

**THE CITY OF WEST PALM BEACH RESTATED EMPLOYEES' DEFINED  
BENEFIT RETIREMENT SYSTEM**

**MINUTES OF PUBLIC HEARINGHELD**

**May 14, 2007**

A Public Hearing of the Board of Trustees was called to order at 1:35 P.M. by the Secretary, Benny Rodgers. The Hearing was held at the West Palm Beach Fire Station #2, 4301 South Dixie Highway, in West Palm Beach, Florida.

Those Trustees present were:

Alfredo Lay, Benny Rodgers, Patrick Cooney,  
William Swisher, and Robert Burd

Also present were:

Scott Baur of the Pension Resource Center  
Denise Clougherty of the Pension Resource Center  
Mr. Robert Klausner of Klausner & Kaufman  
Jonathan Salit of Klausner & Kaufman  
Mr. & Mrs. Orville Polk  
Mr. William Gonzalez Rivera

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APPROVAL OF AGENDA

The Board of Trustees accepted the Agenda as written, with no additions or deletions.

PUBLIC COMMENTS

There were no public comments.

HEARING FOR MR. RIVERA

Mr. Robert Klausner of Klausner & Kaufman was present to officiate a public hearing for Mr. William Gonzalez Rivera, who applied for a duty-disability, claiming a loss of hearing due to years of noise from the truck he operated for the City of West Palm Beach. Mr. Rivera submitted an application for a normal retirement from the City on September 1, 2006 and then submitted an application for disability retirement benefits on January 19, 2007. Mr. Rivera began receiving benefits on December 1, 2006. He added that the Board did not submit Mr. Rivera to an independent physician but denied his request for disability benefits based on the letter from Johnseaster Co. to Mr. Rivera's doctor. In that letter the audiologist feels the contributing factors of Mr. River's hearing loss was 90% due to presbycusis due to aging, and 10% due to his alleged workers compensation injury on 11-01-2006.

*A motion was made by William Swisher to accept all copies of medical records into the record as part of the hearing. The motion was seconded and carried 5-0.*

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Mr. Klausner addressed Mr. Rivera, advising him that in a Disability Hearing, the burden of proof lies with the claimant, to prove his medical disability was caused by an injury, which occurred out of and in the course of his duties with the City of West Palm Beach

Mr. Klausner, a notary public, gave an oath to Mr. Rivera.

Mr. Rivera then addressed the Board and discussed the reasons why he feels he should be granted a duty disability. Mr. Rivera stated he had worked for the City of West Palm Beach for 21 years as a driver of a front-end loader. He noted that he believes his loss of hearing and constant ringing in his ear, which is never going to go away, is due to the noise in the truck. Mr. Rivera further spoke about being in the Red Zone, which is the zone only allowed to operate after 6:00 am, as the work is so loud. Mr. Rivera had a pamphlet, which he read from, which is a piece of advertising from the AA Otolaryngology Office, which indicated that loud noise contributes to loss of hearing.

Mr. Klausner noted that the first and only workers compensation claim made by Mr. Rivera was in November 2006. He also noted that in the medical records from the Ear, Nose and Throat Specialist, Dr. Heiss, the doctor's impression is that the hearing loss is due to normal aging.

Mr. Kaufman asked Mr. Rivera if he stopped working because of his hearing loss, and Mr. Rivera responded that he stopped working because he was of retirement age and was ready to retire. Mr. Klausner thanked Mr. Rivera for his cooperation and then addressed the Board of Trustees. Mr. Klausner advised the Board that after hearing from Mr. Rivera, and reviewing the medical records provided, they must be convinced by the greater weight of the evidence that Mr. Rivera's hearing loss was caused by the noise on the truck he drove for 21 years. Mr. Alfredo Lay asked Mr. Rivera if he understood that, if he were granted a disability retirement, did he know it would be converted to a normal retirement upon his reaching the age of 65. Mr. Rivera responded that he knew this. Mr. Cooney asked Mr. Rivera if there was anything else he would like the Board to consider, to which, Mr. Rivera responded that there was nothing else, except that he was a good worker for the City of West Palm Beach.

Mr. Klausner then made his recommendations to the Board, based on the provisions of the plan. Mr. Klausner recommended the Board deny Mr. Rivera's duty disability application based on the fact that he is no longer a member of the plan, as he began receiving a normal retirement benefit from the plan December 1, 2006, and applied for the disability retirement benefits in January.

*A motion was made by Alfredo Lay to deny the duty disability retirement benefits application submitted by Mr. William Gonzalez Rivera. The motion was seconded and carried 5-0.*

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Mr. Klausner advised Mr. Rivera of the Board's decision and advised him he would receive a written order from the Board.

HEARING FOR MR. ORVILLE POLK

Mr. Klausner gave a brief overview of Mr. Polk's situation to the Board of Trustees. He stated that Mr. Polk applied for a normal retirement and was granted that retirement in error. He was placed in pay status. The error was that Mr. Polk was not of retirement age, nor did he have the full 25 years of service requirement. Mr. Polk's benefit was ceased upon detection of the error by the Pension Resource Center. Mr. Klausner continued, noting that the plan is very clear. This is a complicated situation as Mr. Polk is no longer employed and he has already left the area.

Mr. Klausner administered an oath to Mr. Polk.

Mr. Klausner then asked Mr. Polk to address the Board and tell his side of the story. Mr. Polk proceeded to advise the Board of the chain of events of his retirement. He left the area in October. He checked on his retirement with the Pension Resource Center and also with Patricia Brosamer of the City of West Palm Beach Human Resources. He stated that they told him to go ahead and retire. He also states he was told he would be getting about \$2,400 a month. Based on that information he submitted his paperwork and sold his house and took his children out of school. He moved to South Carolina on November 20, 2006. He received several checks and then received a letter from the Pension Resource Center. Mr. Polk added that this is his only source of income. He has no job. He had to pay for the trip to this hearing, that he could not afford. He emphasized this was not his mistake. He made arrangements that were drastic and his family is dependent upon his income from the retirement system. He added that he would not be able to find a job in South Carolina as his is on 11 different medications for his kidneys and is already 52 years old.

The Board asked questions of Mr. Polk including whether or not he received a Summary Plan Description of the retirement system. He claims his last one was issued in 2005. He then says he never got a summary but only a letter or annual statement, but that was back when he was in the old plan.

*A motion was made by William Swisher to accept all records provided by the Administrator as part of the hearing. The motion was seconded and carried 5-0.*

Mr. Cooney asked Mr. Polk if there were any remedies to this situation that he may have thought of prior to attending the hearing. Mr. Polk responded that he was considering applying for a disability retirement since he has so many problems with his kidneys and is on so many medications. He indicated that was one of the reasons he decided to retire. He stated his doctor here in Florida kept asking him to retire due to the problem. Mr. Polk continued, stating he can no longer go out and find another job with this type of problem.

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He added that he has applied for a disability retirement benefit with social security and has a meeting with them next week. He further noted that he did not make application for a disability retirement with this pension as he could not prove it was duty related, and believed his only option to be a normal retirement. Mr. Polk answered several questions asked of him. He read a letter from Denise Clougherty of the Pension Resource Center and emphasized that the mistake was not his fault. Mr. Rodgers asked the Pension Resource Center to testify.

Ms. Denise Clougherty was given an oath by Mr. Klausner.

Ms. Clougherty was asked to give a time line of events, which she did. She indicated that Mr. Polk's application was processed, as a normal application would be. She testified that she never told Mr. Polk to sell his home and retire, in fact, she says she never even met Mr. Polk until today. All of Mr. Polk's paperwork and communication was done through the internet. Upon detection of the error, she discontinued the benefit and contacted the plan's attorney.

Mr. Klausner addressed the Board, indicating several options;

1. leave the benefit stopped until Mr. Polk reaches age 65 or 60 for early retirement;
2. summarize that, due to the error being on our side, you are legally required to pay him, (this would present a problem, however, since AIG will not pay) and continue to pay him the benefit he is currently receiving;
3. pay Mr. Polk an actuarially equivalent benefit;
4. play the tape back and find him (since the error was on our side) still a member and allow him to apply for a non-duty disability benefit. Should the Board do this, the plan would not allow for him to be paid a benefit while the disability process is being done.

The Board asked Mr. Klausner what makes this case different from Mr. Rivera's, to which, Mr. Klausner responded that in Mr. Rivera's case, there was no error. In Mr. Polk's case, there was an error and the Board has the authority to fix the error. There is a material difference between the two.

Mr. Polk provided the Board with notes and medical records from his nephrologist. The Board accepted the notes and records from the nephrologist and asked for a recess.

The Hearing was recessed at 2:38 p.m.

The Board reconvened at 2:45 p.m. The Hearing continued.

*A motion was made by Mr. Cooney to adopt the medical records and notes from Mr. Polk's Nephrologist as part of the Hearing. The reports available are from two different doctors, Dr. Araskuray and Dr. Cain. The motion was seconded and carried 5-0.*

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*A motion was made by Robert Burd to treat Mr. Polk's normal retirement application as a non-duty disability application and grant Mr. Polk a non-duty disability based on the reports of the doctors that Mr. Polk is permanently and totally disabled due to his significant decrease in kidney function, effective February 1, 2007. The motion was seconded and carried 5-0.*

The Board engaged in discussion about the Pension Resource Center's offer to repay the plan for two and one half months of payments made to Mr. Polk in error, for a total of \$3,875.47.

*A motion was made by Alfredo Lay to accept the Pension Resource Center's offer to repay the plan for the two and one half months of payments made to Mr. Polk in error, for a total of \$3,3875.47. The motion was seconded and carried 5-0.*

Mr. Cooney brought to the attention of the Board the fact that Mr. Polk had a hardship in making the trip for the hearing and the Board directed the Pension Resource Centers to provide Mr. Polk with his check prior to leaving for South Carolina.

There being no other business, and the next meeting having been scheduled for May 15, 2007, the meeting was adjourned at 3:00 p.m.

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Benny Rodgers, Secretary