

**KLAUSNER, KAUFMAN, JENSEN & LEVINSON**

**19<sup>TH</sup> ANNUAL CLIENT CONFERENCE**

**HYATT PIER 66  
FORT LAUDERDALE, FLORIDA**

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**WHAT WERE THEY THINKING?**



**NOW WE FIND OUT!**

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**1. Texas Appeals Court Curtails DROP Benefits.**

A number of current and retired Dallas Police Officers sued the pension fund alleging that certain recent plan amendments violated the pension clause of the Texas Constitution. Specifically, the amendments called for the reduction of the future interest rate on DROP accounts for participants currently in the Plan, including those members already in DROP or whose accounts remained on deposit after separating from service. After a bench (non-jury) trial, the Court determined that the plan amendments did not violate the Texas Constitution. Looking to a case from the U.S. Court of Appeals for the 5<sup>th</sup> Circuit, the state appeals court ultimately concluded that benefit protections only extended to benefits actually earned by a vested member. Additionally, the protection does not extend to the calculation of benefits. With its decision, the Court “stayed true to Texas’ long-held flexible approach permitting municipalities to revise their pension plans in light of changing economic conditions.”

*Eddington v. Dallas Police and Fire Pension System, 2016 WL 7217239 (Tex. App. December 13, 2016)*

**2. Florida Appeals Court Approves DROP Delay.**

Four police officers employed by the City of Hollywood, Florida, as a result of their age, were eligible to enter DROP but wished to defer entry to maximize their monthly retirement benefit. Before entry, in an effort to improve financial problems, the City passed an ordinance that imposed a deadline for entry into the program. The officers brought suit alleging a violation of their contract rights and a taking of private property without just compensation. The trial court ruled in favor of the officers. On appeal, the Appeals Court had to determine whether the officers had a vested interest in delayed entry into DROP and if so, whether the City had a compelling interest in amending the plan. With guidance from a 2013 Florida Supreme Court case which lowered benefits in the Florida Retirement System, the court found, “a prospective change to retirement benefits does not operate as an impairment of a contract

or an unconstitutional taking.” The Court reasoned that the ordinance, “permitted officers already eligible to enter DROP to do so and to enjoy the full benefits of DROP, albeit with an imposed deadline for entry.” The Appellate Court reversed and remanded to the trial court to determine whether, under the terms of the DROP plan, the officers’ DROP application permits them to enter as of the deadline, withdraw their applications or whether their attempt at entry after the deadline renders their applications void.

*City of Hollywood, Florida v. Lyle Bien, Norris Redding, Derrick Austin, and Mark Ruggles, 2016 WL 7733001 (Fla. 4<sup>th</sup> DCA, December 14, 2016)*

**3. Texas Court Holds Delegation of Management to Pension Board Not Unconstitutional.**

The City of Houston, faced with a burgeoning debt, challenged the constitutionality of the statute creating its Firefighter Retirement System. The City contended that delegating management to the board of trustees to, among other things, hire the actuary and adopt contribution rates and actuarial assumptions was unconstitutional. The Court noted that the legislature had broad authority to establish retirement plans and to empower their management by boards of trustees, which were public and not private bodies. The Court noted that empowering the Board to retain an actuary and to act on the recommendations was not tantamount to control of the actuary nor was it a “rogue” operation. The Court found that the statutory regime governing that plan and all similar plans was reasonable and was not unconstitutionally vague.

*City of Houston v. Houston Firefighters Relief and Retirement Fund, 2016 WL 47055928 (Tex. App. 9/8/2016)*

**4. Unused Vacation Days Not Considered a Contractual Benefit.**

A group of employees who are participants in the Illinois Municipal Retirement Fund sued the City of Springfield after it passed an amendment that repealed the opportunity to cash in unused vacations days before retirement. The ordinance was passed on July 21, 2015 in an effort to curb pension spiking. On August 19, 2015, the Fund Director sent a letter to all future retirees informing them of the change and that the opportunity to pension spike by cashing in unused vacation days would end on May 31, 2016. The plaintiffs were a class of individuals who were not yet ready to retire but didn't want to lose out on this opportunity. The parties filed cross-motions for summary judgment and the defendant's motion was granted. Plaintiffs appealed the decision arguing that this ordinance violates the pension protection clause. In affirming the decision of the trial court, the Appeals Court reasoned that the vacation buyback provision was not a benefit of membership in the Fund, but rather a benefit of being employed by the defendant. The change was made to the terms and conditions of employment, not to the Pension Code. This change only resulted in an indirect and incidental effect on the amount of retirement benefits and therefore did not violate the pension protection clause.

*Pisani v. City of Springfield*, 2017 IL App (4<sup>th</sup>) 160417

## **5. Judge Forfeits Pension After Retirement.**

A Magisterial District Judge retired with over 38 years of service, including military time. Subsequent to his retirement, Judge Miller was asked and agreed to serve as a Senior Magisterial District Judge. Pursuant to the Pennsylvania Rules of Judicial Administration, once Miller's application was approved with the Administrative Office he would be eligible for assignment. Miller sat on the Philadelphia traffic court for 177 days between 2006 - 2008 and was paid per diem for his work. Miller continued to be appointed from 2009-2012. In December 2011, while at the Lima Regional Court conducting business associated with his position with the Delaware County District Justice Association, a Court Clerk asked Miller if he knew anyone that could assist her with her son's traffic citation. Miller sent the citation and a note reading "please advise" to the Director of Courtroom Operations. The Director

informed Miller that the citation would be cancelled and that the Clerk's son did not have to appear because "it was dismissed."

On January 31, 2013, the U.S. Attorney's Office filed a Criminal Information against Miller charging him with one count of mail fraud and aiding and abetting. The Information alleged that Miller had exerted extrajudicial influence over the handling of the traffic citation. Miller pled guilty to one count of voter fraud in February of 2013 and thereafter received a letter from the State Employees Retirement System (SERS) notifying him that his pension would be forfeited and he would receive a refund of his contributions. Miller appealed the Board's decision and a hearing was held in 2014. In 2015, the hearing officer denied Miller's appeal and affirmed the forfeiture. The order was adopted by the Board and this appeal followed. Miller argued that because he was not a judge or public official at the time of his misconduct and guilty plea, his pension should not have been forfeited under Act 140. The court, in affirming the forfeiture, argued, "Each Supreme Court appointment of Miller assigning him as a Senior Magisterial District Judge was a renewal of the agreement to perform the term of public service without violating Act 140; an agreement which encompasses all that has gone before it." Because Miller's assignments continued until December 31, 2012, he was considered a judge and public official at the time of his misconduct.

*Miller v. State Employees Retirement System*, 137 A.3d 674 (Pennsylvania, 2016)

**6. Hostage Negotiator Suffering From PTSD Awarded Accidental Disability Retirement Benefits.**

Board of Trustees determined that a detective and hostage negotiator, Gerardo Martinez, was not entitled to accidental disability retirement benefits after witnessing the fatal shooting and display of the corpse of a suspect with whom Martinez had negotiated for 12 hours during a crisis situation. The Board concluded that the incident was not "undesigned and unexpected" for someone trained to handle hostage situations. At Martinez's request, a hearing was held before an Administrative Law Judge who recommended

accidental disability benefits based upon the testimony of Martinez's expert witness. The witness had experienced over 3,500 hostage incidents and explained how a reasonable person would suffer a disabling mental condition as a result of this incident. The Board rejected the ALJ's recommendation, and this appeal followed. Ultimately, the Court determined the Board erred in their decision not to award accidental disability benefits. Martinez had formed a bond with the suspect after negotiating with him for 12 hours and was not informed by SWAT team members before they entered the suspect's home. The witnessing of such a traumatic event satisfied the undesigned and unexpected criteria. The Board's argument that training could have prepared Martinez for this specific situation was not supported by the record.

*Martinez v. Board of Trustees, Police and Firemen's Retirement System*, 2016 WL 7233999 (N.J. Super. 2016)

**7. Village Did Not Have A Due Process Right to Intervene in Police Pension Board's Process for Reviewing Disability Application.**

The Village of Vernon Hills filed a petition to intervene in the Pension Board's disability application proceeding for Officer Briscoe. Briscoe, a watch commander, was injured while responding to a call of a home invasion in progress. The Officer injured his left knee and back and subsequently underwent surgery to repair both. After his injuries, Briscoe never returned to full duty. After Briscoe had submitted his application for a line-of-duty disability pension, the Village petitioned to intervene as they had a "significant financial interest" in the outcome. Briscoe voiced his concerns that interference from the Village could affect a fair application process. The Board denied the Village's petition to intervene. After sending Briscoe to a number of independent medical examinations and hearing his testimony, the Board concluded that Briscoe's injuries to his left knee and back caused him to become totally and permanently disabled. The Village filed an action seeking review of the Board's decision. The trial court affirmed the Board's ruling, stating, "Pension Boards were statutorily empowered to verify an applicant's disability and right to receive benefits, and the Board was ultimately responsible for administering the Fund and designating beneficiaries." While the court noted that the Village did have a financial interest in the outcome of

the hearing, the Village's desire to turn the disability application process into an adversarial process directly contradicted the function of the Board's hearing.

*Village of Vernon Hills v. Vernon Hills Police Pension Fund*, 2017 IL App (2d) 160308-U

**IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS PRESENTATION, CONTACT KLAUSNER, KAUFMAN, JENSEN & LEVINSON, 7080 NW 4<sup>th</sup> STREET, PLANTATION, FLORIDA 33317, (954) 916-1202, FAX (954) 916-1232, WEBSITE, [www.robertdklausner.com](http://www.robertdklausner.com).**