

TOWN OF DAVIE POLICE EMPLOYEES'
PENSION PLAN
MINUTES
July 26, 2011

The special meeting of the Board of Trustees of the Town of Davie Police Employees' Pension Plan was called to order by Chairman Greg Brilliant on July 26, 2011 at 4:00 p.m. at the Town of Davie Police Department at 1230 South Nob Hill Road in Davie, FL.

TRUSTEES PRESENT:

Chairman Greg Brilliant, Trustee Thomas DiMeglio, Trustee Ed Taylor, Trustee Jack Mackie, and Trustee Larry Davis

ABSENT AND EXCUSED:

OTHERS PRESENT:

Fund Attorney Adam Levinson, Don DuLaney of DuLaney and Company, Ken Harrison of Sugarman & Susskind, Retiree Mike Necolettos, Attorney Adam Lister, and Fund Administrator Pete Prior of Benefits USA, Inc.

NEW BUSINESS

Hearing requested by Mike Necolettos regarding Worker's Compensation Offset

Attorney Levinson addressed the Board after the Chairman declared a quorum for the Board. Attorney Levinson provided the Board with copies of emails outlining the hearing. The reason for the meeting is to determine the offset set by the Board and questioned by the applicant. Attorney Levinson reviewed the April 14 email breaking down the values of the settlement as it pertains to 62/38 medical and indemnity ratio. The retroactive benefit totaled \$112,041.25. The indemnity portion of the lump sum worker's compensation settlement equals \$77,311, which is $.38 \times \$203,450$. The medical portion of lump sum worker's compensation settlement equals \$126,139, which is $.62 \times \$203,450$.

Attorney Levinson reviewed the Rules of Evidence that will preside over the meeting and will assist the Chairman throughout the hearing. The burden of proof is incumbent upon the applicant and it is the job of the Trustees to determine the outcome of the hearing. Attorney Levinson also provided a copy of the ordinance as it pertains to a disability.

Attorney Lister addressed the Board quoting FS 185 which states that the employee shall not receive less than 42% of pay. There is no mention of any offset in the law. Attorney Lister provided four documents into evidence on behalf of the applicant. Attorney Lister stated that in all four documents, in his opinion, the language is clear that the applicants' pension cannot be offset. Attorney Levinson advised the Board that they can accept the documents into evidence, to which the Chairman accepted the documents into evidence.

Ken Harrison, special counsel to the Board, addressed the Trustees, providing a brief history of his firm and experience. Attorney Harrison noted that there are two standards here: workers compensation and pension benefits. Both are separate and distinct. The rule that governs the Board is the pension ordinance, and the pension ordinance is clear that there is an offset as it pertains to workers' compensation and social security. Attorney Harrison said that there is no choice by the Trustees but to enforce the ordinance as provided. After knowing what the offset numbers were, the Board moved to offset the pension. Mr. Harrison said that the Board proceeded correctly.


Attorney Lister asked the Board if the Board knew about the language contained in the agreement between the Town and the applicant. Attorney Harrison noted that the Board does not have to know the language of "any deal" the applicant may have had with the Town but the Board does have an obligation to enforce the ordinance as it is written. Therefore, the Board acted in compliance with the ordinance. Attorney Lister disagreed stating that the Town waived those rights as noted in the documents provided to the applicant.

Attorney Levinson reminded the Board that the Board has the ability to decide today or at a later date. Trustee Davis noted that Attorney Lister commented on waiving of rights. Attorney Harrison said there can be a waiver but it has to be provided to the Board by either the Town or a Judge.

Section 4 (a, b) refers to the rules and regulations of the plan, as well as the construction of the plan as it pertains to questions arising under the plan. Attorney Lister asked if the Town ever communicated with the Board or legal counsel regarding the settlement. Attorney Levinson replied that the Town never advised the Board or him that the applicant's pension not be offset.

Attorney Levinson suggested the Board ask questions of the attorneys present. If not, a motion would be in order. After extensive deliberation, Trustee Taylor moved to approve the non-negotiable sum of \$34,760.25 to Mr. Necolettos, in return for a full mutual release based on ratios listed above. Trustee DiMeglio seconded the motion and the motion passed.

There were no further questions. The Board adjourned at 5:10 pm.


Chairman