

Bill Fry (Upper Captiva Fire & Rescue District)

From: Richard Pringle <richard@strayhornandstrayhornlaw.com>
Sent: Friday, May 4, 2018 5:39 PM
To: bill.fry.ncap@gmail.com
Cc: Richard Pringle; Carolyn Quinones
Subject: Upper Captiva Fire District - Employment Agreement for Chief Kinniry

Dear Commissioner Fry,

I have reviewed the Employment Agreement for Chief Kinniry.

Based upon my review of Chief Kinniry's Employment Agreement, I have the following comments.

1. Under Section 4.2 of the Agreement, it appears that the Employment Agreement term automatically renews without an opportunity for the District to not renew the Employment Agreement at the end of any one (1) year period; therefore, the only way to terminate the Agreement is under either Section 4.3 which provides for termination by the Chief or Section 4.4 which provides for termination by the District. As a result of the language of Section 4.2, the District cannot simply not renew the Employment Agreement for an additional one (1) year period at the end of the current one (1) year term.
2. The District can unilaterally terminate the Chief's Employment Agreement under Section 4.4.2 at any time without cause. Section 4.4.2 of the Agreement states that if the District, through the Board, terminates the Chief's employment without cause, the District will have to pay the Chief a severance payment which, as I read Section 4.4.2, is one (1) month's base salary if the Chief's employment is terminated without cause between October 1, 2017 and September 30, 2018.
3. I do not find any provision in the Employment Agreement which says that Chief Kinniry will only be paid a salary through the date of termination; however, there is also no language in the Agreement which says that Chief Kinniry will be paid his full salary for the one (1) year period in which his Employment Agreement is terminated either. Florida law prohibits payment of more than twenty (20) weeks of severance pay to a fire chief; therefore, since the contract does not specifically say that Chief Kinniry will receive payment of his salary for the entire one (1) year contract period during which he is terminated, it is my opinion that the Chief will only be paid a salary through the date of his termination by the District plus one (1) month's (four weeks) salary as severance pay if Chief Kinniry's Employment Agreement is terminated on or before September 30, 2018.
4. In addition to reviewing Section 4 of the Chief's Employment Agreement, I also have reviewed Section 6 of the Agreement which addresses paid time off for Chief Kinniry. Under Section 6.1.2 of the Agreement, it appears that during the current fiscal year, Chief Kinniry will accrue paid time off on a semi-monthly basis at the rate of .875 work days for each pay period which means that Chief Kinniry's PTO is not front loaded at the beginning of the fiscal year and instead accrues along the way throughout the fiscal year. It also appears that under Section 6.1.3 of the Agreement, at the beginning of each fiscal year, Chief Kinniry can carry over up to, but no more than, 42 days of unused PTO. As a result, Chief Kinniry could have started the current fiscal year on October 1, 2017, with up to, but no more than, 42 days of unused PTO accrual. It also appears that Chief Kinniry will continue to accrue additional PTO under the schedule described in Section 6.1.2 of the Agreement throughout the current fiscal year. As a result, it would appear that Chief Kinniry's maximum accrual of PTO for the current fiscal year could occur on September 30, 2018, at which time Chief Kinniry could accrue all of the PTO he carried forward from the last fiscal year plus all of his accrued PTO during this fiscal year. Under my interpretation of Section 6.1.3, it appears that on October 1, 2018, any excess unused PTO over one half of Chief Kinniry's yearly PTO for this fiscal year will be lost if he does not use it; however, on September 30, 2018, it would appear that all of the accrued but unused PTO will still be available PTO. It is important to calculate Chief Kinniry's PTO accumulation because I believe Chief Kinniry's accrued and

unused PTO in existence on his date of termination will have to be paid to Chief Kinniry in addition to his severance payment described in Section 4.4.2 of the Employment Agreement.

5. Under Section 6.3 of Chief Kinniry's Employment Agreement, I have a question about whether the phrase "shall provide" in the second line means that the District pays for the Chief and his spouse's health, dental and vision insurance or whether the phrase "shall provide" means that the Chief and his spouse can participate in the District's health, dental and vision insurance coverages at the Chief's expense. Whatever action the District has taken to this point with regard to payment of the health, dental and vision insurance coverage costs for the Chief and his spouse will establish the precedent for the future. As with the question I have about the proper interpretation of the Agreement concerning the District's obligation to pay the cost of health insurance for the Chief and his spouse during his employment, I have a question about the proper interpretation of the Agreement concerning the District's obligation to pay the cost of health insurance for the Chief after termination of his employment. Section 6.3 of the Agreement is not really clear as to whether the District is responsible to pay the medical insurance for the Chief and his spouse after termination of employment. If there is no past practice that can be used as a basis for an interpretation of the Agreement language, my suggestion is that the language should be interpreted to only provide for medical insurance during the term of the Agreement based on the first six words of Section 6.3.
6. With regard to retirement payment to Chief Kinniry described in Section 6.4 of the Agreement, it appears to me that Chief Kinniry could have become fully entitled to twenty-five percent (25%) of his current base pay for the current 17/18 employment term on September 1, 2017, as a lump sum payment. The District's past practice on accruing the Chief's retirement under Section 6.4 is very important in determining exactly what is meant by the language of Section 6.4. If Chief Kinniry is already fully entitled to all of the retirement pay for this fiscal year and if Chief Kinniry has not already been paid the full lump sum payment of 25% of his current base pay, the lump sum payment of 25% of his current base pay for the 17/18 fiscal year will have to be paid at/or before termination. Also, if the Chief's employment is not terminated until October 1, 2018, or thereafter, it appears that the Chief will be entitled to another retirement payment in the full amount of twenty-five percent (25%) of his salary as of October, 2018.
7. With regard to the housing and utility allowance, described in Section 6.4 of the Agreement, again the Agreement language could be interpreted more than one way. The fairest and most practical interpretation is that the housing and utility allowance should be divided into twenty-four (24) equal payments per year and the Chief should only receive the payments while he is employed up to his Agreement termination date.

As described above, a number of the provisions in the Chief's Employment Agreement can be interpreted more than one way. As a result, it is my suggestion that the District and the Chief enter into a first amendment to the Chief's Employment Agreement which specifically describes a final termination date of the Chief's Employment Agreement and which also describes the severance pay, PTO, health insurance benefits and other pay the Chief will receive at and after termination. A benefit to the Chief of a first amendment to the Chief's Employment Agreement is that the first amendment could provide for the Chief to be returned to his former position of employment by the District, including being employed without an Employment Agreement in lieu of the Chief's employment by the District being terminated all together which is what the District can do under section 4.4.2, at any time, without cause. A first amendment to the Chief's Employment Agreement will also enable the District to specifically state a hard Employment Agreement termination date and the specific termination pay the Chief will receive so that all questions about the interpretation of the Chief's Employment Agreement terms can be resolved in writing.

Best regards,

Richard W. Pringle

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