

HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM
Office of Retirement
4205 Hollywood Blvd., Suite 4
Hollywood, Florida 33021

March 17, 2017

MINUTES

A special meeting of the Hollywood Police Officers' Retirement System was held on Friday, March 17, 2017, at 10:35 A.M., in the Office of Retirement, 4205 Hollywood Blvd., Suite 4, Hollywood, Florida 33021.

PRESENT:

D. Strauss, Chairman, C. Marano, Secretary, C. Boyd, V. Szeto, P. Laskowski and R. Wise.

Excused Absence: R. Brickman.

Also present were Stephanie Szeto, Earl Mitchell & Frank Hogan (Retired Members); Robert Schiano, Plan Member; Stuart Kaufman, Legal Counsel - Klausner, Kaufman, Jensen & Levinson; David M. Williams, Plan Administrator.

PUBLIC COMMENT

Mr. Schiano stated that his prior relief sought from this Board for a fractional part of the supplemental distribution (through September 30, 2011) should be discarded due to: WALTER E. HEADLEY, JR., MIAMI LODGE NO. 20, FRATERNAL ORDER OF POLICE, et al., Petitioner, vs. CITY OF MIAMI, FLORIDA, Respondent - No. SC13-1882¹. Mr. Schiano felt members similarly situated to him should receive a full portion of the supplemental distribution that is currently pending payment on or about April 1, 2017. Further, Mr. Schiano feels that the retirees who received past payments should be offset from this current payment to recoup missed payments as well.

Mr. Kaufman indicated that public comments was not intended to be an exchange between the speakers and the Board, but he would address the issue, as he was going to speak about it under his attorney's report.

Mr. Kaufman explained that it is his position and that of his firm (who has direct knowledge of the case cited above) that the ordinance that was passed by the City of Hollywood in 2011 should be void as it was unconstitutional. The claim of financial urgency was improper, thus any action that followed was likened to the fruit from the poisonous tree². Mr. Kaufman also said that the city may have a different position.

As such, Mr. Kaufman indicated that he was comfortable having the actuary identify the funds allocated in this distribution and in arrears. The total amount being distributed this year was not going to change, it would just be reallocated with more members being included. Mr. Kaufman prefaced his comments by advising the Board not to release the funds to those members, but to hold it aside until further clarification and/or conclusion.

In terms of past payments made, Mr. Kaufman indicated they were paid based on the ordinance. The hundreds of payments previously made (since 2011) could not be re-clawed or off-set by the Board, unless ordered by a Court or possibly, if each member affected was provided due process and a Notice of a Hearing before this Board.

¹ <http://www.floridasupremecourt.org/decisions/2017/sc13-1882.pdf>

² **Fruit of the Poisonous Tree.** An extension of the exclusionary rule established in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920). This doctrine holds that evidence gathered with the assistance of illegally obtained information must be excluded from trial.

Mr. Kaufman felt the actuary should value the past payments, and that amount would be inclusive to the overall global settlement with the city.

Mrs. Stephanie Szeto reflected that she left the city's employment as a result of the change in the ordinance that has now become debunked. She asked the Board not to forget the members that are in her status as well and to keep the membership informed. Mrs. Szeto felt her class of members are not represented and openly asked if an attorney should be engaged to protect her rights and those similarly situated. Mr. Kaufman responded by making it clear that he cannot give her legal advice, as he represents the Board. Mr. Kaufman stated that it is his goal and that of the Board to be all inclusive when attempting to settle this matter on a global basis. However, it was her right to seek legal counsel at any time.

Motion made by Mr. Laskowski to task the actuary with identifying the affected members entitled to the supplemental distribution this year and prior years (since the passage of the ordinance PO-2011-23). Further, to reallocate the funds due this year and hold it aside for those identified. The motion was seconded by Mr. Szeto. All board members voted yes.

Mr. Williams will proceed accordingly and report back on March 31, 2017 for final authorization.

READING OF THE WARRANTS

The warrants since the last meeting were reviewed and executed by the Board of Trustees.

APPROVAL OF THE MINUTES OF THE FEBRUARY 17, 2017 MEETING

Mr. Strauss asked if there were any additions or corrections to the Minutes of the February 17, 2017 pension board meeting. Mr. Laskowski made a motion to approve the Minutes of the February 17, 2017 pension board meeting, which was seconded by Mr. Szeto. All board members voted yes.

ATTORNEY'S REPORT

Mr. Kaufman indicated that he covered his report to the Board under public comments.

Mr. Strauss asked Mr. Kaufman to report at a future meeting any recent action or interpretation made for the fire pension plan as a result of the supreme court decision.

ADMINISTRATIVE REPORT

General Membership Meetings: Mr. Williams advised the Board that he is starting to receive inquiries from younger members again about their intention of leaving the agency. Sadly, it is reminiscent of 2011. The main theme when speaking to members is the city's position on pensions. Mr. Williams also cited a highly-qualified member with a master's degree that recently left the city for another police agency seeking future security for him and his family. A meeting was held with Mr. Strauss and Mr. Marano to review options. It was decided that open general membership meetings would be in the best interest of all. It should be noted that this action was set up before the supreme court ruling of March 2, 2017. Attorney Robert Klausner was invited to speak at two pension informational sessions March 9th and March 13th, 2017.

Topics covered were:

Pension world overview and how our plan compares, DB vs DC (why Jacksonville will fail), Does funding ratio matter – ARC, 13th check lawsuit, 185 Funds, Our referendum lawsuit & how it ties to (Headley v. Miami case), Pension Task Force. Each session ended with Membership Q & A sessions. Mr. Williams reported that approximately 90 officers attended over the two evening sessions. Mr. George Keller and Mr. Mel Standley also attended one of the sessions and was thanked for their interest. Mr. Williams applauded Mr. Klausner and Mr. Kaufman for their prodigious legal knowledge. This sentiment was echoed by the Board of Trustees.

Honor Update: Mr. Williams established a date to honor Mr. Cypen as March 31, 2017. Past Trustees in the local area would also be informed.

PRESENTATION OF 09-30-2016 FINANCIAL STATEMENTS – BDO

Mr. Williams reported that Mr. Clement Johns of BDO advised the report was not ready, and he would present at the next scheduled meeting of March 31, 2017. Matter Tabled.

EARL MITCHELL – REQUEST FOR HEARING - (Tabled from October 28, 2016 & January 27, 2017)

Mr. Mitchell appeared before the Board to review his drop account and an adjustment that was apparently made from a transaction on November 22, 1999. In the summer of 2016, he received his monthly drop statement and noticed a difference in the balance from the prior month. He contacted Mr. Williams who reviewed his account. Mr. Mitchell was later advised by Mr. Williams that there was a recent enhancement made to the database, and the program now recalculates all transactions each month from inception. As a result, the transaction cited,³ his drop balance was recalculated, based on the ending balance of the quarter of December 31, 1999. Mr. Mitchell met with Mr. Williams and Mr. Szeto to discuss this matter. As no resolution was reached, Mr. Mitchell was advised he could appeal the matter to the Board directly. Mr. Mitchell appeared before the Board and spoke under public comments on August 19, 2016. The Board asked Mr. Williams to review the matter again, which he did and found no alternative solution.

Due to the foregoing a formal presentation was being made to the Board by Mr. Mitchell. Mr. Mitchell reaffirmed his recollection of a conversation he had with Mr. Richard Schiano, the former plan administrator (deceased)⁴. Mr. Mitchell stated he was informed by Mr. Schiano that his drop account would receive partial interest credit for the quarter. Mr. Mitchell advised the Board that he was unaware of the mathematical method(s) used by Mr. Schiano and acknowledged that he was unable to recalculate to the same balance that was previously posted to the account manually by Mr. Schiano. Mr. Mitchell stated, "Only Dick knew that formula".

Mr. Mitchell asserted that the current system records only go back to 1999 and stated the old records were lost. Mr. Williams clarified for all that in that timeframe, it was commonplace and there was a changeover undertaken due to the millennium for a DOS to a Windows based system. Mr. Williams indicated that it was his understanding that the pertinent account balances were transferred accordingly. Further, the transaction in question (November 22, 1999) was not relative to the transition of data as it was clearly included in the current file.

Mr. Mitchell then proffered a notarized statement from Francis Hogan dated January 27, 2017. That written statement is made part of this record and attached hereto.

³ Drop distribution in the amount of \$150,300.90 on November 22, 1999

⁴ Excerpt from August 19, 2016 meeting minutes: Mr. Mitchell reflected that Mr. Schiano stated the account would be credited for the partial quarter the funds remained in the account.

The following is an excerpt from Mr. Hogan on August 19, 2016 to the Board of Trustees (from the official minutes): *“Mr. Hogan (former - Chairman of the Board) had no independent recollection of the conversation but conveyed that Mr. Richard Schiano would act without Board direction as he (Schiano) felt he was still the Chairman at times”.*

Excerpt of Mr. Hogan’s statement presented this date by Mr. Mitchell:

I personally discussed the policy for determining the monthly interest rate and the policy for crediting interest earned to D.R.O.P. accounts with (then) Fund administrator Richard Schiano and I am certain that he understood those policies.

Mr. Mitchell concluded his presentation by saying the transaction was not reversed by the auditor and he is asking the Board to reverse the calculation as manually prepared by Mr. Schiano.

Mr. Williams reviewed what his understanding was back at that time and is true through today. This system does not apply interest on a daily average balance. The accounts were posted with interest based on the last day of the quarter (during the timeframe in question) and now based on the last day of the month.

Mr. Williams stated that he learned in 2016 from IT that the database did not go back to the inception and recalculate the drop balances. As a matter of due diligence, that provision was added to the program during a system update. If there was no manual manipulation to the accounts, there would be no difference in the balances. There was no programming change to the way the interest was applied.

Mr. Williams presented other random account examples in the time range for the Board to consider:

Date	Pmt#	Deposit	Loan Deduct	Post Amt	Int Rate	Int Amt	Account Bal
10/1/1999	4			\$4,346.05	0.000000%	\$0.00	\$17,293.36
11/1/1999	5			\$4,346.05	0.000000%	\$0.00	\$21,639.41
12/1/1999	6			\$4,346.05	0.000000%	\$0.00	\$25,985.46
12/31/1999	0	\$0.00	\$0.00	\$0.00	11.205000%	\$2,911.67	\$28,897.13
1/1/2000	7	\$4,346.05	\$0.00	\$4,346.05	0.000000%	\$0.00	\$33,243.18

In this example, Mr. Williams showed how monthly drop payments were posted each month and how the interest was factored based on the last day of the quarter.

4/28/2000	0	\$0.00	-\$54,409.70	-\$54,409.70	0.000000%	\$0.00	\$173,172.90
6/30/2000	0	\$0.00	\$0.00	\$0.00	-1.125000%	-\$1,948.20	\$171,224.71

4/10/2000	0	\$0.00	\$0.00	-\$45,000.00	0.000000%	\$0.00	\$494,522.76
6/30/2000	0	\$0.00	\$0.00	\$0.00	-1.125000%	-\$5,563.38	\$488,959.38

In these examples, Mr. Williams showed how a deduction was made from a drop account and the interest was factored based on the last day of the quarter.

Mr. Williams then reviewed the Mitchell Account before and after the recalculation correction.

Original DROP Data						
Date	Deposit	Loan Deduct	Post Amt	Int Rate	Int Amt	Account Bal
11/22/1999	\$0.00	\$0.00	-\$150,300.90	0.000000%	\$0.00	\$334,540.71
12/31/1999	\$0.00	\$0.00	\$0.00	11.205000%	\$43,099.02	\$377,639.73
3/31/2000	\$0.00	\$0.00	\$0.00	1.105000%	\$4,172.92	\$381,812.65
4/28/2000	\$0.00	(\$27,273.40)	-\$27,273.40	0.000000%	\$0.00	\$354,539.25
6/30/2000	\$0.00	\$0.00	\$0.00	-1.125000%	-\$3,988.57	\$350,550.68

Mr. Williams indicated that the transaction of November 22, 1999 was factored differently than the transaction of April 28, 2000, just months later. The December 31, 1999 interest as a result of the distribution of November 22, 1999 was apparently manually factored (as per Mr. Mitchell) and entered into the database. The interest of June 30, 2000 was factored based on the April 28, 2000 transaction, which is the way the program was intended, to wit: calculated on the last day of the quarter.

Recalculated DROP Data						
Date	Deposit	Loan Deduct	Post Amt	Int Rate	Calculated Int Amt	Account Bal
11/22/1999	\$0.00	\$0.00	-\$150,300.90	0.000000%	\$0.00	\$334,540.71
12/31/1999	\$0.00	\$0.00	\$0.00	11.205000%	\$37,485.29	\$372,026.00
3/31/2000	\$0.00	\$0.00	\$0.00	1.105000%	\$4,110.89	\$376,136.88
4/28/2000	\$0.00	(\$27,273.40)	-\$27,273.40	0.000000%	\$0.00	\$348,863.48
6/30/2000	\$0.00	\$0.00	\$0.00	-1.125000%	-\$3,924.71	\$344,938.77

This chart exhibits how the account was recalculated based on the programming parameters in place at that time and today.

Mr. Mitchell refuted the April 28, 2000 transaction as a “one off” due to an outstanding loan payment. Mr. Williams opined that a transaction no matter the purpose was still an outflow from the account.

In closing Mr. Williams felt that there were many years between when the transaction occurred and when discovered, but he sees no alternative but to follow established procedure (programming) and apply interest based on the last day of the quarter (as programmed currently on the last day of the month).

The Trustees discussed the foregoing and after doing so, Mr. Laskowski made a motion to deny Mr. Mitchell’s request to readjust his drop account. This motion was seconded by Mrs. Marano.

A formal voice vote was taken as follows:

Chris Boyd -	Yes to Deny
Cathleen Marano –	Yes to Deny
Ron Wise -	Yes to Deny
Van Szeto -	Yes to Deny
Paul Laskowski -	Yes to Deny
David Strauss -	Yes to Deny

Motion carried 6-0

Mr. Kaufman informed Mr. Mitchell of his ability to appeal the matter within 30 days of the minutes being approved.

NEW BUSINESS - Notice of Pension Trustee Election – Results:

Mr. Williams reported that the Board of Trustees administered a pension election from February 15th at 9:00 AM thru February 22nd at 9:00 AM. The election was for three seats.

The results were tallied as follows:

<u>MEMBER</u>	<u>VOTES RECEIVED</u>
Christopher Boyd	187
Rhett Cady	69
Luis Ortiz	73
David Strauss – Incumbent	214
Van Szeto - Incumbent	190

The three members receiving the highest votes were Mr. Boyd, Mr. Strauss and Mr. Szeto. As such, they won the election and will retain or take their positions on the Board for a two-year term. For informational purposes, there were 277 members eligible to vote. Two ballots were disqualified for not following voting instructions.

Mrs. Marano made a motion to formally accept the results as presented. Motion seconded by Mr. Laskowski. All board members voted yes.

Mr. Williams also reported that the required financial disclosure forms were provided to Mr. Boyd and to Mr. O'Brien.

OPEN DISCUSSION

No discussion ensued.

MEETING ADJOURNED

There being no further business, the meeting was adjourned at 11:50 A.M.

The next scheduled meeting is March 31, 2017 at 9:30 AM.

Respectfully submitted,

APPROVED:

C. Marano, Secretary

D. Strauss, Chairperson