

**ATU LOCAL 1596 PENSION FUND
MINUTES OF MEETING HELD
JUNE 8, 2016**

Board Members Present:

Ronald Morgan – Chairman, Union Appointee
Blanche Sherman – Secretary, LYNX Appointee
Frank Luna - Union Appointee
Tangee Mobley - LYNX Appointee
Ismael Rivera – Union Appointee
Donna Tefertiller - LYNX Appointee

Others Present:

Scott Baur, Plan Administrator (Resource Centers)
Pedro Herrera & Bob Sugarman, Counsel (Sugarman & Susskind)
Tom Zehnder & Fritz Wermuth (King, Blackwell, Zehnder, & Wermuth)
Lisa Smith, Court Reporter
Pat Christiansen

Agenda Item	Discussion	Decision	Status	Follow-up
1.	Chair Ron Morgan called the meeting to order at 9:20 AM in the Second Floor Board Room Lynx Central Station, 455 N. Garland Avenue, Orlando, FL 32801.			
2.	No members of the public addressed the Board.		Closed	None
3.	<p>The Board discussed the availability of Minutes for the May 19 cure meeting.</p> <p>Tom Zehnder addressed the Board and reviewed items addressed at the May 19 meeting: fiduciary liability insurance; settlement of Ruiz lawsuit; request by counsel for a shade meeting; closure of plan to new entrants with deferral of discussion on the actuarial cost studies; and plan amendments. He noted that the Board approved voting parity and indemnification provisions of the amendments, while deferring action on the other amendment provisions to the current meeting. Benefit matters in the amendments such as the disability provisions and interest on refunded contributions, meanwhile, were referred back to the parties for consideration in bargaining.</p> <p>Mr. Zehnder stated that the Board properly noticed the meeting.</p>	The Board briefly considered a procedure to post notice of public meetings, which counsel advised will require further review. The Board considered the additional expense to publish notice of public meetings in local papers or business journals, as well as the lead time required for such notices. Mr. Sugarman stated that any procedure must be legal and work for all of the parties involved in the process, including the Board, the plan administrator, the Authority, and the Union. Donna Tefertiller asked to defer any further discussion on the topic, since the procedure does not appear as an item on the Agenda.	Open	Counsel
4.	Mr. Sugarman reviewed the language for the new Amendment 1 modifying the provisions in the plan for voting parity and indemnification. He advised that the new amendment, already approved at the prior meeting, only	Ron Morgan suggested the Board should execute a clean copy of the amendment, but Mr. Sugarman stated the mark-up copy would highlight the actual changes to the plan.	Open	Counsel

	requires execution by the Board.	<p>Blanche Sherman indicated that she could not approve the final language without the prior meeting minutes. Donna Tefertiller expressed confusion over the reference to the old Amendment 1 as opposed to the new Amendment 1. After some discussion, the Board retitled the amendment to Amendment A rather than Amendment 1.</p> <p>Blanche Sherman made a motion to table execution of Amendment A until the next meeting of the Board, seconded by Frank Luna. The Board determined that a motion to table was not necessary to defer the matter.</p>		
5a & 5b.	Mr. Sugarman suggested the Board adopt a budget that sets a policy for the arbitrations before approving the actual disbursements. The Trustees considered the additional decisions to engage counsel, in light of the engagement letters already executed.	<p>Blanche Sherman expressed difficulty with the additional detail provided by the administrator for the Board to consider and approve the disbursements. The information already exists in the original format along with alternate formats generated for the cure process. Mr. Sugarman advised the Trustees should be able to access the necessary information in any desired format.</p> <p>Frank Luna made a motion to table Items 5a & 5b, seconded by Tangee Mobley, and approved by the Trustees 6-0.</p>	Open	PRC/ Trustee Blanche Sherman
5c.	Mr. Sugarman provided an overview of the issues related to the contribution rates, and he discussed the application definition for the contribution rates in question. The collective bargaining agreement for 2012-15 left out previously established minimum contributions. The Board considered whether the omission from the bargaining agreement was intentional, as well as the authority of the Board to determine matters not established in bargaining.	<p>Lynx made actual contributions according to the requirement recommended by the actuary. The Trustees therefore considered setting the contribution annually based on the valuation. The Trustees also considered the historical practice for the Board to establish benefits when minimum contributions exceeded the Annual Required Contribution (ARC) established by the valuation.</p> <p>Frank Luna made a motion to set the contribution requirement annually based on the alternatives provided by the actuary, seconded by Ismael Rivera. Mr. Sugarman advised the motion was out of order since the proposed motion affirmed current practice of the Board;</p>	Closed	None

		<p>the record therefore reflects that the Board accepts the Annual Required Contribution determined by the actuary.</p> <p>Pat Christiansen addressed the Board. He stated that the Trust document sets contributions by the Collective Bargaining Agreement (CBA); therefore, parties must resolve any questions related to contributions in bargaining. Mr. Sugarman explained that the Board has requested clarification of the CBA now for 3 years without any response, leaving the Board to interpret any ambiguity in the CBA.</p>		
5c.	<p>The Trustees considered the amounts contributed to the plan by Lynx. The plan does not receive contributions for new members in the defined contribution plan, and a discussion ensued over whether those defined contribution plan members could have a claim against the pension plan for benefits.</p>	<p>Ismael Rivera made a motion to collect contributions for members in the defined contribution plan, seconded by Frank Luna. The Trustees further considered the employer and member contributions to the plan. Since the plan was not fully closed to new members, Ismael Rivera and Frank Luna expressed concern that the plan could be asked to pay additional benefits. Ismael Rivera stated that the Board should request those contributions from the employer. Donna Tefertiller responded that the Board should not discuss the contributions, since the item does not appear on the Agenda. Mr. Sugarman indicated that the topic of contribution rates would include who should make the contributions, when, and how much.</p> <p>Chair Ron Morgan called the question on the motion. On a roll call vote, Trustees Ron Morgan, Ismael Rivera, and Frank Luna voted to pass the motion. Trustees Blanche Sherman, Donna Tefertiller, and Tangee Mobley voted to abstain. Mr. Sugarman stated that the Trustees have a legal duty to vote unless each Trustee has a personal interest or conflict related to the issue. Blanche Sherman asked Mr. Zehnder and Mr. Wermuth to provide individual counsel related to the abstention, but</p>	Open	Counsel

		<p>Mr. Wermuth stated that he could not advise the Trustees on that issue because his firm provided counsel to the Trustees only related to the cure process and could not represent the Trustees on any matters over which they were in conflict. Pat Christiansen provided his opinion that the voting abstention does not apply to Lynx or committees, but Mr. Sugarman stated that the Board is constituted as an entity separate from Lynx and therefore not subject to the same laws that govern the Authority. Any action of the Board, meanwhile, requires a majority vote. The plan document also does not offer a definition of “deadlock” in situations where one or more Trustees refuse to vote.</p> <p>Chair Ron Morgan called the question to revote on the motion. On a roll call vote, Trustees Ron Morgan, Ismael Rivera, and Frank Luna voted to pass the motion. Trustees Blanche Sherman, Donna Tefertiller, and Tangee Mobley again voted to abstain. Frank Luna called for an arbitration on the basis that the Board reached a deadlock on the matter. Mr. Sugarman noted the motion did not pass, and he offered a definition of “deadlock” as a state of inaction or blocking of an action. By this definition, he provided his opinion that the Board reached a deadlock. Based on the plan document that indicates a trustee is disqualified from voting only if personally affected, Mr. Sugarman advised that the Trustees have an obligation to vote. Blanche Sherman requested that Mr. Sugarman consider further the opinion provided by Mr. Christiansen for the next meeting. Mr. Sugarman noted that the Chair must ultimately determine if the Board reached a deadlock, and if so, the Board already had an arbitration on the matter previously filed in abeyance. The union Trustees made a fresh demand for arbitration on the request to collect contributions.</p>		
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5c.	After breaking for lunch, the Trustees continued to discuss the contribution amounts. Blanche Sherman argued that the valuation sets the contribution rate, while Frank Luna noted that the plan document provides that the Board must set the contribution rate. Pat Christiansen added that the amount missing from the current CBA is simply the same amount from the last CBA, and that amount was left blank in the current CBA unintentionally. The Trustees then discussed the possibility that the rate was left blank intentionally because the parties could not agree on the contribution rate. The prior CBA indicated that the Authority should contribute the Annual Required Contribution (ARC) from the valuation, but not less than 9.75% for the Authority and 5.25% for the member.	<p>Until otherwise directed jointly by the bargaining parties, the Board decided to interpret the missing contribution rates in Article 30 Section 2 of the 2012 CBA to be the same contribution rates set forth in the 2007 CBA. The administrator shall therefore direct the actuary to apply that schedule to calculate the recommended contribution, and the Board shall accept as payment in full the contribution rate recommended by the actuary.</p> <p>The Trustees directed the administrator to add this item to the Agenda for the next meeting that includes the actuary.</p>	Open	PRC Actuary
5e.	Blanche Sherman had previously asked for clarification regarding some Trustees meeting together with counsel to devise a strategy for arbitration. Mr. Sugarman stated that such a workshop does not constitute a Sunshine Law violation since the preparation for an arbitration does not involve a matter that would come before the Board. Discussion of a settlement, however, does involve a matter that would come before the Board and therefore becomes a Sunshine Law issue.	Tangee Mobley made a motion to authorize the purchase of hard copies of the Sunshine Law Manual for any Trustees requesting a copy, seconded by Blanche Sherman. The motion passed 6-0. Mr. Baur noted that the electronic copy of the Sunshine Law Manual is also available electronically in the Trustee section of the plan website. Tangee Mobley, Ron Morgan, Frank Luna, and Ismael Rivera requested the hard copies.	Closed	PRC
5d.	The actuary may have to testify on behalf of one or both sides in an arbitration resulting from a deadlock. The Board considered whether the plan actuary should be available to either side in such a dispute, and if so, who should pay for the services of the actuary.	By consensus the Trustees agreed the plan actuary should be available to either or both parties in an arbitration. Blanche Sherman does not believe that the plan assets should be used to pay the actuary for those services. Ms. Sherman made a motion to not allow use of plan assets to pay the services of the actuary in an arbitration. Frank Luna seconded the motion, but in discussion he rescinded his second. Donna Tefertiller then seconded the motion. On a roll call vote, the motion passed 4-2 with Trustees Ron Morgan and Frank Luna voting against the motion.	Open	PRC

6a.	Mr. Sugarman advised the Board that the language in the plan document should mirror the language in the CBA to both avoid confusion and to protect the Trustees. He recommended that the Board amend the plan document to revise the definition of a member to include employees hired before March 1, 2014.	The issue previously resulted in an arbitration, and the Board has unresolved issues related to the closure of the plan. Frank Luna stated that the Board should consider the issue with the broader issues related to the plan closure. Mr. Luna made a motion to table the matter due to the unresolved issues related to the plan closure. Ismael Rivera seconded the motion, approved by the Trustees 6-0.	Open	Board
6b.	The previously passed Amendment 2 to the plan document addressed mandates from the Florida legislature to limit overtime included for pension to 300 hours annually and lump sum sick and vacation hours included in the final average salary calculation to amounts accrued as of January 1, 2013.	The board discussed the mandates. Blanche Sherman made a motion to adopt Amendment 2 for the plan to conform to Florida Statutes. Frank Luna seconded the motion, approved by the Trustees 6-0.	Closed	None
6c.	The Board reviewed the prior recommendations by GRS, the plan actuary, to change the definition of actuarial equivalence in the Plan Document. The current definition of actuarial equivalence uses different mortality assumptions from the new mortality assumptions mandated by the State of Florida for the Plan.	Blanche Sherman made a motion to approve Amendment 3, which updated the definition of actuarial equivalence in the Plan to match the current assumption for interest and mortality used by the Board. Tangee Mobley seconded the motion, approved by the Trustees 6-0.	Closed	None
7.	As previously discussed, Blanche Sherman will review the disbursements for approval with the plan administrator.	The Board tabled consideration of the disbursements for the next meeting Agenda.	Open	Board
8.	The Board reviewed the status of issues addressed prior to adjourning the meeting.	The Board will revisit the voting parity issues and the possible deadlock related to contributions. The Board will also consider minutes for approval. The Board deferred action on the arbitration related disbursements, approval of legal representation budgets, and the amendment to revise the definition of a member.	Open	Board
8.	The Trustees scheduled the next meeting for 9 AM on July 15, 2016.	There being no further business, the Chair adjourned the meeting at 4:13 PM.		

Respectfully submitted,

Secretary