

TOWN OF PALM BEACH RETIREMENT SYSTEM POLICE OFFICER BOARD OF TRUSTEES SPECIAL MEETING OF DECEMBER 9, 2011

I. Call to Order

Chairman Raymond Snow called the special meeting to order at 9:05 a.m. at Town Council Chambers, 360 South County Road, Palm Beach, FL. 33480. Roll call was taken and three trustees were in attendance and one trustee participated by telephone.

In Attendance:

TRUSTEES:

Raymond Snow, Chairman
James McC. Wearn
Officer Michael Lynch

ALSO PRESENT:

William P. Hanes, Pension Administrator
Gerri Duvall, Staff
Stu Kaufman, Klausner & Kaufman
Officer Fred Hess

Mr. Gerald Goldsmith participated by telephone.
Sergeant Chris Proscia was absent from the meeting.

II. Approval of Agenda

Mr. Goldsmith moved to approve the agenda as presented. Officer Lynch seconded the motion. The trustees unanimously adopted the agenda as presented.

III. Trustee Comments

There were no comments by trustees.

IV. Matter of Fred Hess DROP participation

Chairman Snow discussed that at the conclusion of the prior board meeting, there was confusion and questions regarding the direction to take in the matter of the DROP status of Officer Fred Hess. He referred to an unofficial draft of discussion from the meeting prepared by Administrator Hanes.

Mr. Wearn stated that for the benefit of Mr. Goldsmith two portions should be read from the draft. Mr. Wearn read as follows:

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Mr. Klausner stated that he suggests that since the board does not meet again until February that the application be approved conditional upon proof satisfactory to the plan administrator, and that he is in fact enrolled in a covered position in the Police plan, and if not, the application for DROP is not to be approved and that he would be approved for retirement.

Mr. Wearn read from the draft the board motion as follows:

Mr. Wearn stated that concerning Officer Hess, he would like to move that we take the action verbatim expressed by the board's attorney. Mr. Goldsmith seconded the motion. Chairman Snow asked if there was further discussion regarding Captain Hess. The trustees unanimously adopted the motion.

Chairman Snow noted that subsequent to the board meeting, he had asked Mr. Hanes to examine the issue more closely to determine the status of Mr. Hess and to determine the legal counsel's position regarding Mr. Hess. He stated that he believed that the matter is properly before the board because as fiduciaries the board is obligated to follow the law that creates the board and that authorizes participants to DROP or retire. He stated that rather than taking action regarding Officer Hess or waiting until the February board meeting, Mr. Hanes and he had considered going ahead with the issue by bringing the board back together to discuss the issue in an effort to make the issue clear before taking action.

Mr. Wearn asked Mr. Kaufman for legal counsel's position.

Mr. Kaufman stated that under Florida Chapter 185 the state can determine that the Town would not be entitled to the Chapter 185 monies if the member is found to be in violation of DROP. Mr. Kaufman said he was asked to review the matter of Mr. Hess again by Mr. Hanes, and that he has reviewed the code as well as Chapter 185. He referred to a provision of Town Code section 82-86, and stated that when there is a conflict with Chapter 185 that Chapter 185 controls. He stated that he does not believe there is a conflict, but maybe not a clear reading of the code. He stated that his firm's reading of the code would be that a member who enters into retirement status as a police officer and then transfers into a civilian position, which is not a covered sworn position within the Police Department, would no longer be able to continue to receive the benefit of DROP participation going forward.

Mr. Hanes stated that each quarter there is a report that he provides the trustees for ratification for actions already taken. He stated that Officer Hess began DROP participation in October and that the issue of transferring between groups arose subsequent to his beginning of DROP status as a Police Officer. He stated that the action that the board should be taking is to determine whether Officer Hess can continue to participate as a DROP participant, or whether the board will pay his benefit to him as a retiree. He noted that the real DROP benefit for Officer Hess is for his

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benefit to continue to be paid into a tax deferred account maintained by ICMA while Officer Hess remains in employment status. Mr. Hanes stated that alternatively, the board should pay Officer Hess's benefit taxable as an ordinary retiree.

Mr. Kaufman read from several provisions of the town code supporting his position that Officer Hess no longer is a member of the Police Officer benefit group and is not able to participate in DROP status. He stated that he believed that the position that would be taken by the Florida state Division of Retirement regarding this matter would be that if Officer Hess were allowed to continue in DROP as a civilian employee that it would be violative of Chapter 185 and the state would have a problem with distributing the state chapter monies to the plan.

Mr. Kaufman stated that the decision should have no impact on Officer Hess's entitlement to receive benefits from the plan, even if employed by the town. He stated that it is his opinion that effective January 1, 2012 the board should determine that Officer Hess's status in DROP be terminated, that his DROP deposits be ratified, and he begin receipts of his regular retirement benefits.

Mr. Wearn reiterated that from his reading of the draft prepared for the trustees that Mr. Klausner had suggested if Mr. Hess was in fact enrolled in a covered position in the Police plan that his DROP status would be approved. He stated if not, the application for DROP is not to be approved, but that he would be approved for retirement. He expressed that to be the recommendation that was followed, and that it appears to him that the application for DROP should not be approved.

Mr. Hanes clarified that he discussed with Chairman Snow that he believed that there was a misunderstanding about Officer Hess's status. He stated that the fact that Officer Hess has already been in DROP status as a Police Officer allows him to remain in DROP until such time that he is not qualified to participate. He stated he did not believe it appropriate action for the board to go back and disapprove of his original legitimate DROP participation.

Chairman Snow asked Mr. Hanes if he is telling the trustees that as a factual matter Officer Hess entered the DROP in October and continued as a sworn Police Officer for some period of time? He asked if we know how long it was. Mr. Hanes stated that at the November 10, 2011 meeting Officer Hess was serving as a Police Officer and that it was not until after the meeting that he was transferred to a civilian position.

Officer Hess stated that the date of the transfer was two days after the board meeting, or November 12, 2011.

Mr. Wearn asked if the board had ever approved Officer Hess's DROP application. Mr. Hanes discussed that the approval for DROP or retirement is always an action for board ratification, and that members continuously are taking action in search of information and to complete DROP or retirement application forms for specified dates that fall

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between quarterly meetings. He discussed that the administrator brings the prior DROP or retirements to the board for ratification of action already taken. He explained that the DROP participant and retirant are always in retirement pay status prior to the action for ratification is before the board at quarterly meetings.

Mr. Kaufman stated that in the normal course of retirement the member picks the retirement date, completes the application and the act of the board is merely to ratify, and not for approval of the actual DROP date, but ratification.

Mr. Wearn stated then that the DROP is completed from the standpoint of the plan upon the applicant's unilateral election. He added that it appears clear Officer Hess was in the DROP program from October 1 to November 12.

Mr. Wearn stated that it appears that it would be appropriate for the board to rescind the motion as recited in the minutes of November 10, 2011.

Mr. Wearn moved to rescind the motion previously made regarding Officer Hess and covered in the draft minutes. Mr. Goldsmith seconded the motion.

Mr. Wearn explained that by rescinding the former motion, it opens an opportunity for the board to take other action based on accurate facts.

Mr. Hanes discussed what he believed the Town's construction of the code to be, and that section 82-52 makes reference to the Police DROP plan at 82-119 which is applicable to the particular group, and that he believed that the Town took the position that 82-52 refers to the scheme for "members of the system.". He stated that he believed the Town read the section broadly to allow Officer Hess to transfer to another group while participating in DROP because he remains a member of the retirement system after the transfer. He stated that he believed that innocent mistakes had been made.

Mr. Lynch stated that he believed there should be responsibility for whoever gave him the information that he could elect the DROP and participate in DROP as a civilian.

Mr. Wearn stated that he did not believe the issue of who should be responsible for information given is within the board's jurisdiction in regard to the question raised about how we got to this point. He expressed that the board is not a fact finding board for that type of question.

The trustees unanimously adopted the motion.

Mr. Kaufman inquired about what date Officer Hess transferred from a sworn Police Officer to a civil service position while in DROP. Mr. Hanes answered that the Department of Human Resources advised him that the date of transfer was November

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12, 2011. Mr. Kaufman stated that as commented in the letter submitted by Mr. Klausner, rather than going back to November 12, 2011, the board should consider a

motion that Officer Hess's continuation in the DROP should be discontinued and that he should begin drawing retirement benefits as a normal retirant effective either November 12, 2011 or effective January 1, 2012. He discussed that he believed it is within the discretion of the trustees to choose either. He stated his preference for allowing Officer Hess to complete the current month enrolled in DROP, but discontinuing DROP at the end of this month and placing Officer Hess on normal retirement beginning the following month.

Mr. Kaufman discussed that the appropriate motion would be set forth as entered in the legal opinion, and that the participants DROP status should be terminated on December 31, 2011; that all DROP deposits to that date be ratified; and to allow the participant to begin receiving regular retirement benefits beginning effective January 1, 2012 as a retired participant who has separated from active service as an eligible member of the retirement system.

Mr. Wearn requested through Chairman Snow that the trustees hear the testimony of Officer Hess and any comments he may wish to make.

Officer Hess stated that there were several matters that led to his decision to DROP, and discussed numerous unintended mistakes made while discussing with individuals he had met with regarding his decision to DROP, and to transfer to a civilian position. He stated that he has been the unwitting victim of mistakes, and noted that he confronted several possibilities at the time that he retired. He discussed that he has been in discussions with Mr. Hanes from the time of learning that the board had raised concerns at its November 10, 2011 meeting. He discussed that he has not been able to discuss the employee implications with HR Director Danielle Olson, and neither has he discussed the matter with Director of Public Safety Kirk Blouin. He discussed personal implications that he said he needs to review.

Officer Hess requested of the board that the matter of his DROP status be deferred. He stated that he needs the time to discuss with Ms. Danielle Olson, Town Manager Mr. Elwell, and perhaps consult an attorney. He suggested he is not suggesting suing the Town, but may need legal advise from somebody who understands more than he does about the matter, and someone who is solely looking out for him.

Mr. Wearn asked Officer Hess that if he had not transferred and just retired, and then was rehired, then as he (Mr. Wearn) reads the code, as a new hire you could enter the general employee group and begin your vesting. He continued that in the employment he would need another 10 years to vest; whereas transferring employment from one group to another, he stated you are automatically vested to the earnings you have in the retirement system for which you have earned. Officer Hess stated that his understanding is the opposite, and that if you retire and then rehire under the town code

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that you no longer can accrue additional service. He stated he could not get another pension.

Mr. Hanes stated that he believes the transfer section deals with the member who is in employee status going from one group to another group, and discussed that he has experience with at least two cases since being administrator with the plans at Palm Beach where the transfer section cited by Mr. Wearn has been utilized with transferring active employees. He expressed that he did not believe the section applies with regard to a retiree or someone in DROP. He discussed that the active employee transfers to another group, then it preserves the employee's vesting rights, and the calculation of the benefits upon retirement is based on the different groups accrual of service credit applicable to each group. Mr. Hanes stated that he does not believe it has application for someone who has either entered DROP or retired before coming back to employment. Mr. Kaufman stated that he will need to study the provision to determine whether it applies or not to a DROP employee. He discussed that the code is ambiguous.

Officer Lynch noted that the obligations of Florida Chapter 185 are not cited in the provision on transfer. Mr. Wearn stated that where there is a conflict between the code and Florida Chapter 185, that Chapter 185 must control, even if it is not mentioned in the code.

Mr. Wearn commented that Officer Hess's request for deferral is fair, and that the trustees do not want to precipitously act resulting in unforeseen consequences. He noted that at the same time he would not want the board or the plan to be prejudiced by the delay in action. He posed the question to legal counsel as to whether there is any adverse effect for the board or if the plan would suffer as a consequence by reason of delay in action as requested by Mr. Hess.

Mr. Kaufman stated there is absolutely no legal problem in the board deferring and agreeing with Officer Hess's request. He commented that there are several questions that need to be answered, for the plan's benefit and for Officer Hess's personal benefit. He stated that it will not be a problem with the Florida state Division of Retirement, as long as the board takes corrective action after there has been time to consider all the facts and circumstances. He continued that at this point he believes it would be premature to make a decision based on Officer Hess's comments.

Officer Hess stated that he may want to explore with Ms. Olson his possibility of pulling out of his status in civilian employment.

Mr. Wearn moved that the board defer consideration of action on this matter until all of the questions that Officer Hess has have an opportunity to be explored, up until the regular meeting of the board on February 9, 2012. Mr. Goldsmith seconded the motion.

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Mr. Lynch stated he thinks it appropriate to raise an issue now of what ramification any decision the board makes in February may have on Mr. Hess. Mr. Kaufman responded

that the trustees cannot raise those issues now. He asserted that it would only be speculative at this point.

Mr. Wearn offered as an amendment to the motion that the deferral is to be without prejudice to either the plan or the board. Mr. Goldsmith stated that he seconds the motion with acceptance of the amendment made by Mr. Wearn.

Chairman Snow clarified that since the board had already rescinded its motion of November 10, 2011, that Officer Hess will continue to be allowed to participate in DROP during the deferral period.

The trustees unanimously adopted the motion.

The trustees expressed appreciation to Officer Hess for his service to the Town of Palm Beach and for his appearance and presentation to the board.

VI. Other Business

Mr. Hanes stated that the first monthly payment regarding the Marchman settlement had been received from Pension Resource Center.

Mr. Kaufman discussed recent matters before the Palm Beach Commission on Ethics.

Mr. Goldsmith discontinued participation by telephone.

Mr. Kaufman stated that the reporting of receiving a gift required under state law fully satisfies the requirements of gift reporting for trustees under the county code. He distributed a recent ethics opinion and invited the trustees to contact him if there are questions.

Mr. Wearn stated that he had heard that if there is a filing under the state law for gifts received as it applies to the trustees, that there should also be a separate filing with the county ethics commission of the state form that is filed with the state. Mr. Hanes stated that he believes he had previously made that comment to Mr. Wearn based on information he had received from Ms. Bonni Jensen (Firefighter Retirement Board of Trustees attorney) prior to the latest opinion being issued. It was noted that the issue was not discussed in the handout opinion. Mr. Hanes discussed that the opinion suggests that if you file a gift disclosure form with the state that you would not be required to file with the county commission. Mr. Wearn concurred that to be his opinion. He stated that as he reads the code it would not require the additional filing. Mr. Kaufman concurred.

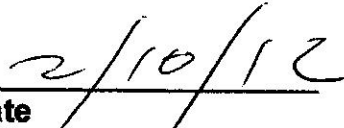
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VI. Adjournment

Officer Lynch moved for adjournment. Mr. Wearn seconded the motion. The trustees unanimously adopted the motion.

Next Meeting: February 10, 2012, 1:00 PM


Secretary


Date