

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CITY OF HALLANDALE BEACH,

CASE NO. 18-019266

Plaintiff,

v.

HALLANDALE BEACH POLICE OFFICER'S
& FIREFIGHTER'S PERSONNEL
RETIREMENT TRUST, and BOARD OF
TRUSTEES FOR THE HALLANDALE
BEACH POLICE OFFICER'S &
FIREFIGHTER'S PERSONNEL
RETIREMENT TRUST,

Defendants.

SETTLEMENT STIPULATION AND ORDER APPROVING SETTLEMENT

WHEREAS, The City of Hallandale Beach ("City") is the sponsor of a defined benefit pension plan for its police officers and firefighters, known as the Hallandale Beach Police Officer's & Firefighter's Personnel Retirement Trust (the "Trust"), which is administered by the Board of Trustees for the Hallandale Beach Police Officer's & Firefighter's Personnel Retirement Trust (the "Board"); and

WHEREAS, in 2013, the City negotiated with, and later entered into, collective bargaining agreements with its police and fire unions (hereinafter, the "CBAs" or the "Agreements"), which memorialized agreements between the City and its police and fire unions to various changes to the Trust; and

WHEREAS, on November 20, 2013, the City adopted Ordinance No. 2013-19, which codified the collectively agreed-upon pension changes set forth within the CBAs; and

WHEREAS, Section 6.14 of Ordinance No. 2013-19, sets forth that "in no case shall benefits accrued under the Police Tier One members be less than benefits accrued by such members as of March 20, 2013 and in no case shall benefits accrued under this Plan for Fire Tier One members be less than benefits accrued by such members as of August 7, 2013"; and

WHEREAS, Section 6.14 of Ordinance No. 2013-19 further provides that police and fire members of the Plan "may elect to receive their respective ... benefit accrual [as of the date of the amendment] and paid according to the terms and conditions applicable to that accrued benefit instead of benefits accrued under the Plan as amended herein;" and

WHEREAS, on January 30, 2017, the Board, through counsel, sent a letter to representatives of the City, which stated, “[a]t this month’s Board meeting several plan members suggested their accrued benefits were impaired by Ordinance 2013-09.” That letter, further stated that “[t]he Board does not propose to entertain this matter until after the parties have had an opportunity to address these concerns”; and

WHEREAS, by letters dated April 3, 2017 counsel for the Board advised the Board that Ordinance No. 2013-19 may impermissibly impair constitutionally protected accrued benefits and stated that, “to the extent that Ordinance No. 2013-19 caps benefits tied to service performed prior to its effective date, the Board should consider working with the Plan actuary to insulate and protect accrued benefits, using a bifurcated benefit structure” and further recommended that “steps be taken to bifurcate benefits earned prior to the applicable effective date (March 20, 2013 for police and August 7 for firefighters).” To this end, counsel for the Board stated that based upon constitutional concerns “the prorated portion of a member’s COLA benefit that is tied to service performed prior to the applicable effective date should not be limited to eight COLA distributions (or the \$95,000 cap).” On November 30, 2017, the Board’s counsel issued another letter, in which it recommended to the Board that the methodology for calculating benefits as set forth in Ordinance 2013-19 implicated constitutionally protected accrued rights of members. On August 16, 2017 and March 2, 2018, the Board’s counsel issued opinions concerning the eligibility of members to purchase enhanced service credit (“AAS credit”) and the procedure for processing claims for AAS credit based upon principles of estoppel. This advice provided to the Board by its counsel shall collectively be referred to herein as the “Legal Opinions”; and

WHEREAS, on December 4, 2017, the Board voted to adopt the Legal Opinions and interpret Ordinance 2013-19 consistent therewith and directed the actuaries to calculate pension benefits based on a bifurcated methodology, applying the cap only to a portion of the members’ benefits; and

WHEREAS, the City disagreed with the Legal Opinions and, on July 7, 2017 and May 25, 2018, the City sent the Board letters advising that the City believes the Board’s actions were inconsistent with the plain language of Ordinance No. 2013-19, and that, absent approval by the City Commission, the Board may not modify the plan; and

WHEREAS, the additional cost to the Trust of the Legal Opinions is reflected in the Trust actuarial valuations of October 1, 2017 (page 6 - \$9.9 million increase in liabilities) and October 1, 2018 (page 14 - \$1.03 million increase in liabilities), for a total additional cost of more than \$11 million; and

WHEREAS, on August 13, 2018, the City filed the instant action against the Board and Trust challenging the Board’s adoption of the Legal Opinions; and

WHEREAS, the City is currently negotiating revisions to the Trust and the ordinance containing its terms with the collective bargaining units representing Trust members; and

WHEREAS, it is the desire of City, Board, and Trust to comprehensively resolve all of the issues referenced above and all of the issues which were raised, or could have been raised in the instant lawsuit, so as to comprehensively and finally settle all claims; and

WHEREAS, the Board has been advised that the City and the labor unions representing the majority of members of the Plan have reached an agreement requesting the Board to withdraw its earlier legal opinions relating to the maximum pension and the cost of living provisions of the Plan; and,

WHEREAS, the Pension Board recently decided that the determination of any relief to the 20 claimants concerning application of the AAS provisions of the Plan shall be determined by an administrative law judge appointed by the Florida Division of Administrative Hearings; and

WHEREAS, the parties hereto have affixed their signatures to this settlement and by doing so have indicated the truth and accuracy of the representations set forth herein, their agreement to the terms hereof, their intent to be bound hereby and their authority to execute and implement this settlement and all terms contained herein;

NOW THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

- 1) The above WHEREAS clauses are true and correct and are affirmed by the parties.
- 2) The Board hereby accepts the request of the City and the labor organizations to withdraw the Legal Opinions identified above and directs the actuary and administrator to apply the Trust as written, and as may be amended by ordinance.
- 3) The Board's agreement to withdraw the Legal Opinions shall not apply to plan members who, as of the date of this Agreement, have: (a) entered DROP or retired; or (b) are eligible for normal retirement and file for retirement by January 1, 2020 ("Grandfathered Members"). A list of the Grandfathered Members to which this provision applies is to be approved by the parties separately and attached hereto as Appendix A.
- 4) The list of claimants under the AAS provisions of the Plan, to be approved by the parties separately and attached as Appendix B, shall have their rights determined by an administrative law judge appointed by the Florida Division of Administrative Hearings. The Parties agree that the Administrative Law Judge shall apply and determine the AAS claims in accordance with the standards for estoppel claims as described in Appendix C to this agreement. The Parties further agree that the City shall have standing as a party to oppose any AAS claim to be determined by the Division of Administrative Hearings.
- 5) In the event legal action is initiated against the Board or any of its advisors as a result of the withdrawal of the Legal Opinions, the City shall indemnify the Board and its advisors from any such claims and shall be responsible for the payment of any adverse judgment, including attorneys' fees and costs.

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- 6) The Board shall not amend the provisions of the Plan without the approval of the Hallandale Beach City Commission. The Board of Trustees will administer the pension plan in accordance with the pension ordinance. In the event the Board applies the Plan document in a manner which the City believes is not contemplated by the Ordinance, the City may seek expedited resolution of the dispute position under the reserved jurisdiction provisions of Paragraph 10 of this agreement. Nothing in this Agreement shall otherwise diminish or impair the authority of the Board of Trustees to exercise the exclusive authority of the Board to administer the Plan. The sole and exclusive administration of, and the responsibilities for, the proper operation of the Plan and for making effective the provisions of Florida Statutes, Chapters 112, 175 and 185 and the Hallandale Beach City Code shall be vested in the Board of Trustees.
- 7) The Board shall provide the City written notice of any action it intends to take that may be reasonably expected to increase the City's contribution thirty (30) days prior to the effective date of any such action. Such notice shall specifically describe the action, the reason for the action and an estimate from the actuary of the anticipated cost. This notice requirement does not apply to 1) board action approving a change to the actuarial assumptions mandated by statute or regulation, 2) investment-related board action, 3) adoption of an assumed rate of return, or 4) board action affecting only one member.
- 8) With entry of this Stipulation by the Court, the City shall dismiss the instant lawsuit, with prejudice, with each party to bear its own attorneys' fees and costs.
- 9) Should either Party breach its obligations under this Agreement, the non-breaching Party shall be entitled to reasonable attorney's fees and costs to enforce the provisions of this Agreement.
- 10) The parties agree that the Court should retain jurisdiction to enforce this Settlement Agreement and all terms herein.

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Witness:

James Bence
Name: James Bence

HALLANDALE BEACH POLICE
OFFICER'S & FIREFIGHTER'S
PERSONNEL RETIREMENT TRUST

By: Alan Miller
Name: ALAN MILLER
Title: CHAIR

Witness:

James Bence
Name: James Bence

BOARD OF TRUSTEES FOR THE
HALLANDALE BEACH POLICE
OFFICER'S & FIREFIGHTER'S
PERSONNEL RETIREMENT TRUST

By: Anthony S. Adelson
Name: Anthony S. Adelson
Title: Secretary

Attest:

Name: _____
Title: _____

CITY OF HALLANDALE BEACH,
FLORIDA, a Florida municipal corporation

By: _____
Name: _____
Title: _____

Approved as to Form and Legal Sufficiency:

Jennifer Merino, City Attorney

Now therefore, based upon the above agreement between the parties, and this Court being fully advised in the premises and finding that the proposed agreement is a fair and lawful settlement, it is ORDERED and ADJUDGED as follows:

1. The settlement as set forth above (the Settlement Agreement) is hereby approved by the Court and shall be binding on all the parties hereto.
2. This Court shall retain jurisdiction to enforce the terms hereof and issue all orders and take all actions required to enforce said terms.

Circuit Court Judge