

MEETING MINUTES
BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE
VILLAGE OF INDIAN HEAD PARK
WEDNESDAY, MARCH 15, 2017 (Date Change)
5:00 P.M. (Time Change)

Pursuant to 5 ILCS 120/1.02 (from Ch. 02, par. 41.02) Open Meetings Act

A meeting of the Board of Fire and Police Commissioners of the Village of Indian Head Park was held on Wednesday, March 15, 2017 at the Village of Indian Head Park, 201 Acacia Drive at 5:00 p.m.

I ROLL CALL AND CALL TO ORDER

Commissioners present and constituting a quorum:

Michael Doheny, Chairman
Michael Vitale, Commissioner

Absent: Mario Stefanini, Commissioner

Guests present:

Robert Cervenka-Police Chief
Patrick O'Connor of Hartigan and O'Connor-Attorney for the Fire & Police Commission

II OPEN MEETING

APPROVE OPEN BOARD MEETING MINUTES OF JANUARY 5, 2017

The Commissioners reviewed the Open Board Meeting minutes of January 5, 2017. Commissioner Vitale motioned to approve the minutes, seconded by Chairman Doheny. A vote was taken. Aye: Vitale, Doheny. Nay: None.

Absent: Stefanini. Motion carried by unanimous voice vote. 2/0/1

III REVIEW AND AMEND BOARD OF FIRE AND POLICE COMMISSIONER RULES AND REGULATIONS-65 ILCS 5/10-2.1-17

The Board reviewed the Rules and Regulations. Mr. O'Connor mentioned that, under the Fire and Police Commissioners Act, under which this Board operates, a Chief can suspend a police officer not to exceed five (5) days. The Police Union Contract says the Chief can suspend up to thirty (30) days. The Chief wanted our Board rules to comport with the Union Contract. I amended the section regarding Suspension, under Section 8 to read: **Notwithstanding the provision of 65 ILCS 5/10-2.1-17, and in accordance with the collective**

OPEN MEETING OF MARCH 15, 2017 (CONTINUED)

bargaining agreement with the police union, the Chief of the Police Department shall have the right to suspend any officer under his command for a period not to exceed thirty (30) days, provided no charges on the same offense have been filed and are pending before the Board. So, now you don't have the Rules saying five (5) days and the Union contract saying thirty (30) days.

Commissioner Vitale mentioned he had some questions. He informed the Board, having sat at the bargaining table a few times during his police career; he used to see what they called a "savings clause". He didn't know if it was in most collective bargaining agreements. He presented a copy of the discipline procedure for the police officers' labor contract, where it does say, thirty (30) days without pay. But there is a "savings clause" and he wanted to get the opinion of the Board's Counsel, Pat O'Connor. Mr. O'Connor said, "that is why I stated: ***notwithstanding the provisions of 65ILCS 5/10-2.1-17 of the Fire and Police Commissioners Act***". Without that, they could have said we're not bargaining away, we want five (5) days and we're entitled to a hearing before the Board. Commissioner Vitale said, the "savings clause" tells me, you could put in, ***the Chief of Police has the authority to suspend up to thirty (30) days***", but in the opinion of the Municipal Code, it's five (5) days. So it's illegal having that sentence in there. Since its illegal, it's unenforceable.

Pat O'Connor responded, "I see your reasoning and I would say that a police officer would have a hard time disputing that, because it was a bargained point in the contract on the suspension. I think suspension is a little bit different. They probably got something in return like five or six days and you're not firing somebody without due process. I think that would violate not only State law, but the Federal Constitution. The 14th Amendment protects public employees' rights in their jobs, if they have reasonable expectations of continuing that job.

Commissioner Vitale asked, why then, would we change the Board's Rules if we know that State law is to the contrary? Pat O'Connor replied, this is just to make comport with the Union contract. From the Board's perspective, we don't suspend anybody for thirty (30) days without a finding of guilty after a hearing, in which they are entitled to present their defense. It is somewhat irrelevant to whatever our rules say; certainly our rules don't take precedence over CBA. Pat O'Connor added, your question is whether CBA takes precedence over the State Statute, but that's not the Board's responsibility, because we are not suspending anybody for 30 days or 5 days without a hearing.

Once charges are brought against a police officer and a hearing has been requested before us, we then have a hearing. We are limited by State Statute, which we cannot change. We're limited to two things; suspension not to exceed thirty (30) days without pay or termination. Those are the only two things we can

OPEN MEETING OF MARCH 15, 2017 (CONTINUED)

do after a hearing. We are not doing suspensions that emanate from the Chief's office.

Commissioner Vitale said he had a section of the contract that says the Chief can suspend a patrol officer not to exceed 30 days. The Illinois State Statutes says 5 days. There is a "savings clause" in the Police contract which says that any section of the contract that's illegal, legislatively or otherwise, is unenforceable. So, that was my question. Why would we change our Rules and Regulations, if something ultimately in that section is saying thirty (30) days which would be unenforceable? And it would ultimately revert back to State law, which is 5 days. I have a problem with that right now.

Pat O'Connor responded, from our perspective, it doesn't really matter, because we do not issue suspensions. Charges emanate with the Chief or his designee. All we do is the eligibility list for hiring. Basically, we do the testing, conduct oral interviews and create an initial and then a final eligibility list. Once a candidate is hired, he is removed from the list, leaving the next candidate available for hire.

If there are charges brought, and the police officer requests a hearing before us, or if there are charges to terminate an employee, we will hear those charges, and our procedures are set forth from there. They have a right to bring in witnesses, subpoena witnesses and so forth.

Commissioner Vitale asked, what if the 30 days disappears on the next contract, and something changes that we are unaware of. Do we then have to change our Rules again? We are constantly going back and forth. Pat O'Connor replied, what we could say, instead of naming a number of days, ***"To the extent permitted by law and in accordance with the collective bargaining agreement with the Police Union, the Chief of the Police Department will have the right to suspend any officer under his command for the period provided therein as long as no charges on the same offense have been filed"***, or something along those lines. We're basically saying, whatever they have bargained for as suspension, that's the power the Chief has, but we're not passing on the wisdom of that collective bargaining agreement. We're just saying, whatever they bargained for, we're fine with that.

Commissioner Vitale commented that he did not want to put language in the Commissioner Rules and Regulations that would be illegal or contrary to State law. Pat O'Connor said we can write, ***"Notwithstanding the provisions of Chapter 65 ILCS 5/10 2.1 17,"*** take out the 30 days and that way, if it changes to 25 days next time, then we don't have to change it. If they change it back to 5 days, we don't have to change it. Pat O'Connor went on to say, then all that is

OPEN MEETING OF MARCH 15, 2017 (Continued)

required is we get notified in writing within 24 hours of the suspension and then *(any policeman so suspended may appeal to the Board for a review of the suspension within (5) five days.)* and the rest is all right. Chairman Doheny said he's fine with that. Pat O'Connor added, if it's grievable and they're going before a Union arbitrator, then it's out of our realm. We would have that put in there.

We can't force them to come here, if the contract says something else. The officer has the option. If they request a hearing before us, then we will have that hearing, unless it's pre-empted by the contract. And usually it's not fully pre-empted, they have a choice to go before us, or if they think they're going to get more favorable treatment by a Union arbitrator, then they're going to go there.

We can change the amendment to read something along those lines. So, I will draft up something here tonight and if it's what you want, the Board can approve it and I will send a finalized copy to your recording secretary. Pat O'Connor asked Chief Cervenka if he approved to just say whatever the contract says to the extent permitted by law. Chief Cervenka answered, yes. I wasn't questioning the days; I was just questioning the discrepancy. Pat O'Connor added, we can't give the Chief authority to suspend for 30 days. We don't have the power to do that, because the State Statute says you have (5) days. They bargain that away and that's permitted by law and the Union people agree and the Village's Labor Counsel agrees, it's not our place to interfere with that. It's irrelevant for us because, we're not issuing the suspensions, anyway. We're called a Board of "limited jurisdiction". So, if the Chief decides he's going to suspend somebody for (15) days, we're not going to tell the Chief, you can't do that. Perhaps, the Union might say, you can't do that. Then the Chief could say, well you bargained the 5 days away, but that would be between the Chief and the Union, not the Fire and Police Commission.

Commissioner Vitale asked Chief Cervenka if he had any personal input in the contract negotiations. Chief Cervenka replied that he wasn't here when the last contract was discussed and he did not know who the Chief was at the time. Chief Cervenka added that the contract expires in 2019. Pat O'Connor said he will send the recording secretary an email with the new changes for the Board's approval. Chairman Doheny motioned, Commissioner Vitale seconded to approve the changes to the amendment originally presented to the board by Pat O'Connor for review. Aye: Doheny, Vitale. Nay: None. Absent: Stefanini. Motion was carried by unanimous voice vote. 2/0/1

OPEN MEETING OF MARCH 15, 2017 (Continued)

IV COMMUNICATIONS

POLICE COMMISSION TRAINING-IFPCA SPRING SEMINAR
Chief Cervenka advised the Board that the seminar in Decatur, Illinois at the Decatur Conference Center and Hotel on May 5th, 6th, & 7th, 2017 did not include the Modules 1 & 2, which are necessary to take before Modules 3 & 4. The Board asked the recording secretary to contact the IFPA and check to see if the November Seminar includes Modules (1 & 2) and then let them know.

NOTICE OF AELE LAW ENFORCEMENT LEGAL CENTER
“Use of Force” four (4) day program April 3-6, 2017 in Las Vegas.

V ADJOURNMENT

There being no more business to come before the Board, Chairman Doheny motioned, seconded by Commissioner Vitale to adjourn at 5:55p.m. A vote was taken: Aye: Vitale, Doheny. Nay: None. Absent: Stefanini. Motion was carried by unanimous voice vote. (2/0/1)

Respectfully submitted,

Prepared by

Michael Doheny, Chairman
Board of Fire and Police Commissioners

Dale Strazzante
Recording Secretary