

February 25, 2022

The Board of Public Works & Safety met in a special meeting on Friday, February 25, 2022, at 11:00 a.m. in the Marion City Council Chambers. Present were Alex Huskey, Janice Adams, Cindy Cunningham, Linda Wilk, Brian Flynn, and secretary to the board.

Alex Huskey: Good morning. Good morning everyone. I'd like to call the February 25th, 2022 Board of Public Works and Safety special meeting to order.

Roll Call was completed.

Alex Huskey: This morning we are here to uh consider the F.O.P. Grievance filed regarding on 2-9-22 regarding pay discrepancies. Um for rank and file members of the Fire Department and specifically the position of captain as it relates to um the F.O.P. contract and pay parity and all of those things to be considered. And as we consider this matter there are a couple of things that came to my attention that I would like to have some further conversation on before we take this matter forward. And that is um and we do I think F.O.P. representation Mr. McPike here and then we also have Judge Hunt here representing the city of Marion, and so I, I I had a couple of questions that I just think I needed to have answered before we move forward and if you, if the board would pleasure me with that and that is we heard great testimony last week from both sides about what the board must consider and also we heard great testimony and argument for the position that the F.O.P. has. There is a position for the fire department who acts as a driver for the fire department. What, what rank is that person, what rank is that individual?

Unknown person: Engineer.

Alex Huskey: They are an engineer and could you please state your name who answered.

Unknown speaker: Brian Cowgill.

Alex Huskey: Okay, Mr. Cowgill they are an engineer. So in the in the ordinance for rank and structure for the fire department what where would the engineer fall under it's either probationary, private, engineering, maintenance private, captain, fire prevention officer, training officer, assistant chief, chief deputy, and fire chief. Would the engineer be that position that is identified as engineering?

Brian Cowgill: Yes.

Chief Paul David: That is correct.

Alex Huskey: That is correct. And fire chief would you please come forward. So that the engineer would be considered the driver.

Chief David: yes that is correct.

Alex Huskey: Ok. Is it correct that if that engineer covers for a captain that engineer gets paid captain pay?

Chief David: That is correct. Anybody that bumps up in a rank for that day bumps up to that pay scale.

Alex Huskey: So that is, that is automatic bump up to that pay scale.

Chief David: That is correct.

Alex Huskey: Okay. And if a captain fills in for an assistant chief the captain gets bumped up to that pay scale.

Chief David: That is correct and it is in the out of classification pay for for that.

Alex Huskey: So essentially individuals can float in and out of that captains...

Chief David: Correct.

Alex Huskey: And the captain can float in and out according to the assignment that they have for the day.

Chief David: That is correct.

Alex Huskey: Okay. Board members do any of you have any questions?

Brian Flynn: I do. Um...you know as I was doing my research on this and going through the documents that were provided to us um one thing that I looked at specifically was the handout about article 24 which is out of classification pay which we were talking about. Um I could find nothing in that article that relates to the grievance. This is about classification pay and the processes to put that together um so I don't believe personally that article 24 out of classification pay is relevant to the grievance. Um even though it does talk about pay it's not about pay to a specific position um receiving additional money which is what the grievance was about, the captains receiving an additional bump in salary of \$2,600. Um. So I didn't spend a lot of time on that um but as I looked at the contract language in article 47 and specifically 47.5 um it became the question to me is is the real question of this grievance is does the increase in salary per captain equate to the contract language of any other city of Marion employee bargaining unit or organization receiving the pay. And umm as I researched and dove in I it appears to me that that a single position within an organization does not meet the criteria of this language. It's not an employee bargaining unit. It's not an organization. It is an individualized position within a bargaining unit. And I tried to come up with a couple of references as comparisons and I just confirmed with the chief of police today they do pay shift differential and uh I would guarantee that equates to more than the \$250 per year in difference in salaries and so using the logic that was presented in the grievance if we agree with the grievance any employee receiving a shift differential that equates to more than \$250 per year would automatically mean every employee got that shift differential whether they worked it or not. And I say that because the assignment to the captain is a specific assignment and the increase was based on responsibilities, duties, job title, you know all of those things and to help separate some of that from the other rank and file of the lower grade jobs. So again as I looked at this and I thought well okay shift differential is one thing and uh what about somebody who's temporarily assigned to a higher level position, if that equates to more than \$250 per annum does that mean every employee within the department gets that bump as well even though they are not working in that compacity. So I as I rolled this around and tried to come up with positives and negatives of how this could possible fit um I don't believe that the grievance meets the contract language to be a violation. A bargaining unit didn't receive an across the board increase. An organization didn't receive an across the board increase, this is an individual position that has been recognized as needing additional salary. Just like somebody who works a second shift or a third shift get additional salary because they're working in that compacity and they only get that if they're working in that compacity. So those are the parallels that I, I bring to group here, to the body to consider. That's it.

Janice Adams: I guess um I hear that but I go back to section 47.5 and I listened to the argument that was explored the last time we were here and um we are talking about an individual but we are also talking about this bargaining unit that this individual is a part of. So, I guess my thought was the individual did we not know, did his duties change after this was written or did something else, was something else added to it, and if there was were we not aware of it um my other thought is is that I guess I want to know more about because it was explored that they were trying to change section 47.5 and after exploring that I didn't see anything that eluded to the fact that they were trying to change anything. To me it is just maybe for me it is just black and white.

If this is here and something has changed then all the rest of them should get it also. And so I didn't see any change in what F.O.P. the people who are bringing the grievance was saying. To me it is just is what it is and I did some research and I am not originally from her but exploring some things with um I just did not see the change in it. For me it's just what it is. It is that that increase. Um maybe some more explanation relating to how it was change and help me boggle my mind to understand that better because I don't see any change that was made to this. And I think that was the statement the last time we were here that the F.O.P was trying to change this and I don't see that.

Alex Huskey: Okay. Thank you.

Janice Adams: So if you could explore that and give me more explanation about it... I see a hand up back there.

Alex Huskey: Can you approach and identify yourself please sir?

Speaker: Hello my name is Michael Ross. I was the president of the F.O.P when section was added to the contract in 2016. The reason why it is so poorly written is because I am not an attorney. So the reason why it is so poorly written is because I am not an attorney I am a police officer and during the contract negotiations the way those sometimes go we go in and we ask for money and a lot of times we are told there no money for raises. My intention in writing this section was at that point in time \$250 was given in flex money or what is called flex money. And I basically said okay you are saying there is no money to give anybody raises I would like it put in our contract that other than this \$250 if nobody is getting a raise but somebody gets more than \$250 then we get it as well. That was the original intent of the section. And I say 2016 because we have had three contracts since then and this section has not been changed since. So there is no rewriting of it. It has literally been in there the last three contracts.

Janice Adams: So what I hear you saying is that since that time it was written that no one has received any raises or anything over the \$250.

Michael Ross: If they have we've also gotten it.

Janice Adams: You've also gotten it. So this is not the procedure you are speaking of. It has been enacted and it has happened in the past.

Michael Ross: I don't know that it has been enacted as when they have given raises just everybody has been given it, we haven't had to worry about this until now.

Janice Adams: Until now. Okay. Well since you are there talking so why do think they are wanting it to be changed now?

Michael Ross: I don't know that anyone is wanting to change it on the F.O.P. side. I can't speak for the city.

Janice Adams: Oh I got that.

Michael Ross: I would assume they don't want that in there because it is very beneficial to us.

Janice Adams: Okay.

Brian Flynn: I would like to ask you a follow up on that.

Michael Ross: Mm hm

Brian Flynn: Um so when this says that in the event that any other city of Marion bargaining unit you interpret that to mean individuals within a unit?

Michael Ross: When I wrote it that was my intent but like I said it is poorly written because I am not an attorney.

Brain Flynn: It doesn't say what you what you think your original intent was at the time.

Michael Ross: Correct.

Brain Flynn: And that is not what this says.

Michael Ross: I agree.

Janice Adams: But it has been understood as what you said.

Michael Ross: That was the context of the meeting when it was enacted, yes.

Alex Huskey: And let me, just let the record reflect that during our last meeting Judge Hunt in telling the board that it is not our purpose to identify intent but to speak to the matters of fact that are before us. So I just want to make sure that we we don't get caught up in the whole intent thing. I, I do Judge...

Attorney Tom Hunt: Might I make a couple of comments?

Alex Huskey: Sure.

Attorney Hunt: I am the one that talked about changing this clause but I didn't say we wanted it to be changed. I don't think the F.O.P. wants it to be changed and there was never any discussion that it would be changed. My comment was that for them to get to where they want to be with this grievance you would have to change the language by removing bargaining unit or organization so that it would just read any city employee who receives a raise. That is the only way you can interpret that clause is to remove the words bargaining unit or organization. And that is the change I was talking about I wasn't advocating for a change I was just suggesting that to get to where the F.O.P wants to be you'd have to change the contract and you can't do that. Once you have reached an agreement and both sides did agree to the language then that's your contract and regardless of what somebody thought they intended when they wrote it the reality is the law requires you to give the plain and ordinary meaning to the language that the parties used and if you don't a couple of things happen. Number one is then the city's agreement is taken away from it because now somebody on the other side feels like the language wasn't appropriate and they are sorry that they signed it with that language there. That is not the way contracts works. The other thing that you need to consider if this grievance is sustained and the raise given to the fire captains is given to the F.O.P across the board then you are in a fact denying the rank and file of the fire department that same raise so you'd have to come back to the fire department and give them that same raise then you'd have to go to the transportation department who has the same clause and give them the same raise and I don't think that is the meaning of this 47.5. I think the meaning of 47.5 it it's go back to composition class when you are in high school your teacher always asked you what's the action of this sentence. The action of this sentence is raise so what is the object of the action? The object of the action is bargaining unit or organization the action is given to the object so it is a raise being given to the bargaining unit or organization. And here we don't have that. We have a raise being given to I don't know how many captains there are on the fire department but a handful of individuals. Now they happen to be members of the bargaining unit, they might be a republican or a democrat but that doesn't matter. What matters is the raise was not given to a bargaining unit or organization. It was given to a handful of people for a specific reason to put some distance in between them and the next lowest uh rank below them. And that is the only purpose of that and so all I am saying is to get to where the F.O.P wants to be you would have to change that sentence and you cannot do that under contract law.

Alex Huskey: And I get what you're saying Judge and I appreciate that certainly you, you are more well-versed in law than I am. Uh my concern or question I should ask first before I present my concern. My question is are then the fire chief and the police considered part of the bargaining units of their respective organization?

Attorney Hunt: No, they are specifically excluded by earlier language from the bargaining unit.

Alex Huskey: Right, they are a part of the administrative ranks.

Attorney Hunt: Right.

Alex Huskey: But they can still members of the bargaining unit.

Mayor Alumbaugh: They still benefit from whatever happens for the bargaining unit.

Alex Huskey: That is the point I was trying to get to. Thank you.

Attorney Hunt: They benefit but they are not members.

Alex Huskey: Right. So well they still have membership because they have to pay their dues and and those things to be members of that unit.

Attorney Hunt: They're members of the union yes.

Alex Huskey: Yes, yes and so therefore it's really difficult to make those decisions and advise and coach and I am not saying that this is the case with our police and fire chief but it is difficult for individuals to advise and coach if there is language that is conflicting if they could possibly benefit if they go back to their original ranks if they are removed from their positions. Is that correct?

Attorney Hunt: Let me make sure I understand your question.

Alex Huskey: So for example.

Attorney Hunt: So you are saying if if a chief no longer is chief and goes back to the rank of captain they would benefit?

Alex Huskey: Yes.

Attorney Hunt: Yes they would.

Alex Huskey: Yes, but so they are a part of that bargaining unit making the decisions shouldn't they be advising the city to be careful of the optics of language that could present a problem later on?

Attorney Hunt: Well I suppose you could but the reality is...

Mayor Alumbaugh: Let me step in on this. Let me explain in real time.

Attorney Hunt: The reality is this language isn't conflicting. Just read it on its face this isn't I think you are trying to over think this.

Alex Huskey: No, no, no. I will tell you where my thoughts are coming in. My thoughts are coming in though if you have an engineer that could bump up for a day or week or six months they are going to get paid as a captain not as an engineer.

Attorney Hunt: Right.

Alex Huskey: Right? And so this does become something that moves fluently throughout just the same as if an individual goes to second shift or third shift in the police department. It is in their contract that they would get that shift differential pay right. So, so, so let's just say, how many engineers do we have with the fire department chief?

Chief David: Twelve

Alex Huskey: Twelve engineers, how many captains do we have?

Chief David: Twelve

Alex Huskey: Twelve captains, twelve engineers.

Chief David: Yes, sir.

Alex Huskey: So during this time period these twelve individuals can move fluently throughout this depending on circumstances and benefit from the pay. Is that correct.

Chief David: And have the responsibility, yes,

Alex Huskey: Yes, And have the responsibility. My my the reason why I asked that question, I, I certainly get idea of trying to make sure that we take care of and make sure that there's enough separation in rank because we want people to apply for those positions. We want people to be you know be to be in those positions. But I think what happens is is when we kind of do it this

way instead of in the contract we create these other appearances of inequity thus is the reason why we are here today. And so that's that's the greatest concern that I have. And I and I have heard Brain's comments and I get this. My only concern is typically is in another life where I was bound by administrative law the one thing that was beat in my head was you can't do indirectly what you can't do directly. And so when I think about that in terms of this indirectly we, we we looked as setting the difference for the captains without going through the transparency process. I hear that word a lot throughout government right now city, county, state, national. We did that but at the end it does create because the police department doesn't have this rank structure it does create a little bit of an equity and so if a person who is a part of the bargaining unit benefit from this up the ladder it becomes problematic in my mind to resolve that.

Attorney Hunt: Well let me just say what you are talking about is, what we are talking about is a positional increase. Not an individual increase and if someone a captain is off sick for surgery or whatever and guy moves up for two weeks that is a positional increase not an individual increase nor is it a bargaining unit increase and that is what you have got to remember. And that is what the language is in this section bargaining unit or organization. It's not individual it's positional.

Mayor Alumbaugh: And let me tell you in real time how this played out. And first of all I want to make sure you understand I said at a meeting Monday I have asked Chief Haley to look at any positions similar to this that need to be corrected where there is not much of a gap in pay. You get a promotion you should not just get a new title. There should be a discrepancy in the pay for your additional responsibilities.

Alex Huskey: Yes.

Mayor Alumbaugh: That's what Chief David came to see me about. He said look at this how we pay the captains and they are basically the supervisors of every station so they are over seeing all of the guys every day on duty. And I said you're right that's not much of a discrepancy. It was in the hundreds of dollars the difference in pay. And he suggested the \$2,600 and I said I am not opposed to that. I think we need to get these things right and reward people for being seen as fit to be captain by giving them their the pay raise that goes along with it not just the title. Those titles don't mean a lot without the pay. That is disrespectful I think. But I then went to Tom and he read the language and I agreed with him and I said yeah it doesn't appear to me either, Mike Flynn didn't think so that this would include the whole bargaining unit. But if they do this then chief can't correct her department's discrepancy in pay too. This is throughout city government these things need to be addressed to get it right for the positions. You should if you want to be in a higher position with more responsibility and you are selected by your superior to do that...

Alex Huskey: Yes.

Mayor Alumbaugh: There should be a financial reward. But if they do this nobody is moving another dollar.

Alex Huskey: And I, And I really do appreciated commentary Mayor and that is why I asked the question in the last meeting. Had this been addressed within, I wasn't necessarily talking about in terms of this grievance but had this been address prior to uh it even getting finalized. Because that was that's that's huge if we know that these things exist we should we should do our due diligence to make sure that we as leadership are addressing. So that's that's why I asked.

Mayor Alumbaugh: That is what I am doing. That is why I have asked the police chief to look at this too because if it is good enough for the fire department it is good enough for my police department. We should not need a me too clause. If the person in charge the Mayor is doing things trying to be fair to all parties then let's do it and that is why I told Chief Haley what

positions do you see in your department that have more responsibility but aren't paid accordingly for those responsibilities. That is all we are trying to accomplish here. That's the point of this pay raise and really that is all I've got to say about it.

Alex Huskey: Okay. Thank you.

Attorney Hunt: The only the last comment I am going to make is Chairman Huskey you made the comment about you can't do indirectly what you can't do directly and I I completely agree with you because that is exactly what is trying to be done here to do indirectly what we can't do directly under this language. Uh to do it indirectly as I said earlier on Monday you got to remove that language and that way you get it done. So that that's all I want to say.

Unknown speaker: I have a comment if you are ready.

Alex Huskey: Please identify yourself.

Unknown speaker: I am the F.O.P President Nick McPike uh a couple of things. Is first we are here to talk about the grievance between the F.O.P and the city um as far as future endeavors that can be taken care of the fire union whenever they come across that or the transportation union whenever they come across that. Whatever decision is made today they would also have to take those measures to do their grievance if they have this kind of clause in their contract. I don't know if they do or not. Um we are not trying to change the language we are trying to use it to our advantage. Uh this language is written so we could benefit from this because every time uh I have sat down at a contract meeting um regarding pay we have been told no. Uh we were actually told no this past December so we so I think it is important that you focus on the grievance today and what's going on today and not what the future endeavors are focused on and is your name Brain?

Brian Flynn: Yeah,

Nick McPike: As far as article 24 it is very prevalent to uh what we are talking about because the entire uh bargaining organization or unit can benefit from this pay increase. Uh within the police department you cannot move between ranks, you can't uh a third class patrolman cannot be a sergeant one day and cannot be a captain and therefore and then move back and forth to those specific ranks uh we have minimum man power which is in our contract uh as far as shift differential that contractual as well. So those things are agreed up on by the body of the F.O.P and so the it wouldn't bring upon those types of grievances because that is an agreed upon language that the body voted on and said yes to. Again I think it is important that you focus what is brought here today and the facts of the case and not what the future endeavors can hold for this.

Alex Huskey: Thank you. Any additional questions, comments, concerns from the board?

Mayor Alumbaugh: I just want to say Nick said that every time they ask for a raise they don't get a raise go back and look at the city council minutes there have been raises. We just did a five percent raise across the board, so there have been raises over the last five or six years, two to three raises.

Alex Huskey: Thank you.

Nick McPike: You told us in December that you did not have any money for raises. We actually asked for less so.

Mayor Alumbaugh: Nick this we weren't expecting to have that but once we had it once we saw that the numbers weren't going to be as bad a projected because of the pandemic I said let's give them a five percent raise.

Alex Huskey: So, again for the matter of the grievance that is before us. My question to the board is are you in need of additional information or are you prepared to make a decision moving forward at this time.

Brain Flynn: I am prepared to make a decision.

Linda Wilk: I am prepared also.

Alex Huskey: Cindy?

Cindy Cunningham: I am not.

Alex Huskey: What additional information are you in need of?

Cindy Cunningham: I just need to look and think a little longer Alex. I am very conflicted on this.

Alex Huskey: Okay. Mrs. Adams?

Janice Adams: Coming in I thought (inaudible) I guess I would like to have a few other questions...

Alex Huskey: Okay.

Nick McPike: I would like to make the point that the board has five days after the receipt of the grievance to make a decision. So that will be tomorrow.

Alex Huskey: I am fully aware of that.

Nick McPike: Thank you.

Janice Adams: I guess I want to hear from Judge Hunt again. You said if we would take these words out if you could just expand on that again for me please.

Attorney Hunt: I am not suggesting that we take it out.

Janice Adams: Oh I hear you.

Attorney Hunt: What I am suggesting is in order to get to where the F.O.P wants to be you have to take them out. Otherwise you have to deny the grievance because those words bargaining, bargaining unit or organization limit the action. The action being a raise and the language says the raise is to a bargaining unit or organization. And that is not what we have here. We have a raise given to a position not a bargaining unit or organization and in order to get to where the F.O.P wants to be in order for you to say yep we are going to give that raise to everybody then you got to take out the language bargaining unit or organization. Otherwise you're ignoring what the contract says. I hope I answered your question.

Michael Ross: If I may respond to that.

Alex Huskey: Just one moment please. Okay please approach.

Michael Ross: Um composition class was brought up. I forgot a comma after employee I would just like to point that out. I would also like to point out whether you are a fireman, a police officer, a sergeant, an engineer, a captain, every single employee under each of these departments belong to the collective bargaining unit. The only people that don't are the chief's and the executive level staff which would be in our case deputy chief. We have made a special provision in ours that goes against state law, no against but allows our captains to be a part of our contract. State law they would be considered executive level staff. Whether you retire as the chief of police, you leave as a police officer, okay. You are a part of that bargaining unit even if you are the chief. You are protected through the pay scale and every other position. So just say you are giving it to a position you are still giving it to a member of that bargaining unit. No matter which way you read it. That is what I would say to that.

Alex Huskey: Mr. Ross can a member elect not to be part of the bargaining unit and thus is not represented by the bargaining unit and not receive the benefits of the bargaining unit?

Michael Ross: A member, so a Marion Police officer can elect not to be an F.O.P member but they would still get every benefit that was afforded to an F.O.P member.

Alex Huskey: So even...

Michael Ross: They just would not have a vote in F.O.P matters.

Alex Huskey: So, even if they are not a part of the bargaining unit uh they could benefit from the rest of the the things that bargaining until benefits from, correct?

Michael Ross: Correct.

Alex Huskey: But if they're not a bargaining unit member then I could come to them and offer them a pay raise that they could get because they are not a part of the bargaining unit.

Michael Ross: Correct.

Alex Huskey: And the bargaining unit cannot get that pay raise because it is not an agreement with the bargaining unit?

Michael Ross: I would have to consult with, you are into attorney stuff now. I don't know what our recourse for that would be.

Alex Huskey: Thank you.

Michael Ross: I think that would fall more under like you're members of the city employees that don't have a bargaining unit.

Alex Huskey: Thank you. Any other comments, questions, concerns from the board? Therefore, I don't hear any questions or concerns from the board. Is the pleasure of the board ready to take this to a vote?

Brian Flynn: Yes.

Linda Wilk: I am ready.

Cindy Cunningham: Yes.

Janice Adams:

Alex Huskey: So, the vote would be rather or not do you vote to sustain this grievance or to deny the grievance. And I would ask that the member of the board would either state as the roll is called sustain or deny.

Aisha Richard: Alex- sustain, Janice- sustain, Cindy-sustain, Linda- deny, Brian-deny

Alex Huskey: Okay, the vote was three to two. What is the next step Aisha?

Aisha Richard: adjournment.

Motion to adjourn- Linda Wilk; seconded Cindy Cunningham.

Meeting adjourned.

Alex Huskey- President
Board of Public Works & Safety

ATTEST:

Aisha Richard- Secretary
Board of Public Works & Safety