

# WEST PALM BEACH FIREFIGHTERS' PENSION FUND

## MINUTES OF MEETING HELD

December 7, 2023

1. Dave Merrell called a regular meeting of the Board to order at 1:30 PM. Those persons present included:

### TRUSTEES

Dave Merrell, Chair  
Brian Walker, Secretary  
Julian Cover  
Elizabeth Fugler  
Jeff Stefaniak

### OTHERS

Bonni Jensen, Board Counsel (Klausner, Kaufman, Jensen & Levinson)  
Bob Sugarman & Madison Levine, Special Board Counsel (Sugarman, Susskind & Herrera)  
Paul Parrish, Counsel  
Rick & April Curtis  
Scott Baur, Administrator (Resource Centers)  
Brendon Vavrica, Investment Consultant (AndCo)  
Chief Diana Matty  
Brian Lamb and, Local 727  
Rick Dorey, Plan Member  
Additional Members of Public and Media

## 2. HEARING: RICK CURTIS APPEAL

Bonni Jensen, counsel to the Board of Trustees, stated that the Board would hear a formal appeal from former Pension Fund member Rick Curtis. The Board previously denied the application for pension benefits submitted by Mr. Curtis after he took a prior refund of his own contributions from the Pension Fund, therefore forfeiting his right to any other benefit from the plan.

Bob Sugarman and Madison Levine appeared as Special Counsel to the Board of Trustees to defend the decision made by the Board. Paul Parrish appeared at the hearing as legal counsel representing Rick Curtis. Mr. Sugarman introduced exhibits numbered 1 thru 10 into evidence, documents distributed prior to the hearing by the administrator.

After initially waiving an opening statement, Paul Parrish addressed the Board of Trustees. He stated that he and Mr. Curtis appeared before the Board seeking to have Mr. Curtis reinstated into the Pension Fund as a member of the plan, citing his unfair treatment by the Fire Department and the City of West Palm Beach. He indicated that Mr. Curtis does not seek something for nothing – Mr. Curtis is willing to return contributions previously refunded to him plus interest and any additional amounts necessary to restore the full actuarial cost of the benefit previously due to Mr. Curtis prior to taking a refund of his contributions. Mr. Parrish stated that the refund taken by Mr. Curtis never happened according to law.

Mr. Baur administered the oath to swear Mr. Curtis as a witness. Rick Curtis then made a presentation to the Board to provide additional background details for the case. Mr. Curtis was a fully vested member of the Pension Fund, and he believes that he was denied his due process and wrongfully terminated by the City. He reviewed his career in the Fire Department and promotions leading up to his termination. Following an arrest for DUI in an off-duty incident, another employee of the Fire Department posted a derogatory and racist video to YouTube. Mr. Curtis stated that the judge presiding over his DUI case commented that Mr. Curtis tried to use his position in the Fire Department to garner special favor during the DUI arrest. The Fire Department subsequently placed Mr. Curtis on administrative leave and ultimately terminated him from his employment in the Fire Department prior to full resolution of the case against him. Mr. Curtis further stated that the judge presiding over his DUI case was romantically involved with an officer of Local 727, the union representing firefighters in the City of West Palm Beach. The judge initially failed to recuse herself from the case even though Mr. Curtis believes that a conflict of interest existed in the matter.

Mr. Curtis played the video. The author of the video apparently made the video while on duty, so the Fire Department allowed that person to immediately retire. Mr. Curtis detailed other incidents where he believes other employees received different treatment from the Fire Department following arrests for civil matters. He stated that he received 192 hours of suspension from duty and no representation from the Local 727 Firefighter Union, even though he was a union member. He then filed a grievance against the Fire Department. The judge presiding over the DUI case did

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eventually recuse herself, necessitating a new trial. In the second trial, a jury found Mr. Curtis not guilty of the DUI charge.

Mr. Curtis detailed his personal losses from the episode. Mr. Curtis stated that he took a refund of contributions to defend himself against the DUI charge, expecting to seek reemployment by the Fire Department following the conclusion of the matter. Even after his acquittal by a jury, Mr. Curtis stated that he was not allowed to restore his pension benefit. Mr. Parrish asked Mr. Curtis additional questions to confirm the events that took place. Mr. Curtis stated that he was fired prior to receiving due process from the Fire Department. He believes that he was treated differently from other employees in like circumstances. He was exonerated in a second trial. Mr. Curtis stated that the disclaimer that he signed when he received a refund of contributions from the Pension Fund in lieu of any and all other benefits stated that he could restore his pension benefit if rehired by the City, but the City of West Palm Beach never rehired Mr. Curtis. Mr. Curtis acknowledged that he would have to return the amount refunded plus interest and additional amounts to restore his pension.

The Board also asked Mr. Curtis questions about the matter. In response to a question from Ms. Levine, Mr. Curtis could not recall if he was offered a public defender as a possible alternative to taking a refund of his contributions to the Pension Fund. His termination letter from the Fire Department did not say that the Department would rehire Mr. Curtis if found not guilty. Mr. Curtis subsequently filed suit against the City for wrongful termination and agreed to a monetary settlement in the case that did not include reinstatement.

Mr. Parrish said the prior Board of Trustees should not have allowed Mr. Curtis to take a refund as a vested member of the Pension Fund. According to the doctrine of "ultra vires" the action by the Board to grant a refund therefore never happened since the Board operated outside of its legal authority. Based on this premise, Mr. Parrish stated that the current Board must restore the pension benefit due to Mr. Curtis. Mr. Curtis must also return amounts refunded plus additional amounts to be determined, as though Mr. Curtis never took a refund of his contributions in the first place. Mr. Parrish reviewed the provisions of Chapter 175 Florida Statutes and the Special Act for the Pension Fund to support his argument that the Board lacked the authority to grant Mr. Curtis a refund of his contributions. He argued that all pension funds generally discourage members from taking refunds in lieu of other benefits. He did not find any provision of Chapter 175 Florida Statutes or the Special Act allowing the Board to grant a refund of contributions to a vested member of the plan, and without such explicit authority, the Board could not grant Mr. Curtis a refund.

Ms. Jensen advised the Board of Trustees that the Special Act does not allow the Trustees to restore a pension benefit to Mr. Curtis, but Mr. Parrish argued that the original refund was not allowed by the Special Act either. Mr. Sugarman, defending the Board decision to deny Mr. Curtis a pension benefit, had no further questions.

The Trustees asked further questions. Mr. Parrish stated that Mr. Curtis was willing to pay back the amounts withdrawn from the Pension Fund plus any additional amounts to restore the assets needed to pay his benefit at market value, as though Mr. Curtis never took the refund. The Board asked further questions to Mr. Curtis about his position on the promotional list at the time of his termination, since Mr. Curtis argued that the Fire Department discriminated by passing him for promotion. The Trustees ultimately determined that questions related to his employment by the Fire Department had no further relevance to the appeal by Mr. Curtis to restore his pension benefit.

The Board Chair indicated that information provided by Mr. Curtis related to his DUI trial was hearsay. Mr. Parrish stipulated that the termination letter from Chief Webb to Mr. Curtis quoted the judge from the first DUI trial for Mr. Curtis. He also noted that Mr. Curtis provided such information to offer a more complete background for the current request to restore the pension benefit to Mr. Curtis. Chair Merrell also noted that the video played by Mr. Curtis never mentioned Mr. Curtis by name, although another employee of the Fire Department admitted to making the video.

The Board of Trustees in place at the time the Board granted Mr. Curtis a refund strongly advised him in person at a meeting with counsel present not to withdraw from the Pension Fund. The Board asked further questions about the stated reasons for his termination from the Fire Department. The PowerPoint presentation made by Mr. Curtis included a copy of the termination letter, so counsel for Mr. Curtis entered the entire presentation into evidence as "Exhibit 1". He then provided his memo explaining the doctrine of "Ultra Vires" as Exhibit 2.

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Mr. Curtis shared letters from the Fire Department ordering him to remove his personal belongings from Station 5 and subsequently his termination from employment. The termination letter cited misuse of his office in the Fire Department and his DUI conviction as grounds for termination. Mr. Parrish introduced the termination letter as Exhibit 3. The Board took a brief recess.

Madison Levine, serving as special counsel to defend the Board decision to deny the application for pension benefits by Rick Curtis, reviewed the facts of the appeal. While the Board does not desire to deny Mr. Curtis a benefit, she stated that Mr. Curtis took a full refund of his contributions as permitted by the Special Act against that advice of the Board. Mr. Curtis signed a detailed waiver acknowledging the consequences of the refund, which he received in lieu of any other benefit from the plan. He was not later rehired by the City of West Palm Beach, and in fact, he entered into a settlement agreement to resolve employment issues. Pursuant to Chapter 175 Florida Statutes, Ms. Levine stated that Mr. Curtis is not permitted to restore his prior service credit unless rehired in the Fire Department by the City of West Palm Beach. The Board denied his application for pension benefits on September 8, 2022.

Ms. Levine provided the Board minutes for the meetings of September 8, 2022, and October 6, 2022 as Exhibit A. She provided the minutes for the Board meeting of August 11, 2011, the meeting where the Board advised Mr. Curtis and approved his application for a refund of contributions, as Exhibit B.

Rick Dorey was sworn as a witness and questioned by Madison Levine. He served as a trustee on the Board starting in 2006. Mr. Curtis applied for a refund of his contributions from the Pension Fund in 2011. Mr. Dorey confirmed that the Board urged Mr. Curtis not to take a refund of his contributions in lieu of any other benefit from the Pension Fund, and he also stated that Board counsel explained to Mr. Curtis the consequences of taking a refund. Mr. Dorey confirmed that the Board ultimately granted the request by Mr. Curtis to take a refund his own contributions from the Pension Fund, and Mr. Curtis received the refund. On cross examination, Mr. Parrish asked Mr. Dorey if he knew the provisions of the Special Act authorizing the Board to grant Mr. Curtis a refund of his contributions. Mr. Dorey responded that he did not. Ms. Levine provided the release and waiver signed by Mr. Curtis on August 16, 2011, as Exhibit C. This document was also previously entered into evidence at the start of the hearing. Ms. Levine reviewed the provisions and disclosures contained in the waiver in detail.

Ms. Levine entered copies of the checks refunding contributions to Mr. Curtis from 2011, along with the detailed amounts of the refund paid, as Exhibit D. She provided the payroll and contribution history serving as the basis for the amount refunded as Exhibit E. She provided the additional pension forms signed by Mr. Curtis and notarized as Exhibit F. She provided a copy of the application for pension benefits submitted by Mr. Curtis in 2021 as Exhibit G.

Ms. Levine referred to provisions of the Special Act, including a provision later added to the Special Act allowing the Board to grant a refund of contributions to a vested member. The Board of Trustees interpreted the Special Act at the time Mr. Curtis requested a refund of his contributions to allow such a refund. The Special Act also contains provisions allowing Mr. Curtis to restore prior service credit if rehired by the Fire Department. Based on the facts of the case, Ms. Levine recommended that the Trustees deny his application for pension benefits.

The Trustees opened a period for questions. Trustee Brian Walker questioned if the Board in 2011 acted outside of the authority provided by Chapter 175 Florida Statutes and the Special Act to approve a refund of contributions to a vested member of the Pension Fund. He noted that a person receiving a refund of contributions does not have Share Account balances restored along with other pension benefits when returned amounts previously refunded. In response to the question, Trustee Jeff Stefaniak referenced Chapter 175 Florida Statutes which allowed a vested plan member to elect to receive either a refund of contributions or a deferred benefit. Trustee Elizabeth Fugler questioned details of the settlement agreement reached between Mr. Curtis and the City of West Palm Beach to resolve employment claims. Ms. Levine explained that Mr. Curtis chose to enter into a monetary settlement with the City rather than pursue his request for the Fire Department to rehire him. Ms. Levine stated that no provision of the Special Act or Chapter 175 Florida Statute gives the Board the authority to restore the pension benefit to Mr. Curtis after he took a refund of his contributions.

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Mr. Parrish repeated his position that no statute or provision of the Pension Fund in 2011 allowed the Board to grant a refund of contributions to a vested member of the plan. Specifically, the Special Act in 2011 stated that a vested member must be at least age 50 with 10 years of service to receive a benefit from the plan. Mr. Curtis was only age 47 at the time he took the refund of his own contributions. If not explicitly allowed, Mr. Parrish argued that the Board lacked the authority to grant Mr. Curtis a refund of contributions. He further stated that no other circumstances related to the refund had any further relevance. If the Board lacked the authority to grant Mr. Curtis a refund then, the Board cannot "undo" that action now. Mr. Parrish advised that the Board must instead proceed as though the refund never occurred.

Mr. Sugarman further elaborated on the provisions of Chapter 175, Florida statutes. A vested member who "elects" to leave contributions remaining in the plan must have a choice to take a refund instead for an election to exist. Mr. Parrish responded that a vested member must first reach age 50 to receive a refund of contributions according to the provisions of the Special Act. Mr. Sugarman explained how the provisions of state law and Chapter 175 Florida Statutes give clarification to the provisions of the Special Act. The Board considered whether a vested member can elect to leave contributions in the plan, and by extension, receive a refund as an alternative choice. Mr. Parrish stated that the Special Act allows for such a refund in only very specific situations, and Mr. Curtis did not meet those criteria in 2011.

Trustee Dave Merrill questioned the clauses of the disclosure and waiver signed by Mr. Curtis in 2011, stating that Mr. Curtis would receive no further benefit from the Pension Fund. Mr. Parrish claimed that the waiver had no meaning if the Board lacked the authority to grant the refund. Ms. Jensen, advising the Trustees, referred to the provisions of Chapter 175 Florida Statutes for members with less than 10 years of service and more than 10 years of service to take a refund of contributions. She advised that the statutes present members with a choice whether to leave money in the plan to receive a future pension benefit. She differentiated between those future benefits and a refund of contributions. In closing, Mr. Sugarman advised that the Board must interpret the law as applied to Mr. Curtis.

In the Board deliberation, Chair Dave Merrell summarized the facts before the Trustees. Board special counsel recommends the Board deny Mr. Curtis a pension benefit. The argument presented by counsel for Mr. Curtis hinges on the meaning of the word "elect" in Florida statutes. Had the Board denied Mr. Curtis a refund of contributions in 2011, he would have argued the word "elect" to mean that Statute provided him with a choice to take a refund. The Trustees considered whether the Board in 2011 had the authority to pay a refund to Mr. Curtis in lieu of any other benefit from the plan. The Trustees determined that the Board acted within the authority granted by law.

- **Brian Walker made a motion to uphold the previous determination by the Board to grant Mr. Curtis a refund of contributions and therefore deny his application for a retirement benefit. The motion received a second from Elizabeth Fugler. The Board approved the motion 5-0 on a roll call vote.**

Chair Dave Merrell closed the formal hearing and called the regular meeting of the Board of Trustees to order at 4:23 PM.

### **3. APPROVAL OF MINUTES**

The Trustees reviewed the draft minutes for the November 2, 2023 Quarterly Meeting of the Board.

- **Brian Walker made a motion to approve the minutes for the November 2, 2023 quarterly meeting as presented. The motion received a second from Elizabeth Fugler, approved by the Trustees 5-0.**

### **4. REPORTS**

#### **Investment Consultant: AndCo (Brendon Vavrica)**

Mr. Vavrica reported that the Pension Fund assets gained about 6% in November and 3.9% for the current fiscal year to date. The market is nearing the all-time high previously reached in January 2022.

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**Attorney: Klausner, Kaufman, Jensen & Levinson (Bonni Jensen)**

Ms. Jensen reported that a case called "Illumina" was filed in court. Illumina, a biotech company, spun off a subsidiary named "Grail". Illumina later repurchased the unit. Some directors for Illumina may have had a conflict of interest in the decision to repurchase Grail. The Pension Fund sustained a loss estimated at \$175,000 for the current class action period and \$735,000 for the entire period tracked by securities litigation firm BLBG. BLBG asked the Pension Fund to join the action as a plaintiff. Counsel may ultimately ask the Board to seek lead plaintiff status in the action. The Board considered the request, the process, and the obligation of the Trustees to act in the situation.

- **Brian Walker made a motion to authorize counsel to join the Board in the action as a plaintiff and seek lead plaintiff status in the matter. The motion received a second from Elizabeth Fugler, approved by the Trustees 5-0.**

**Administrator: Resource Centers (Scott Baur)**

Mr. Baur stated that his office will file the Comprehensive Report to comply with HB 3 by the December 15 deadline. His office previously registered the Board to fill the report.

The Trustees reviewed the renewal for the fiduciary liability insurance policy with Markel and an alternate quote from Hudson. The Markel policy renewed with a slightly higher premium. Mr. Baur highlighted differences between the Markel policy and the alternate proposed policy.

- **Elizabeth Fugler made a motion to renew the current Markel policy as of January 1, 2024. The motion received a second from Julian Cover, approved by the Trustees 5-0.**

The trustees confirmed plans to attend the 2024 FPPTA Winter Trustee School.

**5. PLAN FINANCIAL REPORTS**

The Board received and reviewed the interim financial statement through October 31, 2023. The Trustees then reviewed the warrant for payment of plan expenses.

- **Elizabeth Fugler made a motion to approve the Warrant dated December 7, 2023, for payment of invoices. The motion received a second from Julian Cover, approved by the Trustees 5-0.**

**6. BENEFIT APPROVALS**

The Board reviewed the regular benefits for approval.

- **Brian Walker made a motion to approve the benefits. The motion received a second from Elizabeth Fugler, approved by the Trustees 5-0.**

**7. OTHER BUSINESS**

The Board had no other business for consideration.

**8. ADDITIONAL REPORTS**

The Trustees received additional investment manager reports.

**9. PUBLIC COMMENTS**

No members of the public had any comment.

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10. ADJOURNMENT

There being no further business and the Board having previously scheduled the next regular meeting for Thursday, January 11, 2024 @ 1:30 PM in the Training Room at Station 5, the Chair adjourned the meeting at 4:48 PM.

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Brian Walker, Secretary