could also affect our account. Ms. Mimiaga looked into the relevant statutes that cover legal depositories (C.R.S. 24-75-603 and 31-30-1113 and S.B. 10-021 from 2010). The law is written as “may” and not “shall”, and we should be okay, but we should seek a legal opinion. It would be detrimental to the pension fund if we had to move it to a state bank or state trust company. We could make similar investments with a trust company for a state bank, however they would charge us a percentage of the fund each year to manage the fund.

Lori Johnson made a motion to contact Kelly McCabe, legal counsel, to further look into the situation regarding the pension funds. Matt Lindsay seconded. The motion passed as follows:

Bridgewater	Johnson	Ertel	Lindsay, K.	Lindsay, M.	Lucero	McDonald
no	yes	yes	yes	yes	yes	yes

**Executive Session**

There was no executive session.

**Adjournment**

Having no further business to come before the board, Kent Lindsay made a motion to adjourn the meeting at 6:55 p.m., Orly Lucero seconded. The motion passed as follows:

Bridgewater	Johnson	Ertel	Lindsay, K.	Lindsay, M.	Lucero	McDonald
yes	yes	yes	yes	yes	yes	yes

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Nic McDonald – President

Attest:

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Kent Lindsay – Secretary / Treasurer