

HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM

FINAL ADMINISTRATIVE ORDER GRANTING RE-CLASSIFICATION OF BENEFITS

THIS CAUSE came before the Board, on proper notice, on June 28, 2019 on the request of **David Strauss, Larry Bernstein, Lyle Bien, Nicholas Singley, Luis Ortiz, Ivette Buoni, Tammy Clyde, Van Szeto, Eric Alfonso, Gregory Forsyth, Vincent Rosiak, Tomas Hernandez, Brian Joynt, Mark Ruggles, Alexander Perez, Dwayne Chung, Michael McBride, Kurt Kowalski, Stephanie Szeto, Debra Levy, Donnard Huneke, Matthew Goodnow, Victor Tetter, and Kyle Perez** to be treated as exempt from the 2011 Hollywood City Ordinance changes deemed invalid by the decision of the Florida Supreme Court in the case of *Headley v. City of Miami*, 215 So. 3d 1 (Fla. 2017).

In the *Headley* decision, the Florida Supreme Court upheld a decision of the Fourth District Court of Appeal finding that the City of Hollywood's application of Section 447.4095, Fla. Stat. (the Financial Urgency law) Violated Article I, Section 6 and 10 of the Florida Constitution and determined that the action was void, mandating a reinstatement of the Status quo as it existed prior to the 2011 ordinance.

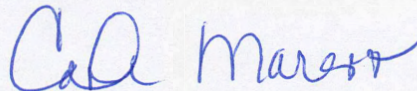
During the pendency of the litigation, the Broward County Police Benevolent Association (PBA) entered into a collective bargaining agreement (CBA) with the City waiving any future remedy after the effective date of the agreement. The agreement was executed on July 29, 2013.

Between the 2011 ordinance and 2013 waiver, several members of the plan either became eligible to retire or were promoted positions outside of the PBA bargaining unit. In either case, the CBA could not lawfully be made applicable to those individuals. Terms and conditions of employment for managerial (non-bargaining unit) employees are not subject to collective bargaining. *City of Orlando v. Orange County PBA*, 435 So. 2d 275 (Fla. 5th DCA 1983). As to those persons becoming eligible to retire prior to the waiver, the terms of their pension rights became fixed as if they actually retired. *O'Connell v. State Dept. of Admin.*, 557 So. 2d 609 (Fla. 3d DCA 1990); *Bean v. State, Div. of Retirement*, 732 So. 2d 391 (Fla. 2d DCA 1999).

As the affected individuals were not subject to a waiver by the bargaining agent for either of the reasons outlined above, the pre-2011 ordinance should be applied to their benefits.

Accordingly, the applicants request be and the same is hereby granted.

Done at Hollywood, Broward County, Florida, this 28 day of July, 2019.



CHAIRMAN

NOTICE OF APPELLATE RIGHTS

This is a final administrative order granting your request for reclassification of benefits. 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 26TH DAY OF JULY, 2019.


ADMINISTRATOR/CLERK

CERTIFICATE OF SERVICE

I certify that this Order was served via U.S. Mail on the above listed members on this 29TH day of July, 2019.


ADMINISTRATOR/CLERK


CHAIRMAN

HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM

FINAL ADMINISTRATIVE ORDER GRANTING RE-CLASSIFICATION OF MEMBERS AS GROUP 1 PARTICIPANTS

THIS CAUSE came before the Board, on proper notice, on June 28, 2019 on the request of **Robert Wolfkill, Jeffrey Mathis, Michael Moxley, Renna Lee Myers, Claudio Loveras, Brian Bartlett, James Barnick, Barry Rumble, Cassandra Jones, Philippe Archer, Cheri Judd Stabile, Jerry Sommer, and Jeffery Lebron** to be treated as exempt from the 2011 Hollywood City Ordinance changes deemed invalid by the decision of the Florida Supreme Court in the case of *Headley v. City of Miami*, 215 So. 3d 1 (Fla. 2017).

In the *Headley* decision, the Florida Supreme Court upheld a decision of the Fourth District Court of Appeal finding that the City of Hollywood's application of Section 447.4095, Fla. Stat. (the Financial Urgency law) violated Article I, Section 6 and 10 of the Florida Constitution and determined that the action was void, mandating a reinstatement of the Status quo as it existed prior to the 2011 ordinance.

During the pendency of the litigation, the Broward County Police Benevolent Association (PBA) entered into a collective bargaining agreement (CBA) with the City waiving any future remedy after the effective date of the agreement. The agreement was executed on July 29, 2013.

Following a period of lengthy negotiations, the City restored most pre-2011 benefits. The applicants retired while these negotiations were pending but, had they remained employed, would have been classified as Group 1 participants.

The Board determined that this small group of individuals would be placed in a position of inequality with similarly situated plan participants. Section 185.01 provides for a uniform system of retirement benefits that meet the minimum standards of Chapter 185. No local ordinance may result in the loss of minimum benefits and standards, one of which is a "uniform retirement system for the benefit of police officers." The Florida Supreme Court and the District Courts of Appeal have repeatedly held that pensions laws are to be "liberally construed in favor of the intended recipients." See, *City of Tampa v. State*, 155 Fla. 177, 19 So. 2d 697 (1944); *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013); *Board of Trustees v. Town of Lake Park*, 966 So. 2d 448 (Fla. 4th DCA 2007).

The Board finds that the above statutory mandate requires the inclusion of the applicants as Group 1 participants but with the benefits accrued as of the date of retirement.

Accordingly, the applicants request be and the same is hereby granted.

Done at Hollywood, Broward County, Florida, this 26 day of July, 2019.


CHAIRMAN

NOTICE OF APPELLATE RIGHTS

This is a final administrative order granting your request for reclassification as a Group 1 participant. 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.

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