

**CITY OF OAKLAND PARK POLICE & FIREFIGHTERS
PENSION PLAN SPECIAL MEETING SUMMARY OF MINUTES**

Tuesday, March 29, 2022

CALL TO ORDER:

The special meeting of the Board of Trustees of the City of Oakland Park Police & Firefighters' Pension Plan was called to order by the Fund Administrator at 3:16 pm City Hall in the Council Chambers.

ROLL CALL:

TRUSTEES PRESENT: Ernest Olivas, James Wilson, Joseph Filkowski and Steve Arnst

ABSENT AND EXCUSED: Chairperson Sheryl Dickey

OTHERS PRESENT: Fund Attorney Milton Collins, Applicant's Attorney Richard Sicking, City Representatives Andrew Thompson and Lori Day and Fund Administrator Livia Giuliani. Nancy Johnson, the court reporter retained for the proceeding, was present to transcribe.

PUBLIC COMMENTS:

NEW BUSINESS:

Full Hearing – Rejection of Disability Application submitted by Kevin O'Connor

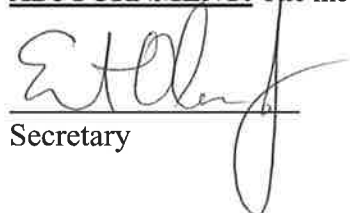
Richard Sicking, Esq., the legal representative for Mr. O'Connor, expressed that he wanted to waive the full hearing. He therefore presumed the Board would readopt its decision at the Informal Hearing. Attorney Collins stated that, under these circumstances, the Board could accept the waiver request and readopt its prior decision. Trustee Wilson moved to uphold the Board's prior decision and Trustee Filkowski seconded the motion. The motion passed 3-1, with Trustee Arnst voting against the motion.

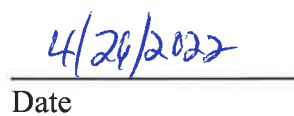
Attorney Collins explained that the Board's Final Order will be virtually identical to the Non-Final Order, save for two (2) changes. First, a reference will be made in the Final Order that the applicant has approximately \$75,000 in contributions in the Plan, and second that the reference to the Board's prior vote related to the non-final order was not unanimous (i.e., there was a dissenting vote). Mr. Sicking, who proposed the two changes, had no issue. Attorney Collins stated that he will add three (3) more exhibits (17, 18 and 19) to the evidentiary record. Mr. Sicking had no objection. That being said, Trustee Wilson moved to have the changes included in the Final Order and the evidentiary record amended. Trustee Filkowski seconded the motion and it passed 4-0.

A brief discussion ensued and Trustee Arnst noted that the Board should allow the member to apply. The Administrator commented that the Board did allow the member to apply, but that the application was denied due to ineligibility. That being said, Trustee Wilson moved to adjourn and Trustee Filkowski seconded the motion and it passed 4-0.

NEXT MEETING DATE: Tuesday, April 26, 2021 at 5:30 pm.

ADJOURNMENT: The meeting adjourned at 3:37 pm.


Secretary


Date

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REJECTION OF DISABILITY APPLICATION
SUBMITTED BY KEVIN O'CONNOR

SPECIAL MEETING
OF
OAKLAND PARK POLICE & FIREFIGHTERS PENSION FUND

DATE TAKEN: March 29, 2022
TIME: 3:00 p.m. - 3:37 p.m.
PLACE: 1298 N.E. 37th Street
Oakland Park, Florida 33334

Examination of the witness taken before:

Nancy S. Johnson
United Reporting, Inc.
1218 S.E. 3rd Avenue
Fort Lauderdale, Florida, 33316
954 525-2221

APPEARANCES

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BOARD MEMBER JAMES WILSON
BOARD MEMBER JOE FILKOWSKI
BOARD MEMBER STEVEN ARNST
BOARD MEMBER ERNEST OLIVAS
LIVIA GIULIANI, ADMINISTRATOR
CITY'S ATTORNEY: MILTON COLLINS, ESQ.
RICHARD SICKING, Attorney for Kevin O'Connor

1 P R O C E E D I N G S

2 MS. GIULIANI: We'll call the City of
3 Oakland Park Police and Firefighters pension
4 fund special meeting, Tuesday March 29, 2022 at
5 3:15 p.m.

6 Trustees present are Ernest Olivas?

7 BOARD MEMBER OLIVAS: Here.

8 MS. GIULIANI: Jim Wilson?

9 BOARD MEMBER WILSON: Here.

10 MS. GIULIANI: Joe Filkowski?

11 BOARD MEMBER FILKOWSKI: Here.

12 MS. GIULIANI: Steven Arnst?

13 BOARD MEMBER ARNST: Here.

14 MS. GIULIANI: Okay. We have a quorum.

15 Sheryl is on her way.

16 BOARD MEMBER OLIVES: The time is 3:16.

17 Extent the full hearing requested by Kevin
18 O'Connor regarding the board's February 15,
19 2022 denial of his application for a disability
20 pension.

21 It should be noted for the record that
22 the decision was not based on the merits of the
23 application, meaning the board has not made a
24 decision about the alleged injury or whether it
25 constitutes a disability, instead the decision

1 was that Mr. O'Connor is not eligible to
2 proceed with a disability pension.

3 This hearing is being transcribed by a
4 court reporter.

5 The decisions of the board based on this
6 hearing shall be final and binding.

7 Within 15 days after the board makes its
8 decision, the board must enter a final order
9 setting forth the findings and conclusions.
10 And a copy of the order shall be provided to
11 Mr. O'Connor.

12 For the record the board shall enter a
13 final order today into the record, and a copy
14 will be sent Mr. O'Connor.

15 Judicial review of the board's decision
16 shall be sought by timely filing a petition for
17 writ with the Broward County Circuit Court.

18 As the vice-chair person, acting
19 chair-person, I will rule on all procedural
20 questions that arise from the hearing with
21 assistance from the pension attorney. My
22 ruling shall stand unless overruled by a
23 majority vote of the board.

24 Is the applicant present?

25 MR. SICKING: Yes.

1 BOARD MEMBER OLIVAS: Is the applicant's
2 legal counsel present?

3 MR. SICKING: Yes.

4 BOARD MEMBER OLIVAS: Please identify
5 yourself for the record.

6 MR. SICKING: Richard Sicking.

7 BOARD MEMBER OLIVAS: Who else is present
8 for the record?

9 MR. SICKING: I am. I'm it.

10 BOARD MEMBER OLIVAS: Very good.

11 All right. Mr. Collins, please explain
12 the hearing process for the record.

13 MR. COLLINS: Yes. Thank you vice-chair.

14 Ordinarily I would sort of give you the
15 rundown on how this hearing is supposed to play
16 out. However, Mr. Sicking did reach out to me
17 about an hour and a half ago and he indicated
18 that he wants to forgo having a full-blown full
19 hearing here today. The reason being is there
20 was an initial hearing as you know last month,
21 a decision was made, and if the board is not
22 inclined to reverse themselves, then this board
23 would just adopt its initial findings last
24 month and therefore that would forgo the need
25 for Mr. Sicking to provide a presentation and

1 to otherwise present his case.

2 So, Mr. Sicking, I don't know if you want
3 to say something.

4 MR. SICKING: That's it essentially.
5 What I had proposed was -- And I'm not just
6 being capricious. The State Statute, which has
7 a short title, the Florida Protection of Public
8 Employee Retirement Benefits Act, says you only
9 have to do this twice; you don't have to do it
10 three times. And you've already done it twice,
11 so there's no need to do it three times when
12 the law doesn't require that.

13 So what I had proposed was that I would
14 waive the formal hearing, which was otherwise
15 scheduled for today, because we really did that
16 the last time, in favor of the hearing we had
17 on the 15th so that the non-final order which
18 Mr. Collins prepared with respect to that
19 hearing could then become the final order. And
20 I had only suggested two changes in it. One of
21 which is at the end it should show what the
22 vote was, which was I believe was four to one,
23 and this other thing was there was a place
24 where it recited what his service credit was,
25 and I had asked that it also include what his

1 contributions were. And he has agreed to make
2 those two changes.

3 And so we really don't need to do this
4 for the third time. And so I waive the final
5 hearing and we could just proceed from there.

6 He had mentioned about maybe he wanted to
7 have you vote again to confirm your vote of the
8 15th of February. I don't think you need to do
9 that. But if you want to do it, I don't have
10 an objection. Except we now have four people
11 instead of five. But three is a quorum. And
12 so if you want to do that, I don't object to
13 it. And that's where we are. That takes care
14 of the day.

15 MR. COLLINS: Yes. Just to make it a
16 little simpler. Last month you made a
17 decision. I prepared a document to memorialize
18 that decision. And he read it. And whether he
19 agrees or disagrees, that's the board's
20 decision. And what Mr. Sicking has said is, I
21 understand that's the board's decision, and if
22 they don't want to, you know, reverse
23 themselves, then that initial decision last
24 month can become the board's final decision --

25 MR. SICKING: Yes.

1 MR. COLLINS: -- with two changes.

2 And one of the changes he wants in your
3 final order is a references to Mr. O'Connor's
4 total contributions in his vested benefit.
5 That's about \$75,000. And I put that into your
6 final order, that he has approximately \$75,000
7 career contributions. Obviously that's just a
8 matter a fact, so I had no issue with that.

9 The second change that he wanted in the
10 final order has to do with the reference to the
11 vote. Obviously it wasn't unanimous. And he
12 just wanted that reflected for the record. I
13 think it's in the transcript. It's fine. But
14 I had no issue with also putting that in your
15 final order.

16 So I guess procedurally how this will
17 play out today is the board -- Again, I do want
18 the board, for you to still talk amongst
19 yourselves about your initial decision last
20 month. Obviously Mr. Sicking is not bringing
21 forth anything today, so I don't foresee anyone
22 changing their mind because there is nothing
23 else for you to consider other than what you
24 already considered last time. But nevertheless
25 I do want the board to talk about your final

1 decision. And if your position has not
2 changed, then today you would just enter a
3 final order with those two changes as I've
4 discussed.

5 And I prepared a draft final order for
6 everyone to take a look at. And, again, it's
7 sort of -- So this would in essence reflect
8 your decision.

9 MR. SICKING: Technically speaking it
10 would require a motion for reconsideration by
11 someone who is in the prevailing side.

12 MR. COLLINS: Take a couple minutes.
13 What's underlined are the two changes that he
14 wanted in there. But this would reflect in
15 essence your final decision. It's the same
16 thing as your decision last month. But
17 nevertheless please take a look at it.

18 BOARD MEMBER ARNST: Can I ask a
19 question? Essentially what you're asking for
20 is for the ability to make an application of
21 benefit from this plan?

22 MR. SICKING: Yes. Just to make the
23 application.

24 BOARD MEMBER ARNST: Nothing else?

25 MR. SICKING: Well, eventually you'll

1 decide whether he's entitled to it.

2 BOARD MEMBER ARNST: But you're here
3 because you're looking to have the ability to
4 apply?

5 MR. SICKING: To apply.

6 BOARD MEMBER ARNST: From a vested
7 member?

8 MR. SICKING: Yes. But he doesn't need
9 to be vested for a disability.

10 BOARD MEMBER ARNST: I understand. But I
11 am saying he is a vested member.

12 MR. SICKING: He is a vested member.

13 BOARD MEMBER ARNST: So whether he's in
14 the plan now, out of the plan, working for the
15 City, not working for the City is irrelevant.
16 The fact of the matter is, he is a vested
17 member, and he's looking to apply for a
18 benefit, whether it be a disability, whether it
19 be any type of benefit that his plan has.

20 MR. SICKING: Yes. That was my argument
21 before and it's still that. I hasn't changed.

22 BOARD MEMBER ARNST: And that's where I
23 think we got a little bit off the track last
24 time, is the fact that we're not basing it on
25 the merits of whether he is entitled to any

1 disability or not or entitled to anything else;
2 all we're doing is making the determination
3 that he's able to apply. And if he applies and
4 then we have a hearing, then we can base it on
5 the merits of the application. Which we don't
6 have an application right now.

7 MS. GIULIANI: Correct me if I'm wrong,
8 didn't he apply already? He already applied.

9 MR. COLLINS: He applied. And I don't
10 think you've actually reviewed it, because you
11 made the decision that he can't proceed.

12 BOARD MEMBER ARNST: I've never seen the
13 application.

14 MR. COLLINS: It's in our packet. And it
15 may have been before your time but -- There is
16 an application. There is a disability claim
17 he's citing. Obviously, you --

18 BOARD MEMBER ARNST: What I'm concerned
19 about is that -- and I'm talking to the board
20 right now -- in case this goes to circuit court
21 and a judge says he's a vested member,
22 irregardless of whether he is entitled to
23 anything, why didn't you have him apply and
24 look at the application and base the
25 application on the merits of the case.

1 And I just don't want to see us get to
2 the point where a circuit court judge comes in
3 and says, well, you didn't let him apply,
4 here's what we've got to do, we're going to
5 apply. And then essentially at the mercy of
6 the court. And I don't want to be left to the
7 mercy of the court, because no one ever knows
8 what a judge is going to do so. Seen every
9 commission for 16 years here, I've seen a lot
10 of decisions made, I've seen a lot of places
11 where the judge gets ahold of it and you lose
12 all control over the situation.

13 Yes, have a full hearing and have an
14 application determining the merits of the case,
15 it's going to take some time, it is going to
16 cost some money. But in the long run, it will
17 be settled by us, not by the judge. I just
18 don't want this to be settled by a judge. I
19 want this to be settled by the pension board.
20 Which is what we were here for.

21 That's all I'm going to say. And I still
22 stand by what I said. I would like to see this
23 be applied for, us get the application, and
24 then have a hearing basing the merits of the
25 case of whether he is disabled or not disabled

1 and whether it occurred on duty, off duty. I
2 just want to -- I would much rather see the
3 case up here. That's all.

4 MR. COLLINS: If I can touch on what the
5 trustee has indicated, obviously if you decide
6 to uphold your decision, Mr. O'Connor does have
7 a right to apply to circuit court for the
8 courts to review your decision.

9 Now, the court does give deference to
10 boards and your interpretation of the code.
11 But, yes, Mr. O'Connor can go into circuit
12 court and say, Your Honor, please take a look
13 at what the board has done. This wouldn't be
14 an evidentiary hearing. The judge would read
15 everything that's in these packets. And he or
16 she would say, okay, the board made an
17 interpretation, I'm not going to disturb it.
18 Or a judge may say the board is totally off the
19 reservation, so to speak, and this person
20 should have a right to apply for the disability
21 pension.

22 And if that decision is made by a judge,
23 then yes, his application can proceed. And, of
24 course, we will go down that three- to
25 six-month process.

1 So he does have some legal recourse. And
2 it's up to him whether he pursues that.

3 But as your pension attorney, the legal
4 basis for your decision is defensible, which is
5 why you're making it. And it's right in front
6 of you. That's why you made the decision you
7 made, an interpretation based on what the code
8 says, what that definitions say. And that's
9 your interpretation and your decision.

10 MR. SICKING: And I respectfully
11 disagree.

12 BOARD MEMBER OLIVAS: Any other
13 questions? Shall we now move to reaffirm our
14 previous decisions? Is that what --

15 MR. COLLINS: Yes. I would recommend
16 that you pass a motion approving these findings
17 of facts and conclusions with the two changes
18 that Mr. Sicking requested. It's right in
19 front of you.

20 And I guess logistically I'd like the
21 court reporter to sort of put the body of this
22 verbiage in the transcript itself.

23 So the issue is, do we wait for the chair
24 for her decision or do you proceed? It was
25 four to one. I know she voted to deny. It

1 would be -- Well, I don't want to --

2 BOARD MEMBER OLIVAS: So we need a motion
3 to accept these findings of facts as presented
4 today?

5 BOARD MEMBER WILSON: We do.

6 BOARD MEMBER OLIVAS: I make that motion
7 that we accept these findings of facts.

8 MS. GIULIANI: Do we have a second?

9 BOARD MEMBER FILKOWSKI: I'll second.

10 BOARD MEMBER OLIVAS: All those in
11 favor --

12 MS. GIULIANI: Roll call. Ernest Olivas?

13 BOARD MEMBER OLIVAS: Affirm.

14 MS. GIULIANI: Jim Wilson?

15 BOARD MEMBER WILSON: Yes.

16 MS. GIULIANI: Joe Filkowski?

17 BOARD MEMBER FILKOWSKI: Yes.

18 MS. GIULIANI: And Steven Arnst?

19 BOARD MEMBER ARNST: No.

20 BOARD MEMBER OLIVAS: Is there further
21 discussion on this?

22 MR. COLLINS: The only thing, some
23 housekeeping, I want to make sure that the
24 record has everything it needs just in the
25 event that if he wants to go to circuit court,

1 I do want to make sure that the judge has all
2 the records. So there are I think 16 exhibits
3 thus far from the last meeting. And I'd like
4 to add --

5 MR. SICKING: Well, technically in court
6 it's included as an appendix, so we're going to
7 include anything that --

8 MR. COLLINS: Yes. But I do want to
9 make --

10 MR. SICKING: I don't object to --

11 MR. COLLINS: Yes. So at the last
12 meeting we presented 16 exhibits. I wanted to
13 add three more exhibits just for the record.

14 So Exhibit 17 would be the transcript of
15 last month's hearing. That should be in the
16 record for the judge to take a look at.

17 Exhibit 18 would be your decision last
18 month, which I typed up. That's called the
19 amended non-final order. That's Exhibit 18.

20 And Exhibit 19 would be the notice of
21 this hearing that we sent Mr. Sicking back in
22 March 11th. So there would be 19 exhibits in
23 all, the 16 exhibits that you've already
24 entered into the record, and three more
25 exhibits.

1 MS. GIULIANI: Am I allowed to say
2 something?

3 MR. COLLINS: Sure.

4 MS. GIULIANI: Okay. I don't know if
5 maybe you're not understanding. He did apply,
6 but his application was denied because he
7 wasn't elidible. But he did apply. He filled
8 out an application. But I think you're
9 thinking that we didn't allow him to apply. We
10 did. He applied for the disability. He's not
11 elidible for it.

12 BOARD MEMBER ARNST: The board has made a
13 determination just --

14 MS. GIULIANI: They denied his
15 application because he's not elidible. But he
16 did apply. He applied.

17 BOARD MEMBER ARNST: This is the first
18 time I've heard of this.

19 MS. GIULIANI: The reason I'm saying this
20 is because when he submitted the initial
21 application, it was handwritten and he was
22 saying, you know, see my personnel file or
23 whatever. So the attorney reviewed it and said
24 he has to be more explicit when he completes
25 the application. So then he gave us like some

1 things that were wrong with it. But he did
2 apply. We brought the application to the
3 meeting.

4 BOARD MEMBER ARNST: I wasn't here
5 obviously.

6 MS. GIULIANI: Right.

7 MR. COLLINS: But we are talking
8 semantics because, yes, he filled out a piece
9 of paper and he sent it to the board. But you
10 didn't --

11 MR. SICKING: Wouldn't accept it.

12 MS. GIULIANI: But he did apply.

13 BOARD MEMBER ARNST: Who determines
14 whether we're going to have a hearing, whether
15 it's under --

16 MS. GIULIANI: I guess what I'm saying
17 is, when the board denied his application is
18 when Mr. Sicking wanted to have another
19 hearing. So that the board, you know -- That's
20 how I -- Is that correct?

21 MR. SICKING: The vice-chairman stated it
22 correctly. This is not as to his entitlement.
23 This is just whether -- You stated it
24 correctly. It's whether you will accept his
25 application. That's all it is. It's strange,

1 but I've never seen it before.

2 I have a question about Robert's Rules of
3 Order, if I may. I don't want anything -- I'm
4 not trying to be picky. But I believe that
5 when the roll is called is, it's called -- you
6 should not call the person who made the motion
7 first. It should be the others. The person
8 who makes the motion should not vote first.
9 That's Robert's Rules of Order. But we did
10 that, unfortunately.

11 MS. GIULIANI: I just went by
12 chair-person and --

13 BOARD MEMBER ARNST: Actually, the way it
14 works is the chair always votes last.

15 MS. GIULIANI: That's what I thought.

16 BOARD MEMBER ARNST: The chair always
17 votes last --

18 MS. GIULIANI: That's what I thought.

19 BOARD MEMBER ARNST: -- whoever the chair
20 is.

21 MS. GIULIANI: Yeah. That's what I
22 thought.

23 MR. COLLINS: According to your operating
24 rules it's a guide. Robert's Rules is never
25 archaic and there's things that you just don't

1 even do.

2 In any event, I don't want to belabor any
3 of these issues.

4 So final housekeeping, I'd like the board
5 to accept the three additional exhibits into
6 the record. And that's 17, 18, and 19. That's
7 the transcript, that's the amended non-final
8 order that you did last month, and that's the
9 notice to him that this hearing was happening
10 today.

11 MR. SICKING: So the transcript from last
12 month being the transcript --

13 BOARD MEMBER OLIVAS: So can we accept
14 that without objection or do you actually
15 need --

16 MR. COLLINS: I'd like to you pass a
17 motion.

18 BOARD MEMBER OLIVAS: Is there a motion
19 to accept the three addendums requested by the
20 attorney?

21 BOARD MEMBER WILSON: I'll make a motion
22 to accept the three addendums presented by the
23 attorney.

24 BOARD MEMBER OLIVAS: Is there a second?

25 BOARD MEMBER FILKOWSKI: I'll second.

1 MS. GIULIANI: Okay. Roll call. Ernest
2 Olivas?

3 BOARD MEMBER OLIVAS: Yes.

4 MS. GIULIANI: It's going to go by rank.
5 Jim Wilson?

6 BOARD MEMBER WILSON: Yes.

7 MS. GIULIANI: Joe Filkowski?

8 BOARD MEMBER FILKOWSKI: Yes.

9 MS. GIULIANI: Steve Arnst?

10 BOARD MEMBER ARNST: Yes.

11 MS. GIULIANI: Okay.

12 MR. COLLINS: Anything else, Mr. Sicking?

13 Did you have anything final to add? What will
14 happen from this point --

15 MR. SICKING: We'll see you in court.

16 MR. COLLINS: -- the transcript will be
17 presented. We will present you the final
18 version of the final order. And I guess you
19 can do what you want with it.

20 MR. SICKING: Yes. See you in court.

21 MR. COLLINS: Okay.

22 MS. GIULIANI: Do you want me to call
23 Sheryl? Do we need her here?

24 BOARD MEMBER OLIVAS: You might as well
25 call. We don't want her to show up.

1 Is there a motion --

2 BOARD MEMBER WILSON: Motion to adjourn.

3 BOARD MEMBER OLIVAS: Second?

4 BOARD MEMBER FILKOWSKI: Second.

5 MS. GIULIANI: We have a motion and a
6 second to adjourn.

7 Ernest Olives?

8 BOARD MEMBER OLIVAS: Yes.

9 MS. GIULIANI: Jim Wilson?

10 BOARD MEMBER WILSON: Yes.

11 MS. GIULIANI: Joe Filkowski?

12 BOARD MEMBER FILKOWSKI: Yes.

13 MS. GIULIANI: And Steve Arnst?

14 BOARD MEMBER ARNST: Yes.

15 (Hearing concluded at 3:37 p.m.)

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CERTIFICATE

STATE OF FLORIDA)

COUNTY OF BROWARD)

I, Nancy S. Johnson, professional reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings, and that the transcript is a true record of my transcription.

DATED at Fort Lauderdale, Florida this 12th day of April, 2022.

Nancy S. Johnson
Notary Public, State of Florida
Commission No. HH244197
My Commission Expires: 4/2/2026