

**THE BOARD OF TRUSTEES OF THE
CITY OF HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM**

**In Re: STEVEN SPARKMAN,
LUIS A. ORTIZ,
JOHN KIDD,
ARNOLD CAMPBELL,
DANIEL CASEY,
DANA DOKLEAN, and
MICHAEL MCKINNEY,**

Applicants.

**FINAL ORDER ON
APPLICANTS' REQUEST FOR RE-CLASSIFICATION**

On April 26, 2021 and August 20, 2021, a hearing was convened on the matter of *Sparkman, et al v. Hollywood Police Officers' Retirement System*. The Board of Trustees of the City of Hollywood Police Officers' Retirement System ("Board") received into evidence a series of stipulated facts and documentary evidence, which are incorporated below, and heard argument of counsel. Under Florida law the burden of proof is on the party asserting the affirmative before an administrative tribunal,¹ which in this matter is the Applicants, and the standard is a preponderance of the evidence.²

For the reasons set forth below, the Board finds that the applicants in this matter, Steven Sparkman, John Kidd, Dana Doklean, Arnold Campbell, Daniel Casey, Luis A. Ortiz, and Michael McKinney ("the Applicants") have not established by a preponderance of the evidence that Florida law allows the Board to reclassify the Applicants' time served as corrections officers with the city

¹ *Espinoza v. Dept. Bus. Prof. Reg.*, 739 So. 2d 1250 (Fla. 3d DCA 1999)

² *M.H. v. Dept. Children Family Services*, 977 So. 2d 755 (Fla. 2d DCA 2008)

of Hollywood Police Department, from the Employees' Retirement Fund to the City of Hollywood Police Officers' Retirement System.³

STIPULATED FACTS

The City of Hollywood Police Officer's Retirement System

1. The City of Hollywood, Florida, ("the City") is a political subdivision and a unit of local government of the State of Florida, duly created and existing pursuant to Article VII, Section 2 of the Constitution of the State of Florida.

2. The City of Hollywood Police Officer's Retirement System ("the Plan") is governed by Chapter 33 of the Hollywood Code of Ordinances, Chapter 185, Fla. Stat. and Section 112.60, et seq., Fla. Stat.

3. The Plan is established for the purpose of providing "terms and conditions under which retirement benefits will be provided to eligible employees of the City [of Hollywood.] Hollywood, Fla. Code § 33.125.

4. The Plan ordinance defines "Member" as "All employees of the city classified as full-time Police Officers." Hollywood, Fla. Code § 33.126.

5. The System is a "local law plan" as that term is defined by § 185.02(13), Fla. Stat., and is a yearly recipient of premium tax revenues pursuant to § 185.08, Fla. Stat.

6. "Police Officer" is defined by the Plan Ordinance as:

Any person who is appointed or employed full time by the city, who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law

³ The transcript citations from the Board's meeting are as follows: (page, line).

enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. § 943.10(6) and (8), respectively.

Hollywood, Fla. Code § 33.126.

7. Section 943.1395, Fla. Stat. establishes the authority for the Criminal Justice Standards and Training Commission to certify a law enforcement or correctional officer if the person complies with § 943.13(1)-(10).

8. Section 943.13, Fla. Stat., establishes the requirements for employment anywhere in the state of Florida as a full-time law enforcement officer or full-time correctional officer after October 1, 1984.

9. Section 943.10(1), which defines “law enforcement officer” for use in Chapter 943, is virtually identical to the definition in paragraph six above.

10. The definition of “police officer” at § 185.02(16), Fla. Stat., is virtually identical to the definition in paragraph six above.

11. The term “police officer” was essentially unchanged between the original adoption of Chapter 185 in 1953 and the addition of the certification requirement in 1991.

12. The terms of the Plan limits membership in this Plan to “police officers.” See Hollywood, Fla. Code § 33.127.

13. Florida Statute defines “Correctional officer” as:

any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.

§ 943.10(2), Fla. Stat.

The Applicants

Steven Sparkman

14. Sparkman, initially employed with the City of Hollywood Police Department as a Police Apprentice [dept. 2000; division 2041], was promoted effective June 19, 1995, to a corrections officer [dept. 2000; division 2044] by the City Police Department and started his training to become a certified correctional officer pursuant to Florida Statutes Chapter 943 on June 26, 1995. Sparkman completed his correctional officer training and was awarded a correctional officer certificate of compliance on September 26, 1995 and remained employed by the City of Hollywood Police Department as a corrections officer until July 14, 1996. See Exhibit 1, Florida Dept. of Law Enforcement Global Profile Sheet, and Exhibit 8, City Personnel Action Forms for Steven Sparkman.

15. Sparkman was promoted from a corrections officer [dept. 2000; division 2044] to a police officer [dept. 2000; division 2044] with the City of Hollywood Police Department effective July 15, 1996 and started his training to become a certified police officer on the same date. Sparkman completed his police officer training and was awarded a law enforcement officer certificate of compliance December 12, 1996.

John Kidd

16. Kidd became employed with the City of Hollywood Police Department on June 6, 1995, as a corrections officer, having already completed his correctional officer training. Prior to his date of hire with the City of Hollywood Police Department, Kidd was awarded a correctional officer certificate of compliance pursuant to Florida Statutes Chapter 943 on October 27, 1994. Kidd remained employed by the City of Hollywood Police Department as a corrections officer until July 1, 1999. See Exhibit 2, Florida Dept. of Law Enforcement Global Profile Sheet, and Exhibit 9, City Personnel Action Forms for John Kidd.

17. Kidd took a cross training – corrections to law enforcement class between January 20, 1998 and April 29, 1998. Kidd was promoted to a police officer with the City of Hollywood Police Department on March 15, 1999 and was awarded a law enforcement officer certificate of compliance July 23, 1999. Kidd retired on November 1, 2019.

Dana Doklean

18. Doklean became employed with the City of Hollywood Police Department on October 27, 1997, as a corrections officer, and started her training to become a certified correctional officer pursuant to Florida Statutes Chapter 943 on November 6, 1997. Doklean completed her correctional officer training and was awarded a correctional officer certificate of compliance on February 25, 1998 and remained employed by the City of Hollywood Police Department as a corrections officer until September 7, 1998. See Exhibit 3, Florida Dept. of Law Enforcement Global Profile Sheet, and Exhibit 10, City Personnel Action Form for Dana Doklean.

19. Doklean was promoted to a police officer with the City of Hollywood Police Department on September 7, 1998 and began a cross-training-corrections to law enforcement class on September 8, 1998. Doklean completed the cross-training class on December 10, 1998 and was awarded a law enforcement certificate of compliance on December 16, 1998.

Arnold Campbell

20. Campbell became employed with the City of Hollywood Police Department on August 28, 1995, as a corrections officer, and started his training to become a certified correctional officer pursuant to Florida Statutes Chapter 943 on September 7, 1995. Campbell completed his correctional officer training and was awarded a correctional officer certificate of compliance on December 12, 1995 and remained employed by the City of Hollywood Police Department as a

corrections officer, until July 21, 1997. See Exhibit 4, Florida Dept. of Law Enforcement Global Profile Sheet, and Exhibit 11, City Personnel Action Form for Arnold Campbell.

21. Campbell was promoted to a police officer on or about July 21, 1997, and started his training to become a police officer, which he completed on December 6, 1997 and was awarded a certificate of law enforcement compliance on December 17, 1997. Campbell was awarded a law enforcement certificate of compliance and remained in that position until his retirement on February 25, 2019.

Daniel Casey

22. Casey became employed with the City of Hollywood Police Department on July 20, 1992, as a detention officer, and started his training to become a certified correctional officer pursuant to Florida Statutes Chapter 943 on August 4, 1992. Casey completed his correctional officer training and was awarded a correctional officer certificate of compliance on October 21, 1992 and remained employed by the City of Hollywood Police Department as a detention officer until December 11, 1994. See Exhibit 5, Florida Dept. of Law Enforcement Global Profile Sheet, and Exhibit 12, City Personnel Action Form for Daniel Casey.

23. Casey was promoted to a police officer on July 17, 1995. On December 12, 1995 Casey was awarded a law enforcement certificate of compliance and remained in that position until his retirement on April 5, 2020.

Luis A. Ortiz

24. Ortiz became employed with the City of Hollywood Police Department on August 20, 1990, as a corrections officer, and started his training to become a certified correctional officer pursuant to Florida Statutes Chapter 943 on August 29, 1990. Ortiz completed his correctional officer training and was awarded a correctional officer certificate of compliance on November 16,

1990 and remained employed by the City of Hollywood Police Department as a corrections officer until October 26, 1992. See Exhibit 6, Florida Dept. of Law Enforcement Global Profile Sheet, and Exhibit 13, City Personnel Action Form for Luis Ortiz.

25. Ortiz was promoted to a police officer with the City of Hollywood Police Department on October 26, 1992 and started his training to become a certified police officer on the same date. Ortiz completed his police officer training and was awarded a law enforcement officer certificate of compliance March 4, 1993 and retired on August 3, 2020.

Michael McKinney

26. McKinney became employed with the City of Hollywood Police Department on April 25, 1994, as a corrections officer, and started his training to become a certified correctional officer pursuant to Florida Statutes Chapter 943 on the same date. McKinney completed his correctional officer training and was awarded a correctional officer certificate of compliance on July 27, 1994 and remained employed by the City of Hollywood Police Department as a corrections officer until July 16, 1995. See Exhibit 7, Florida Dept. of Law Enforcement Global Profile Sheet, and Exhibit 14, City Personnel Action Form for Michael McKinney.

27. McKinney was promoted to a police officer with the City of Hollywood Police Department on July 17, 1995 and started his training to become a certified police officer on the same date. McKinney completed his police officer training and was awarded a law enforcement officer certificate of compliance December 6, 1995 and is still employed by the City of Hollywood as a police officer.

The Applicants' Request for Reclassification

28. All of the Applicants are retired for pension purposes – either retired and completely separated from City employment or are currently in the Hollywood Police Officers' Retirement System DROP program.

29. While the Applicants were employed by the City Police Department as corrections officers, they were members of the City Employees' Retirement Fund ("ERF").

30. The calculation of each of the Applicants' pension benefits occurred shortly before they retired for pension purposes.

31. Each Applicants' total retirement benefit consisted of benefits payable under the ERF combined with benefits payable under the Police Officers' Retirement System. § 33.137(B), Hollywood, Fla. Code.

32. The start date for accumulating credit with the Police Officers' Retirement System was the date each of the Applicants transferred from their positions covered by the Employees' Retirement Fund to positions covered by the Police Officers' Retirement System. § 33.137(B)(2), Hollywood, Fla. Code.

33. Benefits payable to the Applicants under the ERF were calculated using a benefit percentage rate of average monthly earnings, based on the ERF plan provisions, multiplied by credited service in the ERF.

34. Each Applicant was hired before September 30, 2011; therefore, their benefit under the Police Officers' Retirement System was calculated based on 3% of their average monthly earnings, multiplied by continuous years of service as a police officer with the City up to 20 years of service, plus 4% of average monthly earnings multiplied by the years of additional service.

35. The benefit for credited service under the Police Officers' Retirement System was higher than the benefit for credited service under the Employees' Retirement Fund.

36. On April 26, 2019, Steven Sparkman, individually, and on behalf of the Applicants requested to reclassify the Applicants' time served with the city of Hollywood Police Department, as corrections officers from the ERF to the City of Hollywood Police Officers' Retirement System.

37. Following a period of service with the Hollywood Police Department as detention officers or corrections officers, the applicants were promoted to police officers and enrolled in the Plan.

LEGAL ANALYSIS

A. Reclassifying the Applicants Would Run Contrary to Chapter 185

As a recipient of premium tax revenues pursuant to § 185.08, Fla. Stat., the Board must govern the plan consistent with the requirements of Chapter 185 of the Florida Statutes. Although an administrative agency holds the power to construe the law it is charged with enforcement, and the agency's construction is generally entitled to great deference, an agency action may be set aside when its interpretation of law is erroneous, or its discretion was outside agency rules. *Bethesda Healthcare Sys., Inc. v. Agency for Health Care Admin.*, 945 So. 2d 574, 576 (Fla. 4th DCA 2006); *see also* 120.68(7), Fla. Stat. Although Florida law requires that pension statutes are to be liberally construed in favor of the intended recipients,⁴ when the language of a statute "is

⁴ *Bd. of Trustees of Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park*, 966 So. 2d 448, 451 (Fla. 4th DCA 2007).

clear and unambiguous and conveys a clear and definite meaning... the statute must be given its plain and obvious meaning.” *Salinas v. Ramsey*, 234 So. 3d 569, 572 (Fla. 2018).⁵

The definition of “police officer” has changed significantly over the years. Prior to 1986, Chapter 185 defined “police officer” simply as “a full-time police officer who receives compensation from municipal funds of any incorporated municipality of the state for services rendered.” See Ch. 86-42, § 2, at 143, Laws of Fla. In 1986, however, the Florida Legislature implemented a change that created a more concise definition of “police officer,” which remains virtually unchanged today and states in part:

“Police officer” means any person who is elected, appointed, or employed full time by a municipality, who is certified or required to be certified as a law enforcement officer in compliance with s. 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as those terms are defined in s. 943.10.

§ 185.02(16), Fla. Stat.

It is well-established that pension benefits are determined by the terms of the governing ordinance and Florida Statutes. Chapter 185 gives the Board the authority to decide all claims for relief and provides:

[T]he sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this chapter are vested in the board of trustees; however, nothing herein shall empower

⁵ See also *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (“the courts of this state are without power to construe an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.”); *United Auto. Ins. Co. v. Salgado*, 22 So. 3d 594, 599 (Fla. 3d DCA 2009) (“This Court cannot grant an exception to a statute, nor can we construe an unambiguous statute different from its plain meaning.”); *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (“this Court is without power to construe an unambiguous statute”) (internal citations omitted).

a board of trustees to amend the provisions of a retirement plan without the approval of the municipality.

§ 185.06(4), Fla. Stat. The Applicants have come to the Board asking the Board to grant them credit in the Plan for their time working for the City of Hollywood as certified correctional officers. The plain language of Section 33.127(3) of the City Code is clear and unambiguous that creditable service in the Plan, “shall only include that period of employment during which such persons are Police Officers as defined herein.” The Plan defines “police officer” in part as any “person who is appointed or employed full time by the city, who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395...” The definition is identical to that found at Section 185.02(16), Fla. Stat.

The definition of police officer is unambiguous and without room for interpretation. The Board does not have the power to amend, alter or otherwise change provisions which the state and local legislative bodies have put in place to govern the Plan and its qualifications. The Applicants were not certified police officers during their time as correctional officers and their request for reclassification is tantamount to asking the Board to re-write the ordinances and essentially change the definition of police officer to broaden the period of employment for purposes of calculating creditable time under the Plan. Here, the Applicants were properly credited for the time they were police officers in accordance with Florida Statute and the Plan’s definition of a police officer. If the Florida Legislature intended to include correctional officers as part of a police officer pension plan, it would have done so. If the Board were to abrogate legislative authority, construe the statute in favor of the Applicants and reclassify them, it would be in violation of Chapter 185, which could place the City of Hollywood’s allotment of yearly chapter dollars at risk.

In *Brutus v. Ft. Lauderdale Police and Fire Retirement System Board of Trustees*, No. CACE17-002456 (21), Order (17th Jud. Cir., July 19, 2018), the Court found that despite sympathy

for the Plaintiff, “under the terms of Chapter 185, Florida Statutes, and the City Code, a police officer must be certified pursuant to section 943.13, Florida Statutes, to be entitled to disability retirement benefits.” Much like the petitioner in *Brutus*, the Applicants were not certified as police officers for the time they are seeking to be recalculated. Their request, however sympathetic one may be to it, is contrary to the Plan’s provisions and the state of the law in Florida and cannot be granted.

B. The Benefit Cases are Distinguishable

The Applicants were all hired after 1986, thus their request for reclassification must be determined based on the post-1986 definition of police officer and in accordance with Florida law. The Applicants’ reliance on *Musial*, *Rumpf*, and *Sharpe*, is not helpful to them as each case was decided and argued prior to 1986 – the year that the current definition of “police officer” was implemented.

In *Headley v. Sharpe*, 138 So. 2d 536 (Fla. 3d DCA 1962), the Third District Court of Appeal found that the job description for corrections personnel in the city of Miami Police Department met the then applicable definition of police officer for pension purposes. That changed however, in 1970 when the same court determined that differing job descriptions within the police department led to approval of different pay classifications for persons in the police department corrections division, even though the corrections personnel were classified as police officers. *See City of Miami v. Rumpf*, 235 So. 2d 341 (Fla. 3d DCA 1970). This evolutionary process ended with *City of Miami v. Musial*, 291 So. 2d 77 (Fla. 3d DCA 1974) when the same court denied a transfer from the City's General Employee Retirement plan to the fire and police plan because of the different training for persons in records and identification from those who were police officers, even though the employees all had a police classification. Significantly, the court also noted that a

multi-year delay in requesting reclassification constituted a waiver of any potential misclassification. The *Headley* precedent would have applied if the Applicants had been corrections officers in 1962.

There is a progression from *Headley*, decided in 1962, to *Musial* decided in 1974. The *Headley* Court made a decision based upon the pre-86 definition of “police officer,” whereas by 1974, the Court relied heavily on the Miami Civil Service System’s distinctive definition of “police officer” in denying the petitioner’s relief. In the same vein, the 1986 change to the definition of police officer removed any ambiguity, requiring certification by FDLE as a police officer. Accordingly, these cases are distinguishable and inapplicable.

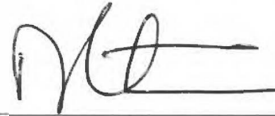
Though it should be pointed out that even under the pre-1986 language, the job duties of a Hollywood Police Department correctional officer would still not be sufficient to gain creditable service under the Plan. The traditional responsibility of a police officer has always been the prevention or detection of crime, and the enforcement of penal, criminal, traffic, or highway laws of Florida. As Correctional Officers, however, the Applicants were primarily responsible for the care, custody, and control of arrestees in the City Jail within the Hollywood Police Department.

As Correctional Officers, the Applicants were only allowed to make arrests after a police officer had already apprehended a subject, when a person had turned themselves into the Police Department, or when an arrestee had committed a crime on an officer in the detention center. (p.20, 22-25; 21, 1-4; 31, 3-10; 34, 12-15). During the hearing, Sparkman testified that he did not go out on his own, make felony arrests, answer domestic violence calls or enforce traffic while a correctional officer. (p.33, 18-25; 34, 1-15). Further, when asked whether the Applicants were allowed to work as patrol officers, Sparkman answered, “no... we were never asked to go out and be police officers.” (p.31, 15-17, 19-23). Thus, the Applicants’ primary responsibility was to

ensure arrestees were supervised inside the jail, and their secondary responsibility was to provide support to police officers if needed outside of the jail. Thus, even under the pre-86 language of the statute, the Applicants could not be considered police officers.

ACCORDINGLY, the applicants request to reclassify their time served with the Hollywood Police Department as correctional officers, from the ERF to the City of Hollywood Police Officers' Retirement System is hereby DENIED.

Done at Hollywood, Broward County, Florida, this 16th _____ day of September 2021.



D. Strauss – Chairman

NOTICE OF APPELLATE RIGHTS

This is a final administrative order denying your request for reclassification of service. You have a right to seek review in the Circuit Court of the 17th Judicial Circuit of Florida by filing a petition for certiorari with the clerk of the Circuit Court within 30 days of the date this order is filed with the Administrator/Clerk of the Board in the manner prescribed in Rule 9.100, Florida Rules of Appellate Procedure. Failure to seek review within the time prescribed by law will make this order final. In any judicial proceeding, the unsuccessful party is required to pay the attorneys' fees of the prevailing party.

FILED WITH THE ADMINISTRATOR/CLERK OF THE BOARD THIS
17 TH DAY OF SEPTEMBER 2021

By:



Dave Williams, Administrator/Clerk of the Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the above-named addressees via electronic and USPS regular mail this 17th day of September, 2021.

Michael F. Dutko, Jr.
Conrad & Scherer, L.L.P.
633 South Federal Highway
Eighth Floor
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By: _____
Dave Williams, Administrator/Clerk of the Board