

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2011-CA-004348  
DIVISION: CV-A

CURTIS W. LEE, an individual and  
THE CONCERNED TAXPAYERS OF  
DUVAL COUNTY, INC., a non-profit  
Florida corporation,

Plaintiffs,

vs.

CITY OF JACKSONVILLE, a  
municipal corporation of the State of  
Florida and JACKSONVILLE POLICE  
AND FIRE PENSION FUND BOARD  
OF TRUSTEES,

Defendants.

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**SUMMARY FINAL JUDGMENT FOR PLAINTIFFS**

This action is before the Court on: (1) Plaintiffs Curtis W. Lee and The Concerned Taxpayers of Duval County, Inc.'s ("Plaintiffs") Motion for Summary Final Judgment; (2) Defendant City of Jacksonville's (the "City") Motion for Summary Judgment; and (3) Defendant Jacksonville Police and Fire Pension Fund Board of Trustees' (the "Pension Fund") Counter-Motion for Summary Judgment.

Plaintiffs ask this Court to determine, as a matter of law, that the City and Pension Fund violated the Sunshine Law by holding private meetings to negotiate pension benefits of City employees who are members of the Pension Fund. The First District recently held that such negotiations between the City and Pension Fund, even in the context of federal court mediation

(an issue not present in this case), were a violation of the Sunshine Law. *See Brown v. Denton*, 152 So.3d 8 (Fla. 1st DCA 2014). In *Denton*, the First District stated that:

By holding closed-door negotiations that resulted in changes to public employee's pension benefits, the appellants ignored an important party who also had the right to be in the room – the public.

*Id.* at 12.

Plaintiffs seek a determination that the non-public negotiations between the City and the Pension Fund giving rise to proposed Ordinance 2011-400 violated the Sunshine Law, and that the non-public negotiations resulting in the Pension Fund Contract also violated the Sunshine Law, rendering the Pension Fund Contract void *ab initio*.

In opposition to the Plaintiffs' motion, Defendants argue that the negotiations between the City and the Pension Fund did not entail collective bargaining, and therefore were not subject to the Sunshine Law. Defendants contend that: (1) the Pension Fund is not a bargaining unit or agent of the police or firefighter unions; and (2) as a result of the agreement between the City and Pension Fund, the unions waived their right to collective bargaining in favor of the pension benefits granted to the employees under the Pension Fund Contract, or benefits subsequently negotiated between the City and the Pension Fund. The First District rejected these arguments in *Denton*. The Defendants also argue that the Plaintiffs' claim that the Pension Fund Contract is void *ab initio* is barred by a four-year statute of limitations.

The Court has jurisdiction over all parties and the subject matter of this action, and makes the following findings of fact and conclusions of law:

**I. Standard of Review**

Pursuant to Florida Rule of Civil Procedure 1.510(c), summary judgment shall be granted if "the pleadings and summary judgment evidence on file show that there is no genuine issue as

to any material fact and that the moving party is entitled to a judgment as a matter of law.” “Summary judgment evidence” consists of “affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence....” Fla. R. Civ. P. 1.510(c). The moving party carries the burden of proving that “no genuine issue of material fact exists.” *Dade County Sch. Bd. v. Radio Station WOBA*, 731 So.2d 638, 643 (Fla. 1999) (citations omitted). Summary judgment should be exercised with restraint, and any doubts are to be resolved in favor of the nonmoving party. *Clay Elec. Co-op., Inc. v. Johnson*, 873 So.2d 1182, 1185 (Fla. 2003).

## **II. Undisputed Facts**

1. Defendant City of Jacksonville is a public employer and a municipality of the State of Florida.

2. Defendant Pension Fund is an agency of the City of Jacksonville with its principal place of business at 1 West Adams Street, Suite 100, Jacksonville, Florida 32202. The Pension Fund was granted the power to sue and be sued by Section 22.04(c), Jacksonville Ordinance Code.

3. The Pension Fund was created in 1937 and is a local law defined benefit pension plan governed by Article X, §14, Florida Constitution and Chapters 112, 175, and 185, Florida Statutes.

4. As a general matter, the City is required by law to fund the Pension Fund on a sound actuarial basis.

5. In or around 1993, the City and the Pension Fund entered into a contract with an eight-year term, and including specific provisions for retirement benefits of employees of the Jacksonville Sheriff’s Office (“JSO”) and Jacksonville Fire & Rescue Department (“JFRD”),

funding requirements, and actuarial assumptions. Most of the employees so benefited were members of bargaining units and represented by employee organizations, *i.e.*, labor unions. This contract was later amended by the parties and each amendment was approved and adopted by City ordinance.

6. On or about March 5, 2001, the City and the Pension Fund entered into a replacement contract entitled “Restated Agreement Between the City of Jacksonville and the Jacksonville Police and Fire Pension Fund Board of Trustees,” which the parties amended in 2003, 2004, and 2006. The 2001 contract and each amendment were approved and adopted by City ordinance.

7. The 2001 contract and its several amendments are collectively referred to herein as the “Pension Fund Contract”.

8. The Pension Fund Contract states that it is in effect through September 30, 2030. *See* Pension Fund Contract, ¶ 31.

9. The Pension Fund Contract purports to establish the retirement benefits of the Pension Fund’s members and future members, who are persons formerly employed, currently employed, or to be employed by the JSO and JFRD. Most of such employed and future members are or will be members of bargaining units and represented by employee organizations.

10. The City is a public employer within the meaning of Chapter 447, Part II, Fla. Stat. (the “Public Employee Relations Act”). The members of the Pension Fund are, were, or will be public employees within the meaning of the Public Employee Relations Act.

11. The Florida State Lodge, Fraternal Order of Police (“FOP”), is the certified exclusive collective bargaining agent for the police officers who are or will be members of the Pension Fund.

12. The Jacksonville Association of Firefighters, IAFF, Local 122 (“JAFF”), is the certified exclusive collective bargaining agent for the firefighters who are or will be members of the Pension Fund.

13. In or about October, 2009, the City demanded that the above-described collective bargaining agents collectively bargain pension benefits.

14. In response, the JAFF and its president filed a declaratory judgment lawsuit against the City and the Pension Fund in January, 2010. The case was styled *Jacksonville Association of Fire Fighters, Local 122, IAFF, and Randal Wyse v. City of Jacksonville and Jacksonville Police and Fire Pension Fund Board of Trustees*, Case No.: 16-2010-CA-001494 (the “JAFF Lawsuit”).

15. In the JAFF Lawsuit, the JAFF sought a declaratory judgment that, among other things, it is not required to collectively bargain retirement benefits because such retirement benefits have already been agreed to between the City and the Pension Fund in the Pension Fund Contract.

16. Notwithstanding the JAFF lawsuit, the City and Pension Fund engaged in negotiations during 2010 and 2011 regarding changes to the Pension Fund contract.

17. Such negotiations resulted in the introduction of proposed Ordinance 2011-400 (the “Proposed Ordinance”). The Proposed Ordinance, which is attached as Exhibit 5 to Plaintiffs’ Amended Complaint, consists of: (i) a lengthy proposed ordinance that would, *inter alia*, change the retirement benefits of newly hired JSO and JFRD employees who are members of FOP and JAFF; (ii) a fourth amendment to the Pension Fund Contract, which would remain in effect through September 30, 2030, and which would, *inter alia*, set forth many terms and

conditions of the retirement benefits of such newly hired, and existing, JSO and JFRD employees; and (iii) certain actuarial letters and assumptions.

18. The negotiations between the City and the Pension Fund resulting in the Pension Fund Contract and the Proposed Ordinance were not conducted in noticed and open public meetings.

### **III. Conclusions of Law**

#### **A. History**

1. In 1937, the Jacksonville Police and Fire Pension Fund was created under Chapter 18615, Special Acts of Florida, and codified in sections 121.101-.401 of the City Ordinance.

2. The Pension Fund is a local-law defined-benefit pension plan governed by Article X, § 14, Florida Constitution, and Chapters 112, 175, and 185, Florida Statutes. *See* Jacksonville Charter § 22.08.

3. When the City of Jacksonville consolidated with Duval County in 1968, the Pension Fund was continued, without interruption. *See* Jacksonville Charter § 18.04.

4. In 1992, the legislature readopted the entire City Charter of Jacksonville by chapter 92-341, Laws of Florida. *See Evans v. Bell*, 651 So.2d 162, 166 (Fla. 1st DCA 1995).

5. Under section 121.101, Jacksonville Ordinance Code, the control and administration of the Pension Fund shall be exercised by the Board of Trustees, as “created and authorized by F.S. Ch. 175 and F.S. Ch. 185, and Article 22.01 of the City Charter . . . .”

6. Article 22 of the City Charter, which created the Jacksonville Police and Fire Pension Board of Trustees (“the Pension Fund”) by Special Act, established a “body politic and corporate” to *administer the [Pension] Fund*, and vested with the [Pension Fund] Board the

*authority to invest and reinvest the assets of the [Pension] Fund.* § 22.02 and § 22.04, Charter of the City of Jacksonville.

7. Chapters 175 and 185, Florida Statutes, created a board of trustees responsible for *administering the municipal police and fire retirement plans*, effective October 1986. See §§ 185.05 and 175.071, Fla. Stat.

8. “In each municipality and in each special fire control district there is hereby created a board of trustees of the firefighters’ pension trust fund, which shall be solely responsible for administering the trust fund.” § 175.061, Fla. Stat. (2013). The Florida Statutes establish an identical foundation pertaining to the police officers’ retirement fund. § 185.05, Fla. Stat. (2013).

9. “All administrative bodies created by the Legislature are not constitutional bodies, but, rather, simply mere creatures of statute . . . . As such, [its] powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. Any reasonable doubt as to the lawful existence of a particular power that is being exercised . . . must be resolved against the exercise thereof . . . .” *City of Cape Coral v. GAC Utilities, Inc., of Fla.*, 281 So.2d 493, 495-96 (Fla. 1973) (citations omitted).

**B. Collective Bargaining**

10. The Jacksonville City Charter defines Collective Bargaining as:

“Collective Bargaining” means the performance of the mutual obligations of the public employer and the bargaining *agent* of the employee organization to meet at reasonable times and places to confer and negotiate in good faith, *and to reduce to writing and to execute any written agreement* with respect to collective negotiations concerning the wages, rates of pay, hours, working conditions, and *all other terms and conditions of employment*.

§ 19.101(i), Charter of the City of Jacksonville (emphasis added).

11. Pursuant to the collective bargaining provisions of the Charter of the City of Jacksonville,

[P]ublic employees shall have the right to be represented by an employee organization of their own choosing, to negotiate collectively through a certified bargaining agent with their public employer in the determination of the wages, rates of pay, hours, and all other terms and conditions of their employment, and to be represented in the determination of grievances arising thereunder.

§ 19.202, Charter of the City of Jacksonville.

12. Public employees shall have the right to refrain from exercising the right to be represented. § 19.202, Charter of the City of Jacksonville.

13. The employee organization may certify a bargaining agent to engage in collective bargaining with the employer. § 19.206(a), § 19.207, Charter of the City of Jacksonville.

14. Any collective bargaining agreement shall be reduced to writing and such agreement shall be “signed by the negotiators for the public employer and the bargaining agent.” § 19.208, Charter of the City of Jacksonville.

15. Any collective bargaining agreement shall not exceed a term of more than three years. § 19.208, Charter of the City of Jacksonville.

16. In 1986, the Florida legislature revised substantial portions of Chapters 175 and 185, Florida Statutes, which are the general state laws governing municipal police and fire retirement plans.

17. In 1969, the Supreme Court of Florida held that, with the exception of the right to strike, public employees have the same rights of collective bargaining as are granted private employees. *Dade County Classroom Teachers' Ass'n v. Ryan*, 225 So.2d 903, 905 (Fla. 1969).

18. The Florida Legislature enacted Chapter 447, Part II, of the Florida Statutes, titled the Florida Public Employees Relations Act (“PERA”).



19. PERA embodies the right of full-time public employees to collectively bargain, articulating who qualifies as a public employee, as a public employer, and the process for bargaining. *See* §§ 447.203(2), 447.309, Fla. Stat.

20. Section 447.01(2), Florida Statutes, states that “[i]t is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth.”

21. The Florida Statutes defines Collective Bargaining as:

“Collective Bargaining” means the performance of the mutual obligations of the public employer *and the bargaining agent of the employee organization* to meet at reasonable times, to negotiate in good faith, and to execute a written contract with respect to agreements reached concerning the terms and conditions of employment . . . .”

§ 447.203(14), Fla. Stat. (emphasis added).

22. Moreover, Florida law dictates that any collective bargaining agreement shall not provide for a term of existence of more than three years. § 447.309(5), Fla. Stat.

23. The right of public employees to collective bargaining “is a constitutionally protected right which may be enforced by the courts, if not protected by other agencies of government.” *United Teachers of Dade, FEA/United AFT, Local 1974, AFL-CIO v. Dade County Sch. Bd.*, 500 So.2d 508, 510 (Fla. 1986).

24. As a term or condition of employment, pension benefits are retirement benefits that are a mandatory subject of collective bargaining. *Scott v. Williams*, 107 So.3d 379, 396 (Fla. 2013); *see City of Tallahassee v. PERC*, 410 So.2d 487, 491 (Fla. 1981); *see generally United Teachers of Dade FEA/United AFT, Local 1974, AFL-CIO*, 500 So.2d at 515 (Boyd, J.,

dissenting) (“the subject of rights and benefits under retirement pension plans [cannot] be legislatively removed from the field of collective bargaining”).

25. The Pension Fund and the City both argue that the negotiations leading to the Pension Fund contract could not have been collective bargaining because the unions, not the Pension Fund, were the “bargaining units” certified by PERC. However, the First District rejected this argument in *Denton*. As noted in that case, Florida law provides a broader definition of a “bargaining agent” as compared to a “bargaining unit.” See *Denton*, 152 So.3d at 11. A “bargaining agent” means not only the employee organization certified by PERC but also its representative. See § 447.203(12), Fla. Stat. Under Section 447.605(2), Florida Statutes, the “collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of s. 286.011 [the Sunshine Law].” The Pension Fund was acting as a representative of the unions in the negotiations over pension benefits. Accordingly, Florida Statutes governing collective bargaining and the Sunshine Law required that the negotiations leading to the Pension Fund Contract and the Proposed Ordinance be conducted in public.

26. Nothing in the City Charter overrides general laws related to collective bargaining. The relevant City Charter provisions are consistent with general law regulating collective bargaining. Accordingly, the City and unions remain subject to Florida Statutes governing collective bargaining. Governing statutes material to Plaintiffs’ Sunshine Act claim include the following: (1) the provision that pension benefits are employee rights subject to mandatory collective bargaining. See, e.g., *Scott*, 107 So.3d at 396; (2) the definition of collective bargaining includes the negotiation of pension benefits, not only by an appointed

bargaining agent, but also by a union's "representative." See § 447.203(12), Fla. Stat.; and (3) collective bargaining agreements are limited to three-year terms. See § 447.309(5), Fla. Stat.

27. Applying general law to the undisputed facts yields the conclusion that, in negotiating the Pension Fund Contract and the Proposed Ordinance, the City and Pension Fund were engaging in collective bargaining. The City and Pension Fund were negotiating pension benefits that were required by law to be done through the process of collective bargaining. The Restated Agreement purported to bind the City to provide defined pension benefits to the Police and Fire Union employees for a fixed term of years. In negotiating the Proposed Ordinance, it is obvious that the Pension Fund and the City necessarily negotiated the terms of the Fourth Amendment to the Restated Agreement that would have changed the specific, defined pension benefits to be provided City employees in the Police and Fire Unions. In so negotiating, the Pension Fund was necessarily acting as a representative of the unions, and thus acted as a "bargaining agent." See *Denton*, 152 So.3d at 11.

28. An important part of the Proposed Ordinance was the making of significant changes to the financial terms of the pension benefits to be provided the Police and Fire Union employees. Viewing the record in the light most favorable to Defendants, it is apparent then that the Pension Fund representatives negotiated such changes to the employee pensions on behalf of the employee unions. Accordingly, the Pension Fund necessarily acted as the employees' representative. It therefore follows that the negotiations for the changes in the pension benefits were negotiations over the terms of employee benefits that were required to be the subject of mandatory collective bargaining. Consequently, absent a clear and unmistakable waiver or exception, such negotiations were also subject to the requirement that they be conducted in the sunshine. See § 447.605, Fla. Stat.; *Denton* at 11.

29. The Pension Fund and the City argue that the Restated Agreement and the Proposed Ordinance both represent a waiver by the employee unions of their right to compel compulsory collective bargaining. These Defendants essentially argue that once the City and Pension Fund entered into an agreement fixing pension benefits for the next 30 years, employees were satisfied with the pension benefits set by the Pension Fund Contract and thus agreed to forgo their right to bargain collectively on pensions for the time period covered by the Pension Fund Contract.

30. Defendants' argument, however, misapprehends the nature of a waiver of the right to collective bargaining. A waiver typically occurs when the parties collectively bargain certain terms of employment, and in consideration of such an agreement, expressly agree that certain other terms of employment would remain subject to change at the discretion of the employer; moreover, such waiver must be clear and unmistakable. *See Communications Workers of Am., AFL-CIO, CLC v. City of Gainesville*, 65 So.3d 1070, 1072 (Fla. 1st DCA 2011). The Restated Agreement and the Proposed Ordinance are the antithesis of a waiver. Instead, these agreements lock the City into very specific and defined pension benefits for a term of years. The negotiations leading to such agreements were the opposite of a waiver and amount to collective bargaining through nontraditional means. The fact that the Pension Fund was not a registered bargaining agent does not change the outcome. Moreover, if the Pension Fund should have been registered as an official bargaining agent, such failure to do so may perhaps be grounds for regulatory action by PERC. Such action, however, would not change the essential nature of the activity, as least for the purposes of applying the Sunshine Act that mandates that collective bargaining activity be conducted in public. Otherwise, parties could simply negotiate pension benefits using representatives other than their statutorily-designated bargaining agents and call

such negotiations and any resulting agreement the result of a waiver of the union's right to collective bargaining. To allow such activity to be conducted in private would violate the principle that evasive devices to circumvent the Sunshine Law cannot be upheld. *See Sch. Bd. of Duval County. v. Fla. Publishing Co.*, 670 So.2d 99, 101 (Fla. 1st DCA 1996).

31. In short, the record shows that the Pension Fund engaged in collective bargaining with the City, on behalf of the Unions, as their bargaining agent, when it negotiated pension benefits in the Pension Fund Contract, as well as the Proposed Ordinance.

**C. Sunshine Law**

32. The Sunshine Law is a codification of the long-standing principle of open government in Florida, which was elevated to a constitutional right. The Sunshine Law provides:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

§ 286.011(1), Fla. Stat.; Art. I. § 24(b), Fla. Const.

33. The purpose of the Sunshine Law includes the protection of “the public's right to be present and to be heard during all phases of enactments by governmental boards and commissions,” and the principle that “*the act should be accorded a liberal construction to give effect to the public purpose and to frustrate evasive devices.*” *Sch. Bd. of Duval County*, 670 So. 2d at 101 (emphasis added); *see Zorc v. City of Vero Beach*, 722 So.2d 891, 896 (Fla. 4th DCA 1998) (“The purpose of the Sunshine Law is 'to prevent at non-public meetings the

crystallization of secret decisions to a point just short of ceremonial acceptance.”) (citation omitted).

34. “In construing the statute, it is well settled that the Sunshine Law, enacted for the public benefit, should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed.” *Zorc*, 722 So.2d at 897.

35. Section 447.605, Florida Statutes, is a provision within Florida's collective bargaining laws for public employees that specifically provides: “*The collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of s. 286.011.*” § 447.605(2), *Fla. Stat.* (emphasis added).

36. Because the collective bargaining statute incorporates the provisions of the Sunshine Law, the Court has jurisdiction to determine whether collective bargaining has been held in the Sunshine in compliance with Section 286.011. *See, e.g., City of Fort Myers v. News-Press Publishing Co.*, 514 So.2d 408, 411 (Fla. 2d DCA 1987) (determining whether collective bargaining violated Sunshine Act). To hold otherwise would leave a violation of Section 447.605(2) without redress.

37. Once a plaintiff establishes a Sunshine Law violation, the Court has the authority to enjoin violations similar to those already committed, if there is a danger such violations may be repeated. *Bd. of Public Instruction of Broward County. v. Doran*, 224 So.2d 693, 699-700 (Fla. 1969); *see Times Publishing Co. v. Williams*, 222 So.2d 470, 476-77 (Fla. 2d DCA 1969) (holding that upon violation irreparable injury is presumed and, upon a real and imminent threat to repeat the violation, the agency may be enjoined, “since there obviously is no adequate remedy at law”), *rev'd on other grounds, Neu v. Miami Herald Publishing Co.*, 462 So.2d 821

(Fla. 1985); *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974) (holding that irreparable injury is presumed upon a violation of the Sunshine Law).

38. Upon a showing that the Sunshine Law was violated, a court may enjoin a future violation that bears some resemblance to the past violations, as long as the enjoined conduct is “specified, with such reasonable definiteness and certainty that the defendant could readily know that [which] it must refrain from doing without speculation and conjuncture.” *Port Everglades Auth. v. Int'l Longshoremen's Ass'n. Local 1922-1*, 652 So.2d 1169, 1173 (Fla. 4th DCA 1995), quoting *Doran*, 224 So. 2d at 699.

39. Although the Pension Fund alleges that it is not a recognized bargaining agent and, therefore, could not have engaged in collective bargaining during the negotiations, the evidence indisputably establishes that the Pension Fund, by participating in the negotiations for pension benefits, became an agency subject to the Sunshine Law.

40. Evasive devices used to circumvent the dictates of the Sunshine Law are condemned and cannot be upheld. *See Sch. Bd. of Duval County*, 670 So.2d at 101 (“the [Public Records Act] should be accorded a liberal construction to give effect to the public purpose and to frustrate evasive devices”). Thus, the Court finds that the negotiations between the City and the Pension Fund were in violation of the Sunshine Law because they included negotiations over pension benefits contained in the Restated Agreement. As bodies subject to the Sunshine Law, the Pension Fund and City were required to conduct their negotiations in the public realm.

**D. Actions of a public body in violation of the Sunshine Law are void *ab initio*.**

41. If any action is taken resulting from meetings held in violation of the Sunshine Law, such actions are void *ab initio*. *See Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974) (planning advisory committee violated Sunshine Law, so zoning ordinance adopted

based on committee meetings was void *ab initio*); *Silver Express Co. v. District Board of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So.2d 1099, 1101 (Fla. 3rd DCA 1997) (college committee's violation of the Sunshine Law constituted irreparable public injury and actions taken were void *ab initio*); *Grapski v. City of Alachua*, 31 So.3d 193, 200 (Fla. 1st DCA 2010) (city's action taken in violation of the Sunshine Law was void *ab initio*); *Zorc v. City of Vero Beach*, 722 So.2d 891, 901-903 (Fla. 4th DCA 1998) (unauthorized shade meeting violated Sunshine Law and actions taken as a result were void *ab initio*, and subsequent open city council meeting did not cure violations); *Port Everglades Authority v. International Longshoremen's Ass'n, Local 1922-1*, 652 So.2d 1169, 1170 (Fla. 4th DCA 1995) (contract entered into in violation of the Sunshine Law was void *ab initio*).

42. Based upon the cited cases, this Court's holding that it was a violation of the Sunshine Law for the City and Pension Fund to negotiate and agree to pension benefits in secret meetings, renders the Pension Fund Contract void *ab initio*.

E. **The Defendants' statute of limitation defense does not apply to the 30-year agreement, since it is void *ab initio*.**

43. The City and Pension Fund's statute of limitations defense could not apply to the alleged Sunshine Law violations in 2010 and 2011 because those negotiations took place less than four years before this action was filed. However, Defendants assert that Plaintiffs' claims of Sunshine Law violations giving rise to the Pension Fund Contract are barred by a four year statute of limitations.

44. Florida law is clear, however, that a statute of limitations does not apply to actions which are void *ab initio*. See *Gotshall v. Taylor*, 196 So.2d 479 (Fla. 4th DCA 1967) ("the attempt is a nullity . . . and between the parties is void *ab initio*, and subsequent events will not breathe life into it"); *New Testament Baptist Church, Inc. of Miami v. State, Department of*



*Transportation*, 993 So.2d 112 (Fla. 4th DCA 2008) (holding that statute of limitations applies to a voidable conveyance, but not to a conveyance which is void *ab initio*); *Moore v. Smith-Snagg*, 793 So.2d 1000, 1001 (Fla. 5th DCA 2001) (there is no statute of limitations in respect to the challenge of a forged deed, which is void *ab initio*); *Wernle v. Bellemead Development Corp.*, 308 So.2d 97, 102 (Fla. 1975) (statute of limitations did not apply to conveyance that was void *ab initio*); *Word of Life Ministry, Inc. v. Miller*, 778 So.2d 360, 365 (Fla. 1st DCA 2001) (a forged or otherwise void deed was a nullity which could never start the running of a statute of limitation); *One Harbor Financial Ltd. Co. v. Hynes Properties, Inc.*, 884 So.2d 1039, 1044 (Fla. 5th DCA 2004) (affirming a trial court order setting aside an easement that had been in use for fifteen years on the ground that the easement was void *ab initio*); *Padron Warehouse Corp. v. Realty Assoc. Fund III, L.P.*, 377 F. Supp.2d 1259, 1269-1270 (S.D. Fla. 2005) (recognizing that the statute of limitations would not apply to a forged deed because it is void *ab initio* and cannot transfer title).

45. Based upon the foregoing cases, the Defendants' asserted statute of limitations defense does not apply to Plaintiffs' claim that the 30-year agreement was entered into in violation of the Sunshine Law. Since the 30-year agreement was negotiated in violation of the Sunshine Law, it is void *ab initio*, and the statute of limitations does not apply.

**F. Voiding the 30-year agreement does not affect current benefits.**

46. This Court's determination that the 30-year agreement is void *ab initio* has no effect on current pension terms under the "status quo" doctrine. Current levels of public employee benefits cannot be changed until either they are collectively bargained differently, or the public employer determines new future benefits with the acquiescence of the bargaining agents. Such future changes, if any, must be made in accordance with the provisions of PERA.

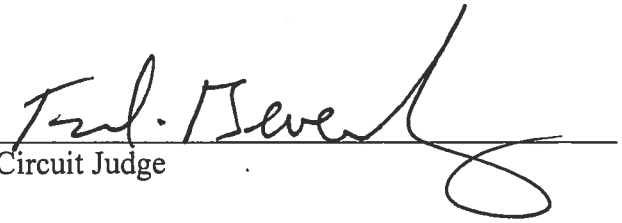
*See City of Delray Beach v. Professional Firefighters of Delray Beach, Local 1842, International Association of Firefighters*, 636 So.2d 157, 161 (Fla. 4th DCA 1994) (until a new agreement is negotiated, an employer is prohibited from unilaterally altering benefits); *International Union of Police Associations v. State, Department of Management Services*, 855 So.2d 76, 77-78 (Fla. 1st DCA 2003) (remedy for unilateral changes in terms and conditions of employment by public employees is return of the parties to the “status quo ante”).

Accordingly, for the reasons stated, the Court **ORDERS AND ADJUDGES**:

1. The Plaintiffs’ Motion for Summary Final Judgment is **GRANTED**.
2. The Motion for Summary Judgment filed by Defendant City of Jacksonville is **DENIED**.
3. The Counter-Motion for Summary Judgment filed by Defendant Jacksonville Police and Fire Pension Fund Board of Trustees is **DENIED**.
4. The Court declares that the negotiations between the City and the Pension Fund which were held in meetings that were not noticed or open to the public violated the Sunshine Law.
5. The Pension Fund Contract is void *ab initio*.
6. Defendants, the City of Jacksonville and the Jacksonville Police and Fire Pension Fund Board of Trustees, are enjoined from negotiating pension benefits without reasonable notice to the public, the taking of minutes of such meetings, opening such meetings to the public, and otherwise complying with Section 447.605(2) and Section 286.011, Florida Statutes.
7. The Court reserves jurisdiction to determine motions for attorneys’ fees or costs.

RECEIVED MAR 5 2015

**DONE AND ORDERED** in Chambers at Jacksonville, Duval County, Florida, on this 24 day of March, 2015.

  
Circuit Judge

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Case No.: 16-2011-CA-004348  
Summary Final Judgment for Plaintiffs