James Hicks/PD/COD
05/09/2011 10:36 AM

To Mark Boughton/MAYOR/COD@Danbury, David St Hilaire/FINANCE/COD@Danbury, Alan Baker/PD/COD@Danbury, Terrence
cc Peter Tragni/PD/COD@Danbury
bcc

Subject Revised agenda for Post 1983 Pension Board meeting 5/10/11

Post 1983 Pension Board Members,

We will be meeting on **Tuesday, May 10, 2011, at 4:00 PM**, in the Common Council Caucus Chambers located on the third floor at City Hall.

The following is our agenda:

1. Review of IME reports for Vincent DiBernardino.
2. Work related disability pension application from Officer Cervone.
3. Legal opinion pertaining to Post 1983 Pension members while on peacekeeping activity leave of absence.
4. The hiring of Hooker & Holcombe for oversight services for the pension plan.

Please see attachment for leave of absence legal opinion. Other pertinent documents were previously sent to Board Members only.

Detective Jim Hicks

Post 1983 Pension Board Secretary Danbury Tragni Opinion to Pension Board.doc

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BY: LK

CITY OF DANBURY

OFFICE OF THE CORPORATION COUNSEL

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(203) 797-4518 (203)796-8043 FAX

To: 1983 Police Pension Board

From: Dianne Rosemark, Assistant Corporation Counsel

Re: Officer Peter Tragni

Date: May 4, 2011

Cc: Chief Alan Baker, Deputy Chief Terence Shanahan, Virginia Alosco-Werner, Director of Human Resources

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Dear Members of the 1983 Police Pension Board:

You have requested that I provide you with an opinion on the extent to which the Board has jurisdiction to determine whether Officer Peter Tragni will be granted credited service for time spent on a leave of absence for the purpose of employment by a contractor of the United States Government which provides services related to international peace keeping activities such as training.

The short answer to your question is that the Board does not have jurisdiction over this issue, as it is a matter covered by the collective bargaining agreement between the City and the Danbury Police Union Local #891, Council #15, AFSCME, AFL-CIO. This agreement provides, in Article 8, Section 8.5, that no pension credit shall accrue during a leave without pay.

A more detailed review of the background and law concerning this issue is set forth below.

Factual Background

In a letter to the Mayor dated September 18, 2010, Officer Tragni informed the Mayor that he would be requesting a leave of absence pursuant to "Public Act 05-200[1], past practice and precedent" to "participate in an International Peace Keeping Operation." To date, Officer Tragni has not been selected for a specific operation, so his request for leave

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[1] This Public Act is now Section 7-294aa of the Connecticut General Statutes.

has not been finalized or acted upon. Officer Tragni is not a member of the armed services, and would not be serving in the military during this leave.

Officer Tragni took a similar leave from March 2004 to March 2005, during which he was employed by Dynacorp International, a government contractor that was helping to train new police officers in Iraq. Prior to his departure for that leave, the leave was mistakenly characterized as "military leave" by the City. Therefore, when he returned, Officer Tragni expected to receive pension credit for the leave in accordance with Section 14-52(b) of the pension ordinance. A grievance over the issue was settled by an agreement between the City and the Union, permitting the pension board to make the final decision on whether Officer Tragni would receive pension credit for the year he was on leave. However, the settlement agreement expressly provided that the granting of pension credit by the Board would not establish a precedent. (See attached copy of agreement.) Therefore, there is no past practice or precedent applicable to this issue.

Legal Considerations

If Officer Tragni is selected for an assignment by the government contractor and finalizes his request for a leave of absence, the City will grant such leave as required by Section 7-294aa of the Connecticut General Statutes. This statute guarantees that a police officer who takes a leave to participate in international peace keeping operations, with a government contractor, will be reinstated to his job when he returns from leave. (See attached copy of statute.) The statute is silent on what, if any benefits accrue during one of these leaves of absence. Therefore, we must look to the pension ordinance and the collective bargaining agreement.

Chapter 14, Section 14-52, (b), of the Danbury Code of Ordinances includes the following provision:

> . . . .Military service in time of war or national emergency shall be counted as continuous service in the police department by any member who entered military service while a member of the department and such member shall not be liable for any assessments during that time.

This is the only provision of the pension ordinance which grants credited service for time spent on leave by a police officer. Since Officer Tragni is not in the military and would not be on military leave, the ordinance would not allow him to have his time on leave "counted as continuous service."

Section 8.5 of the collective bargaining agreement governs leaves of absence other than military leave. That section states that:

> Leaves of absence in excess of the number of days allowed in any calendar year shall be granted by the Chief of Police subject to approval of the Mayor. When on such leave without pay, the following conditions shall prevail:

a. No pension credits shall accrue.
b. No sick days will be earned.
c. No vacation time will be earned which will result in a reduction of the normal vacation days on a pro-rata basis.
d. Seniority will be preserved.
e. Premium payments for medical insurance must be made by the employee.
f. The officer will not be eligible nor can he/she accept Special Services or Extra Police Work assignments.

Thus, the clear and unambiguous terms of the collective bargaining agreement provide that there are no benefits other than seniority for an employee on a leave of absence. Pension credits do not accrue during such leave.

The general authority of the Pension Board cannot modify the collective bargaining agreement. Section 7-474 of the Connecticut General Statutes clearly states that "where there is a conflict between any agreement reached by a municipal employer and an employee organization . . . the terms of such agreement shall prevail . . . .

Conclusion

Based on the pension ordinance and the collective bargaining agreement, Officer Tragni's leave to work on a "peacekeeping mission" for a government contractor does not qualify as service for the purpose of the 1983 Police Pension. Connecticut statutes do not provide for counting this leave as pension credited service and do not give the Pension Board the authority to modify the collective bargaining agreement or the pension ordinance.

Sincerely,

Dianne Rosemark
Assistant Corporation Counsel

Section 7-294aa of the Connecticut General Statutes provides as follows:

Reinstatement of state or municipal police officers upon return from participation in international peacekeeping operations. (a) Any sworn police officer employed by the state or a municipality who takes a leave of absence or resigns from such officer's employment on or after September 11, 2001, to volunteer for participation in international peacekeeping operations, is selected for such participation by a company which the United States Department of State has contracted with to recruit, select, equip and deploy police officers for such peacekeeping operations, and participates in such peacekeeping operations under the supervision of the United Nations, the Organization for Security and Cooperation in Europe or other sponsoring organization, shall be entitled, upon return to the United States, (1) to be restored by such officer's employer to the position of employment held by the officer when the leave commenced, or (2) if the original position of employment is not available, to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment, provided not later than six months after such return such officer notifies such officer's employer of such return and such officer's desire to be restored to such officer's original position of employment or an equivalent position of employment.

(b) The Police Officer Standards and Training Council shall not cancel or revoke the certification of a police officer during the period such officer is participating in international peacekeeping operations outside the United States in accordance with subsection (a) of this section and for a period of six months after such officer returns to the United States, except for a reason specified in subsection (c) of section 7-294d.

City of Danbury and – Danbury Police Union Local #891,
Council #15, AFSCME, AFL-CIO

Agreement Re: SBMA Case 2005-A-0801

1. The City and the Union agree to postpone the hearing scheduled for August 31, 2006.
2. The issue of whether the grievant's (Trapp's) leave should be counted as credited service for pension purposes shall be submitted to the Post-03 Pension Board.
3. If the Board grants the service credit:
   a) Trapp shall not be required to make a contribution, and
   b) Trapp shall forfeit one week's vacation, and
   c) the Union shall withdraw the arbitration.

The grant of pension credit, if any, shall not establish a precedent for any other case.

4. If the Board denies the service credit, the Union may pursue the arbitration.

The Union

Mike Farrell, duly authorized
President, Local 891

The City

Saranne P. Murray
Saranne Murray
Labor Counsel