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MEMO

TO: Burlington City Council

FROM: Kenneth A. Schatz, Esq., City Attorney *KAS*

RE: Retirement Board Composition

DATE: September 27, 2011

In a resolution approved by the City Council on July 11, 2011 and signed by the Mayor on July 12, 2011, the City Attorney was requested to review the history of the Retirement Board makeup and advise if and how the Council can change the makeup of the Retirement Board. Our understanding of this request requires us to address two questions: (1) whether the City must "bargain" such a change with the City's unions and (2) whether the description of the Board's composition in § 284 of the City Charter may be changed by ordinance. As described below, we conclude that it is not necessary to "bargain" a change to the makeup of the Retirement Board and that such a change may be made by adopting an amendment to the Retirement Ordinance.

(1) Must the City "bargain" a change to the Retirement Board composition with the City's unions?

At the City Council meeting on July 11, 2011 a question arose as to whether the expansion of the Retirement Board membership in 1998 occurred as a result of a collective bargaining agreement with one or more of the City's unions. If so, it would be a reasonable conclusion that any further change to the makeup of the Retirement Board would have to be agreed upon through the collective bargaining process.

We did review the history and determined that while the Retirement Board membership issue may have been first raised by the firefighter's union, we did not find any documentation indicating that the 1998 retirement ordinance amendment authorizing the change in makeup of the Board to increase the number of employee representatives came about as a result of a collective bargaining agreement.

Apparently, the issue of increasing the number of employee representatives on the Retirement Board was raised by the firefighter's union in the spring of 1996. Eventually, on

April 14, 1997, the City Council passed a resolution creating a Study Group to look at the membership of the Retirement Board. The Study Group included employee/union members, the city treasurer, the chair of the Retirement Board and an attorney. That group met and recommended increasing the number of members on the Board by adding additional employee representatives. In January, 1998, the City Council approved on first reading a retirement ordinance amendment increasing the number of employee representatives on the Retirement Board. That proposed amendment was referred to the Ordinance Committee and the approved on second reading on April 13, 1998. A memo to the City Council from Retirement Administrator Cindy Davis, dated April 7, 1998, references the study group and its recommendations. Neither the memo nor any of the minutes of the City council meetings indicate in any way that the proposal was a result of a collective bargaining agreement.

We reviewed the City's union contracts going back to 1995, and none of the City's contracts with Police, Fire, AFSCME, or IBEW contain any provision regarding the retirement board's makeup or employee representation on the board. (Attached is a timeline regarding the increase of the number of employee representatives on the Retirement Board.)

Consequently, our conclusion is that the 1998 change in makeup of the Retirement Board did not come about as a result of a collective bargaining agreement and thus we do not believe the City must "bargain" any further change to the composition of the Retirement Board.

(2) May the description of the Board's composition in § 284 of the City Charter be changed by ordinance?

It was also noted at the City Council meeting on July 11, 2011 that the current composition of the Retirement Board is not consistent with § 284 of the City Charter. A question was raised as to whether the Council was authorized to change the makeup of the Retirement Board.

City Charter Section 284 describes the Retirement Board as consisting of:

- two (2) members appointed by the city council
- one (1) class A member of the system elected by the class A membership
- one (1) class B member of the system elected by the class B membership
- the chief administrative officer as an ex officio member

The current makeup of the Retirement Board is:

- three (3) members appointed by the city council
- two (2) class A members of the system elected by the class A membership
- two (2) class B members of the system elected by the class B membership
- the chief administrative officer as an ex officio member
- of the class A and class B members, no two shall be employed at the same department

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This current makeup is consistent with the Retirement Ordinance, B.C.O. § 24-48, as amended in April 1998.

In 1998, the Council relied on the separate authority provided by § 406 of the City Charter to expand the membership of the retirement board by ordinance. § 406 of the City Charter provides, in pertinent part, as follows:

“The city council of said city is hereby authorized by ordinance to appoint and employ such boards and officers as may be necessary to administer, control and make expenditures for such fund or funds...and to make, amend or repeal such ordinances as may be convenient or necessary to create, manage and operate a fund or funds for the payment to city employees and appointive officers of retirement, disability and death benefits, or any one or more of them.”

Consequently, despite the description of the Retirement Board composition in § 284 of the City Charter, the Council may change the Board's membership by ordinance under the separate authority granted in § 406 of the Charter. That was the analysis in 1998 and we see no reason why the Council cannot make another change to the Retirement Board's makeup through adoption of an ordinance amendment of B.C.O. § 24-48, including the possibility of returning to the membership described in § 284 of the Charter or some other composition deemed convenient or necessary to administer, control, manage and operate the retirement fund.

Therefore, it is our opinion that the City is not required to “bargain” any further change to the composition of the Retirement Board and the Council can change the makeup of the Retirement Board by adopting an amendment to the Retirement Ordinance at B.C.O. § 24-48.

We trust this is responsive to your request. Please feel free to contact us if you have further questions.

cc: Bob Kiss, Mayor
Scott Schrader, Interim CAO
Retirement Board Members
Susan Leonard, Human Resources Director
Marina Collins, Retirement Administrator, HR
Joseph E. McNeil, Esq.

Composition of Retirement Board
Timeline re increasing number of employee representatives

- July 1, 1995 – June 30, 1997; extended through June 30, 1998 – collective bargaining agreement between city and firefighter’s union does not include any reference to increasing number of employee representatives on Retirement Board
- Spring, 1996 - firefighters union proposals include increasing number of employee representatives on Retirement Board (see Cindy Davis memo to Retirement Board dated May 3, 1996)
- April 14, 1997 – city council passed Resolution entitled Study of the Membership of the Retirement Board (creating a study group, including union representatives)
- May – July, 1997 – study group met and recommended increasing number of Retirement Board members by adding additional employee representatives
- Summer – Fall, 1997 – firefighter union proposals in union negotiations included “retirement board composition increased by adding more employees representatives” (memo from BK to CD dated 1/29/98 includes: “comment: change is already in progress”)
- January 26, 1998 –proposal to amend ordinance re Retirement Board composition consistent with study group recommendations approved by city council on first reading and referred to Ordinance Committee
- January 13, 1998(?) – Ordinance Committee considered and recommended approval by city council on second reading of proposed ordinance amendment re composition of retirement board
- April 13, 1998 – city council approved on second reading ordinance amendment on Composition of Retirement Board, increasing number of Retirement Board members by adding additional employee representatives
- July 1, 1998 – June 30, 2000 - collective bargaining agreement between city and firefighter’s union does not include any reference to increasing number of employee representatives on Retirement Board
- Review of 1996 – 1998 collective bargaining agreements with police, AFSCME and IBEW - no reference to increasing number of employee representatives on Retirement Board