

## **Item 3**

### **Fred Zieglar Petition**

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**Re: Fred Ziegler, Disability Retiree, Under the City of Delray Beach Police and Firefighters Pension Fund**

1 message

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**Mark Berkowitz** <labor@markjberkowitz.com>

Mon, Jan 17, 2022 at 6:29 PM

To: castronovo@mydekraybeach.com, zigesti1@aol.com, larry@judgelarryseidlin.com, Mark Berkowitz &lt;markberk57@gmail.com&gt;

Lisa Castronovo  
Plan Administrator  
City of Delray Beach Police and Firefighters Pension Fund

**Re: Status of Enhancement Benefit for  
Fred Ziegler  
[For the Purpose of Settlement]**

Dear Ms. Castronovo:

I had previously written to Janice Rustin, the former counsel for the City of Delray Beach Police and Firefighters Pension Fund. Ms. Rustin has informed me that her office is no longer counsel for the Pension Fund. Therefore, I am forwarding my prior letter, to Ms. Rustin, to your office, for further consideration.

Thank you for your courtesy and consideration.

Respectfully submitted,

**Mark J. Berkowitz**

Attorney, Labor and Employment Law at Mark J. Berkowitz, P.A.

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**FredZieglerLetter.docx**

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**Via E-mail: [jrustin@llw-law.com](mailto:jrustin@llw-law.com)**  
Ms. Janice D. Rustin  
Lewis, Longman & Walker, P.A.  
360 S. Rosemary Avenue  
Suite 1100  
West Palm Beach, Florida 33401

January 14, 2022

**Re: Retirement Benefit Enhancement**  
**City of Delray Beach Police & Firefighters**  
**Retirement System**  
**Disability Retirement Beneficiary—Fred Ziegler**  
**Confidential Settlement Communication**

Dear Ms. Rustin:

My office has been retained to represent Mr. Fred Ziegler, who is a disability retiree, and a beneficiary, pursuant to the City of Delray Beach Police and Firefighters' Retirement System. It is my understanding that the most recent interpretation of Plan Section 33.689, concluded that for disability retiree beneficiaries, retiring prior to 1993, such as Mr. Ziegler, those beneficiaries are entitled to receive a benefits enhancement, under the terms of the Plan. Mr. Ziegler was only recently informed of this new development, regarding the applicability of a benefits enhancement, in his case.



It appears that for benefits adjustments, which should have been made prior to July 6, 2015, the retirement benefit enhancement should reflect a percentage of the beneficiary's benefits, which is based on the premium tax revenues, as set forth in that year's actuarial valuation report. In addition, the adjustment amount should also include an interest rate, as determined by the Police and Firefighters Retirement Board of Trustees. Apparently, according to the Plan Documents, at section 33.62(G)(1), references an interest rate of either 3% or 5%, depending on the retiree beneficiary member's continuing years of service.

Therefore, at this time, we are respectfully requesting that the Plan Actuary promptly calculate the enhanced benefit, for which Mr. Ziegler is entitled to receive, since he indeed retired prior to the effective date of the 1999 ordinance. After the applicable actuarial calculation is made, we would like to follow up and place the applicable enhancement calculation before the Delray Beach Police and Firefighters Retirement Board of Trustees, for their consideration and final approval, at the earliest possible date.

Thank you for your courtesy and consideration.

Respectfully submitted,

/s/ Mark J. Berkowitz  
Mark J. Berkowitz, on behalf of  
Fred Ziegler

cc: Fred Ziegler  
Via e-mail



**CITY OF DELRAY BEACH  
BOARD OF TRUSTEES  
POLICE AND FIREFIGHTERS' RETIREMENT SYSTEM**

**FRED ZIEGLAR,  
Petitioner,**

**vs.**

**BOARD OF TRUSTEES  
CITY OF DELRAY BEACH,  
POLICE AND FIREFIGHTERS'  
RETIREMENT SYSTEM,  
Respondent.**

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**PETITION FOR DISABILITY RETIREMENT BENEFITS ENHANCEMENT,  
PURSUANT TO THE APPLICABLE PLAN**

Petitioner, FRED ZIEGLAR, by his undersigned counsel, hereby files this Petition for Disability Retirement Benefits Enhancement, Pursuant to the Applicable Plan Documents, before the Board of Trustees, City of Delray Beach, Police and Firefighters' Retirement System; and he further seeks a declaration of his rights and benefits, as a retirement disability annuitant, under the terms and provisions of the applicable Plan documents, under the City of Delray Beach, Police and Firefighters' Retirement System. In support of this Petition for Disability Retirement Benefits Enhancement, the Petitioner, FRED ZIEGLAR, states as follows:

1. Chapters 175 and 185, Florida Statutes, provide for uniform retirement systems for both firefighters and municipal police officers, respectively.
2. Petitioner, FRED ZIEGLAR ("ZIEGLAR"), is a disability retirement annuitant, under the City of Delray Beach Police and Firefighters' Retirement System (hereinafter, referred to



as, the “Plan”); and he retired prior to the effective date of the 1999, Plan Section 33.689 amendment; and after September 30, 1993.

3. In 1993, the City of Delray Beach (“CITY”), its police and firefighter unions, and the Board of Trustees for the Plan, reached an agreement, concerning a “retirement benefit enhancement,” and the use of premium tax revenues, received by the CITY.
4. The CITY agreed to use premium tax revenue “received pursuant to chapters 175 and 185 of the Florida Statutes,” to provide a 1% annual increase in pension benefits, to members retiring after September 30, 1993.
5. Pursuant to the terms of the 1993 Agreement, the CITY amended the Plan and codified the retirement benefit enhancement, in CITY Ordinance No. 85-93.
6. This benefit increase would be provided “regardless of the amount of premium tax revenues received,” and the CITY further agreed that the premium tax revenue it receives each year, in excess of the 1993 amount, would be used to increase the 1% annual benefit enhancement, in increments of .1% to a maximum total annual benefit increase of 4%.
7. On May 15, 2020, the former counsel to the Board of Trustees, City of Delray Beach, Police and Firefighters’ Retirement System, Janice Rustin, issued an Opinion Memorandum,<sup>1</sup> on the applicability of the benefit retirement enhancement, for disability retirement annuitants, Ms. Rustin concluded that disability retirement annuitants, who retired between 1993 and 1999, are entitled to the enhanced retirement benefit and in support of this conclusion, she opined as follows:

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<sup>1</sup> Counsel’s Opinion Letter is attached hereto, as **EXHIBIT A**.



. . . at its meeting on September 22, 1999, the Plan Board of Trustees interpreted the relevant section of Ordinance 29-99 to mean that all members who retired prior to the effective date of the 1999 ordinance, including disability retirees, were eligible for the benefits enhancement. Although the minutes do not describe the full details of the Board's motion, the memo from the Plan Administrator to the City clarifies that the Board's motion included beneficiaries of disability retirees. See Memo dated June 16, 2000.

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. . . Based upon the Plan documents stated above, the beneficiaries of the two disability retirees are entitled to the retirement benefit enhancement adjustment that should have been paid to them on the anniversary of the disability retirees' first benefit payment. The adjustment should be based on the benefits received by the beneficiary at the end of the preceding year. See Ord. 29-99. The adjustment percentage should be equal to the benefit enhancement percentage in effect on the date they were due to receive it:

For adjustments that should have been made on or after July 7, 2015, the retirement benefit enhancement is 1% of the member's benefits.

For adjustments that should have been made prior to July 6, 2015, the retirement benefit enhancement is a percentage of the member's benefits that is based on the annual premium tax revenue as reflected in that year's actuarial valuation report

The adjustment amount should also include interest at a rate determined by the Board. The Plan does not address the rate of interest for a payment correction of this nature, but it does provide that interest paid to members for a refund of their contributions is either 3% or 5% depending on the member's years of continuing service, See Section 33.62 (G)(1). The Board may want to consider this section when determining the rate of interest to apply to an adjustment of a retirement benefit enhancement.

8. On January 14, 2022, undersigned counsel for the Petitioner contacted the Plan Administrator, Mx. Lisa Castronovo, regarding the pending pension enhancement issue, pertaining to the Petitioner, in an effort to secure the pension enhancement benefits for the Petitioner.<sup>2</sup> However, there has been no response from the Plan Administrator.

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<sup>2</sup> The e-mail communication to Ms. Castronovo, is attached hereto, as **EXHIBIT B**.



9. Board of Trustees, City of Delray Beach, Police and Firefighters' Retirement System, Petitioner seeks the placement of his Petition for Disability Benefits Enhancement on the Agenda, before the Board of Trustees, City of Delray Beach, Police and Firefighters' Retirement System, on the earliest possible date for due and proper consideration.

**WHEREFORE**, the Petitioner, herein, FRED ZIEGLAR, respectfully requests that the Board of Trustees, City of Delray Beach, Police and Firefighters' Retirement System, grant his Petition for Disability Retirement Benefits Enhancement, Pursuant to the Applicable Plan Documents, recalculate his disability pension retirement benefits, based upon the prior conduct of the Board, its prior course of dealings, and the Opinion of Prior Board Counsel, and grant further applicable relief, including applicable reasonable costs and interest.

Respectfully submitted,

Mark J. Berkowitz, P.A.  
Attorney for Petitioner  
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Fla. Bar No. 369391

/s/ Mark J. Berkowitz  
By: Mark J. Berkowitz

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent by e-mail and by certified mail on this 8<sup>th</sup> day of February, 2022, to Lisa Castronovo, Plan Administrator, City of Delray Beach, Police and Firefighters' Retirement System, 100 NW 1<sup>st</sup> Avenue, Delray Beach, Florida 33444.

/s/ Mark J. Berkowitz

By: Mark J. Berkowitz



**ATTORNEY OPINION LETTER**



Reply To: West Palm Beach office

**MEMORANDUM**

TO: Board of Trustees, Police Officers Retirement System

FROM: Janice Rustin, Esq.

DATE: May 15, 2020

SUBJECT: Retirement benefit enhancement for beneficiaries of disability retirees

At the February 25, 2020 Board meeting, a question was raised as to whether the beneficiaries of two disability retirees who retired between 1993 and 1999 are entitled to a retirement benefit enhancement. Upon review of the history of the Plan and the minutes from past Board meetings, it is our opinion that these beneficiaries are entitled to the retirement benefit enhancement, and that they should have had their retirement benefit adjusted annually on the anniversary of the disability retiree's first benefit payment. The adjustment should be equal to the benefit enhancement percentage that was in effect at the date they were due to receive it and should be compounded annually.

**Background**

On August 17, 1999, Plan Section 33.689 was amended to expressly state that disability retirees and their beneficiaries are not eligible to receive a retirement benefit enhancement. See Ord 29-99. However, at its meeting on September 22, 1999, the Plan Board of Trustees interpreted the relevant section of Ordinance 29-99 to mean that all members who retired prior to the effective date of the 1999 ordinance, including disability retirees, were eligible for the benefit enhancement. Although the minutes do not describe the full details of the Board's motion, the memo from the Plan administrator to City clarifies that the Board's motion included beneficiaries of disability retirees. See Memo dated June 16, 2000.

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In 2016, the Plan section defining the amount of the retirement benefit enhancement was revised to limit the adjustment to 1% of benefits. This change became effective July 7, 2015. Prior to that date, the annual benefit amount was tied to the annual premium tax revenues, but not to exceed 4%. This amount was reflected in the annual actuarial valuation report.

Calculating the amount due

Based on the Plan documents stated above, the beneficiaries of the two disability retirees are entitled to the retirement benefit enhancement adjustment that should have been paid to them on the anniversary of the disability retirees' first benefit payment. The adjustment should be based on the benefits received by the beneficiary at the end of the preceding plan year. See Ord. 29-99. The adjustment percentage should be equal to the benefit enhancement percentage in effect on the date they were due to receive it:

- For adjustments that should have been made on or after July 7, 2015, the retirement benefit enhancement is 1% of the member's benefits.
- For adjustments that should have been made prior to July 6, 2015, the retirement benefit enhancement is a percentage of the member's benefits that is based on the annual premium tax revenues as reflected in that year's actuarial valuation report.

The adjustment amount should also include interest at a rate determined by the Board. The Plan does not address the rate of interest for a payment correction of this nature, but it does provide that interest paid to members for a refund of their contributions is either 3% or 5% depending on the member's years of continuing service. See Section 33.62(G)(1). The Board may want to consider this section when determining the rate of interest to apply to an adjustment of a retirement benefit enhancement.

A copy of the Board minutes from 1999, the text of Plan Section 33.689 adopted in 1999 (and as amended in 2012 and 2015), and the June 16, 2006 memo from the Pension administrator to the City are attached to this memo for your convenience.



CITY OF DELRAY BEACH  
POLICE & FIREFIGHTERS RETIREMENT SYSTEM

MINUTES OF  
SEPTEMBER 22, 1999

MEMBERS: Off. Jeroloman, Lt. Ligouri, Jack Frysinger, Robert Levitt, Capt. Davis, Chief Wigderson, Off. Arena

Steve Cypen, Board Counsel

ABSENT: Chief Adams, Mayor Alperin

GUESTS: Joe Safford, Finance Director; Lt. Tabeek & Chief Henriques, F.D.; Al Lewis & Bob Sylvester (Retirees)

Capt. Davis, Vice Chairman, called the meeting to order at 3:05pm. A roll call was taken of members and guests.

Capt. Davis suggested that the agenda be amended to add the following: Approve DROP Disbursement to Douglas Trawick (\$215,739.53) and Alfred Damato (\$169,810.42). Approve Warrants 407 and 408. 2 memos from Finance: Grant exception for the first year of the change (adjustment date) so 1999 benefit enhancement would not be missed; and Retirement benefit enhancement applicable to current disability retirees.

Mr. Frysinger made the motion to accept the amended agenda. Mr. Levitt seconded the motion. None opposed.

1. APPROVE JUNE 23 AND AUGUST 13, 1999 MINUTES:

The minutes of the June 23, 1999 meeting were reviewed and only grammatical changes will be necessary. Mr. Frysinger made the motion to accept the minutes. Off. Jeroloman seconded the motion. None opposed.

The minutes of the August 13, 1999 meeting were reviewed and only grammatical changes will be necessary. Mr. Levitt made the motion to accept the minutes. Mr. Frysinger seconded the motion. None opposed.

2. RETIREMENT ENHANCEMENT (FIRST YEAR):

Mr. Safford stated that on September 10th. he sent a memo to Chief Adams concerning the applicability of the retirement benefit enhancement the first year of implementation where the effective date was changed from October 1st. following 25 years from date of hire; the date was changed to read anniversary date of the employees first retirement payment. He is requesting that the Board make the determination as to whether an exception should be granted for the first year of the change in the adjustment date so retirees do not miss their 1999 Retirement Benefit Enhancement. (See attached memo)

Mr. Cypen stated that at the August meeting he had made the Board aware that by changing the wording of the ordinance, as suggested by the City, there would always be someone that would be affected by not receiving their enhancement on a specific date. He stated that he requested the City Attorney add a clause that would give the Board, in the first year, the discretion that if in the event the new date unjustly affects someone the Board would have the authority to make an adjustment. The City refused and told him that



2. RETIREMENT ENHANCEMENT (FIRST YEAR): cont'd...

this change was negotiated and agreed upon by both sides. He made the Board aware that after the fact there would be nothing that they could do to remedy the problem.

Lt. Ligouri stated that the original intent was to have the benefit enhancement commence one month after the person reached the 25 anniversary date not payment anniversary.

Mr. Safford suggested that he would draft a memo to the City Attorney requesting that the Board be given the authority to prorate the retirement benefit enhancement only for those people who are retired and would have received the enhancement on October 1.

Off. Arena made a motion authorizing Mr. Safford to draft the memo to the City Attorney and present it to the Board for their approval at the October meeting. Lt. Ligouri seconded the motion. None opposed.

3. RETIREMENT ENHANCEMENT (DISABILITY RETIREES):

Mr. Safford stated that Ordinance 29-99 has eliminated any retirement benefit enhancements to disability retirees. In the backups of the ordinance which was presented to the City Commission that the change was a clarification of the 175-185 Agreement (1993). Up to the time of the passage of the ordinance, no disability retiree had ever received a benefit enhancement. The City now feels, with the passage of Ordinance 29-99 clarification of the true intent of 175-185 agreement has been made and no one has been affected because there were no eligible recipients.

Mr. Safford is requesting that the Board advise whether or not the Retirement Benefit Enhancement should be applied to those disability retirees that retired prior to the clarification provided in Ordinance 29-99.

Mr. Cypen stated that the original agreement the benefit enhancement did not apply to disability. However, when the ordinance was adopted it did not have the exclusion of disability retirees, making it applicable to everyone. The Board immediately requested that the City change the wording of the ordinance. The City's response was that pensions were no longer negotiable. Clarification is not necessary because there is nothing that is unclear.

Mr. Fryinger made the motion that on the advice of counsel the Board reaffirms that anyone who retired prior to the effective date of Ordinance 29-99, including disability retirees, not affected by the change which would otherwise prohibit disability retirees after that date from receiving the benefit enhancement. The Board has previously, on more than one occasion, brought this issue to the City's attention in order to seal the number of retirees who went out prior to the ordinance change. Off. Arena seconded the motion. Mr. Levitt opposed. Motion passes.

4. THIRD PARTY ADMINISTRATION:

Mr. Safford stated that the General Employee Pension Plan is utilizing the ICMA as a third party administrator for the DROP Plan participants. By utilizing the ICMA, a person can control his own investment, call on a daily basis and receive balance information, and the account will be under the control of the retiree.

NOT  
TRUE  
PRIOR TO  
1995  
RECD 5%  
DISABILITY  
RETIREES



4. THIRD PARTY ADMINISTRATION: cont'd...

Mr. Cypen stated that ICMA is a well known company in this field. However, the ordinance would have to be amended because presently, the ordinance states that the DROP Plan is invested in the same manner as the rest of the fund. He suggested that the Board wait for further information on the history of ICMA.

Mr. Safford again informed the Board that the problems with First Union and Genysis still exist and there seems to be no end to the monthly problems.

Mr. Safford stated that First Union is planning on making a change soon and he will keep the Board apprised of the situation. If the change has no affect on their performance, then he will make the recommendation that the process be moved in-house (Finance Department).

5. OTHER BUSINESS:

-Accept Disability Retirement Application: Sgt. William Berry (PD) & Firefighter Ronald Pangburn (FD) - Mr. Frysinger made the motion to accept the submitted applications. Chief Wigderson seconded the motion. None opposed

(Note: Mr. Pangburn submitted his application prior to the effective date (September 1st.) of Ordinance 29-99. If granted, the 75% disability would apply.)

-Approve Disbursements of DROP Account to Douglas Trawick (\$215,739.53) and Alfred Damato (169,810.42) (Warrants 405 & 406): Off. Arena made the motion to approve the disbursement and warrants. Mr. Frysinger seconded the motion. None opposed.

-Approve Warrants 404, 407 & 408: Officer Arena made the motion to approve payment of warrants. Mr. Frysinger seconded the motion. None opposed.

The meeting adjourned 4:50pm.



CITY OF DELRAY BEACH POLICE & FIREFIGHTERS RETIREMENT SYSTEM

The undersigned are the Secretary and Chairman of the Police and Firefighters Retirement System, Board of Trustees, and the information provided herein are the Minutes of the Meeting of said body for September 22, 1999, which minutes were formally approved and adopted by the Police and Firefighters Retirement System, Board of Trustees on October 20, 1999, Battalion Chief William Adams, Chairman and Officer Salvatore Arena, Secretary.

Bill Adams (acu)  
Battalion Chief William Adams, Chairman

Sal Arena (acu)  
Officer Salvatore Arena, Secretary

NOTE TO THE READER: If the minutes that you have received are not complete as indicated above, then this means that these are not the official minutes of the Police and Firefighters Retirement System, Board of Trustees. They will become official minutes only after they have been reviewed and approved, which may involve some amendments, additions or deletions to the minutes as set forth above.

COPIES TO:

Members of the Board  
City Commissioners  
City Manager, David Harden  
City Attorney, Susan Ruby

Asst. Finance Director, Melina Walinski  
Finance Department, Sherry Muchlburg  
Finance Director, Joe Safford  
Police & Fire Bulletin Boards



## CASE LAW



**Opinion** Case details

From Casetext: Smarter Legal Research

## State v. City of Delray Beach

District Court of Appeal of Florida, First District

Jul 13, 2010

40 So. 3d 835 (Fla. Dist. Ct. App. 2010)

Copy Citation

No. 1D09-2854.

July 13, 2010.

836 Appeal from the Circuit Court for Leon County, Frank Sheffield, J. \*836

Thomas E. Wright, Assistant General Counsel, Tallahassee, for Appellant, Department of Management Services, and G. "Hal" Johnson, Tallahassee, and Bonni S. Jenson, West Palm Beach, for Appellant, Police Benevolent Association.

James W. Linn and Glenn E. Thomas, of Lewis, Longman Walker, P.A., Tallahassee, for Appellee.



Red flags, copy-with-cite, case summaries, annotated statutes and more.

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**Opinion**   **Case details**

that the City's police and firefighter pension plan must comply with chapter 99-1, Laws of Florida, which amended sections 175.351(1) and 185.35(1), Florida Statutes. The issues for our review are (1) whether the Division's application of chapter 99-1 unconstitutionally impaired the rights of retired police officers receiving benefits under the City's preexisting pension plan, and (2) whether the City is a "supplemental plan municipality" exempt from 837 the minimum benefit requirement \*837 in chapter 185, Florida Statutes, pertaining to pensionable earnings calculations for police officers. We reverse the summary judgment entered in favor of the City, finding that no vested rights were impaired by the Division's application of chapter 99-1 to the Plan, and there is no evidence in the record showing the City maintains a supplemental plan.

## I. BACKGROUND AND FACTS

*A. Chapters 175 and 185, Florida Statutes; Chapter 99-1, Laws of Florida; Premium Tax Revenue; and Minimum Benefits*

Chapters 175 and 185, Florida Statutes, provide for uniform retirement systems for firefighters and municipal police officers, respectively. Both set forth standards for operating and funding pension plans for those local public safety officers. Under both chapters municipalities may elect to fund their pension plans with state-collected excise taxes imposed on property and casualty insurance premiums. But to be eligible to receive this premium tax revenue, municipal pension plans must meet certain criteria established by the Legislature.

Prior to 1999, a city opting to take advantage of the premium tax distribution scheme had to demonstrate its retirement fund(s) met the operating standards set out in sections 175.351 and 185.35, as applicable. See §§ 175.351(1), 185.35(1), Fla. Stat. (1997). If deemed by the Division to be in compliance with those standards, a city could put the premium tax revenue in its pension fund for the exclusive use of





**Opinion    Case details**

~~Effective March 12, 1999, the Legislature renumbered chapters 175 and 185.~~  
See Ch. 99-1, Laws of Fla. Among other things, the Legislature instituted minimum retirement benefits for firefighters and police officers and amended sections 175.351 and 185.35 to make receipt of premium tax revenue contingent on meeting both the minimum operating standards *and* the minimum benefits. See Ch. 99-1, §§ 35, 74, Laws of Fla. The Legislature also specified that municipalities must use premium tax revenue solely to pay extra retirement benefits to police officers and firefighters, whether the revenue is placed in the pension fund for their exclusive use or in a separate supplemental plan. See *id.* The Legislature mandated further:

The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to police officers, or to police officers and firefighters, where included. *However, local law plans in effect on October 1, 1998, shall be required to comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance. . . .* When a plan is in compliance with such minimum benefit provisions, as subsequent additional tax revenues become available, they shall be used to provide extra benefits. . . .

"[Additional premium tax revenues" means revenues received by a municipality . . . that exceed the amount received for calendar year 1997 and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality.

Ch. 99-1, § 74, at 61, Laws of Fla. (amending section 185.35) (emphasis added). Cf. Ch. 99-1, § 35, at 29, Laws of Fla. (amending section 175.351 with virtually identical language regarding firefighter pension plans). As to police officers, minimum benefits now include at least 300 hours of overtime pay

838 in the annual compensation \*838 figure used

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## *B. The City's Pension Plan and the 1993 Agreement*

The City for many years has maintained a defined benefit pension plan established pursuant to chapters 175 and 185 for its police officers and firefighters. The pension plan, officially known as the City of Delray Beach Police Officers and Fire-fighters Retirement System ("Plan"), is codified at sections 33.60 through 33.72 of the Delray Beach City Code.

In 1993, the City, its police and firefighter unions, and the Board of Trustees for the Plan reached an agreement concerning a "retirement benefit enhancement" and the use of premium tax revenues received by the City ("1993 Agreement"). The City agreed to use premium tax revenue "received . . . pursuant to chapter[s] 175 and 185, Florida Statutes" to provide a 1% annual increase in pension benefits to members retiring after September 30, 1993. This benefit increase would be provided "regardless of the amount of premium tax revenues received." The City further agreed that the premium tax revenue it receives each year in excess of the 1993 amount (\$504,922) would be used to increase the 1% annual benefit enhancement in increments of 0.1% to a maximum total annual benefit increase of 4%. Finally, the 1993 Agreement provided that "pension benefits will not be subject to the collective bargaining process in the future" but that "should premium tax revenues cease, the retirement benefit enhancement . . . will be subject to re opener negotiations." Pursuant to the terms of the 1993 Agreement, the City amended the Plan and codified the retirement benefit enhancement in City Ordinance No. 85-93. The enhancement went into effect October 1, 1994, and has been in effect continuously since that date.

After chapter 99-1 was enacted, it appears the City amended the Plan again to provide four "no-cost" minimum benefits required by that chapter. The only minimum benefit the Plan still does not provide is the inclusion of at least 300 hours of overtime pay annually in the pensionable earnings of police officers. Since the Plan's inception, t





**Opinion Case details**

*On the Division's Application of Chapter 99-1 to the City of Decatur's Pension, and the Order Granting Summary Judgment*

The Division is responsible for the over-sight and monitoring of local government retirement plans for firefighters and police officers established pursuant to chapters 175 and 185. The Division determines whether police and firefighter pension plans are meeting the minimum standards and minimum benefits set forth in those chapters, and if so, disburses premium tax revenues to the compliant municipalities.

In July 2003, the Division responded to an inquiry from the City regarding application of chapter 99-1 to the Plan and use of the increases in premium tax revenue. In its letter, the Division summarized the "retirement benefit enhancement" added to the Plan effective October 1, 1994, and advised the City, in pertinent part:

839 Since the 1% retirement benefit enhancement is guaranteed by the city regardless of the amount of premium tax increases received by the city, it appears, \*839 that the remaining 3% may be funded, to the *extent possible*, by the dollar amount of increases between 1992 and 1997 (\$830,154.20-504,922.00=\$325,232.20).

Pursuant to chapter 99-1, any increase over and above the 1997 amounts (Police — \$446,406.96, Fire — \$383,747.24, and Fire Supplemental — \$0) should be used first to meet the minimums. Once the minimums are met, as any subsequent additional tax revenues become available they could again be used to help fund the retirement benefit enhancement.

Additionally, since the retirement benefit enhancement is capped at 4%, once the increase in the state premium tax moneys exceeds the amount necessary to fund such enhancement, all such future increases must be used for some new extra benefit as provided in chapter 99-1



**Opinion   Case details**

With regard to the issue of salary for police officers and firefighters, please refer to the definition of "compensation" found in ss. 175.032(3) and 185.02(4), F.S.

(Emphasis in original.) Thus, according to the Division, the City could continue to fund the agreed-upon retirement benefit enhancement while meeting the new minimum benefit levels as required by chapter 99-1.

The City filed a Complaint for Declaratory Judgment<sup>1</sup> asserting that the Division is applying chapter 99-1 in a manner that violates Article I, section 10, of the Florida Constitution which prohibits the enactment of laws impairing contractual obligations. Specifically, the City alleged "[t]he Division is attempting to apply the 1999 legislation in a manner that impairs the City's rights and obligations under the 1993 Agreement, by requiring that premium tax revenues be shifted from the benefit enhancement provided to retirees by the 1993 Agreement, to pay for the inclusion of overtime in the pensionable compensation of current police officers." This, the City alleged further, also will "reduce the amount of the benefit enhancement received by retired police officers, in violation of those officers' vested rights."

<sup>1</sup> The complaint was filed in 2006 in the Fifteenth Circuit in Palm Beach County. In September 2008, venue was transferred to the Second Circuit in Leon County.

Both parties moved for summary judgment. In its motion, the City argued its retirement benefit enhancement constitutes a "supplemental plan" under sections 175.032(17) and 185.02(15), Florida Statutes (1999), and thus the Plan need not comply with the mandate to include at least 300 overtime hours annually in police officers' pensionable earnings. On May 12, 2009, the circuit court granted summary judgment in favor of the City finding "retroactive application of the 1999 revision to chapters 175 and 185, Florida Statutes, has a substantial impact on the 1993 plan, and impairs the rights of





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requirements of a supplemental plan under sections 175.032(17) and 185.02(15), Florida Statutes, and that under section 185.35(3), Florida Statutes, the provisions of section 185.02(4)(a) including overtime pay in the  
840 \*840 calculation of police officers' earnings do not apply to the Plan.

## **ANALYSIS** <sup>2</sup> *A. Whether the Division Retroactively Applied Chapter 99-1, Impairing Vested Rights*

<sup>2</sup> We review the trial court's Order Granting Summary Judgment *de novo*. See *Volusia Country v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla. 2000).

In Florida, "[t]he general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively." *Metro. Dade County v. Chase Fed. Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999). However, even where such legislative intent exists, the statute cannot be constitutionally applied if it "impairs vested rights, creates new obligations, or imposes new penalties." *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1995).

The analytical framework for retroactivity issues is discussed in *R.A.M. of So. Fla., Inc. v. WCI Communities, Inc.*, 869 So.2d 1210 (Fla. 2d DCA 2004).

The threshold question is whether the proposed application of the statute to a particular case constitutes a retroactive application. Where the contemplated application is judged to be retroactive, the court must determine whether there is a sufficient basis in the relevant statute to justify the retroactive application. If the statute is construed as being properly given retroactive effect, it must finally be determined if such application is inconsistent with any constitutional limitation.

*Id.* at 1215. Whether a statute has been retroactively applied depends on



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concept of vested rights [plays] a central role in the analysis of retroactivity issues." *R.A.M.*, 869 So.2d at 1216.

[T]o be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand. . . . Vested rights are distinguished not only from expectant rights but also from contingent rights. . . . They are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons, as a present interest. They are expectant when they depend upon the continued existence of the present condition of things until the happening of some future event. They are contingent when they are only to come into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting.

*Id.* at 1218 (citations and quotations omitted). If a statute has been applied retroactively, the court looks for an expression of clear legislative intent rebutting the presumption of prospective operation. *Id.* at 1216. Finally, if the Legislature intended retroactive application of a civil statute, the court determines if the statute violates due process rights or impairs contractual rights and/or obligations. *Id.* at 1217.

We conclude chapter 99-1 was not retroactively enforced so as to impair the vested rights of retirees receiving benefits under the Plan. The enhanced  
841 benefits at \*841 issue resulted from the 1993 Agreement, which provided for: (1) a 1% annual benefit increase "regardless of the amount of premium tax revenues received;" and (2) an additional annual benefit increase capped at 4%, "[t]o the extent annual premium tax revenues exceed" \$504,922. The 1% increase, as correctly noted by the Division in its July 10, 2003, letter to the City, "is guaranteed by the city." If premium tax revenue were to cease





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right.

As to the additional annual benefit increase, the terms of the 1993 Agreement reveal that the parties contemplated the possible cessation of premium tax revenue:

The City, IAFF, and PBA agree that pension benefits will not be subject to the collective bargaining process in the future and that this agreement shall be binding on their successors and assigns; *provided, should premium tax revenues cease, the retirement benefit enhancement referred to in paragraph 3, above, will be subject to reopener negotiations.*

(Emphasis added.) Clearly the parties knew when the agreement was negotiated and executed that the law could change, and that the continued availability of premium tax revenue is "a matter of legislative grace that could be withdrawn by subsequent legislative action." *R.A.M.*, 869 So.2d at 1217. Indeed, the premium tax revenue is *state tax revenue* and the Legislature has sole authority to decide how those funds are to be spent. The City cannot bargain away the Legislature's appropriations power. *See State v. Fla. Police Benevolent Ass'n, Inc.*, 613 So.2d 415, 418-19 (Fla. 1992) (stating that requiring the Legislature to fully fund collective bargaining agreements would allow the executive branch, by entering into such agreements, "to invade the legislative branch's exclusive right to appropriate funds."). Furthermore, receipt of the premium tax revenue is contingent upon the Division determining that the Plan is in compliance with the requirements of chapter 185. *See* § 185.23(1), Fla. Stat. Because the right to receive the additional annual benefit increase is dependent on continued legislative appropriations and the Plan's compliance with current law, it can be fairly characterized as either an expectant right or a contingent right. If the contingencies materialize, the right becomes vested.

Assuming the Plan satisfied the requirement \_\_\_\_\_ be \_\_\_\_\_





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\$325,232.20, and according to the Division, the City is entitled to use those funds to pay the additional benefit enhancement per the terms of the 1993 Agreement. But in accordance with chapter 99-1 the City must now use any premium tax revenue exceeding \$830,154.20 to meet the minimum benefit requirement to include at least 300 hours of overtime pay annually in the pensionable earnings of police officers.<sup>3</sup> The Division's application of 842 chapter 99-1 to the Plan does not impair retirees' vested \*842 rights under the 1993 Agreement. The trial court erred in concluding otherwise and granting summary judgment to the City on that basis.

- <sup>3</sup> Nothing in the record indicates how the City will use the \$504,922 in premium tax revenue not going either to the annual benefit increment or to fund the 300 overtime hour minimum benefit.

### *B. Whether the City is a "Supplemental Plan City" Exempt From the 300-hour Minimum Benefit Requirement*

As an additional ground for entering summary judgment for the City, the trial court determined the City is exempt under section 185.35(3)(a) from the 300 overtime hours minimum benefit requirement for police officer pension plans. This requirement is found in section 185.02(4) which reads:

"Compensation" or "salary" means the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, *but in no event shall such overtime limit be less than. SOI) hours per officer per calendar year.*

§ 185.02(4), Fla. Stat. (1999) (emphasis added)





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otherwise payable to each police officer covered by the retirement trust fund or plan.

§ 185.02(4)(a), Fla. Stat. (1999). But section 185.35, which requires local pension plans to provide the minimum benefits set out in chapter 185, provides an exception:

(3) Notwithstanding any other provision, with respect to any *supplemental plan municipality*:

(a) Section 185.02(4)(a) shall not apply, and a local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on the effective date of this act.

§ 185.35(3)(a), Fla. Stat. (1999) (emphasis added). A "supplemental plan municipality" is a "local law municipality in which there existed a supplemental plan as of January 1, 1997." § 185.02(16), Fla. Stat. (1999).

The record does not support the trial court's conclusion that the City operates a supplemental plan. As amended by chapter 99-1; section 185.02 defines "supplemental plan" as

[A] plan to which deposits of the premium tax moneys as provided in s. 185.08 are made to provide extra benefits to police officers . . . under this chapter. Such a plan is an element of a local law plan and *exists in conjunction with* a defined benefit plan that meets the minimum benefits and minimum standards of this chapter.

§ 185.02(15), Fla. Stat. (1999) (emphasis added). *See also* Ch. 99-1, § 42, Laws of Fla. at 40. Further, under section 185.35(1), premium tax revenue may be either placed in the pension plan exclusively to pay extra benefits to police officers, or placed "in a *separate supplemental plan* to pay extra benefits to police officers." § 185.35(1)(b), Fla. Stat. (1999) (emphasis added). Nothing in the record shows that the City maintains



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judgment to the City based on the exemption in section 185.35(3)(a) for supplemental plan municipalities.

We REVERSE the Order Granting Summary Judgment and REMAND for entry of summary judgment for the Division.

DAVIS, J., concurs; BENTON, J., concurs with opinion, in which DAVIS, J., concurs.

BENTON, J., concurring.

I join the court's opinion and write only to make clear that its thorough and lucid treatment of the merits is no endorsement of the procedural path that brought the case here. In July of 2003, before the City filed in circuit court seeking declaratory judgment, it had received what was in effect at least a declaratory statement, *see* § 120.565, Fla. Stat. (2009), from the Division of Retirement within the Department of Management Services, which the City apparently decided against appealing for dubious tactical reasons.

If the City had taken an appeal from the Division's July 2003 determination, there is, to be sure, no reason to believe the City would have met with any more success than the Florida League of Cities, Inc., met with in *Florida League of Cities, Inc. v. Florida Department of Management Services*, 883 So.2d 803 (Fla. 1st DCA 2004) (table). In its unsuccessful challenge to the Division's proposed rules 60Z-1.026 and 60Z-2.017, the League advanced the same arguments the City makes in the present case. *See Fla. League of Cities v. Dep't of Mgmt. Servs.*, No. 03-1117RP (DOAH Sept. 23, 2003) (upholding proposed rules on grounds the statutes to be implemented — notably sections 175.351(13) and 185.35(2), Florida Statutes (1997), as amended by sections 35 and 74, chapter 99-1, Laws of Florida — required that "[e]xtra benefits [already] enacted . . . must be funded from premium tax dollars [already being] received") *aff'd Fla. League of Cities, Inc. v. Fla. Dep't. of Mgmt. Servs.* 883 So.2d 803 (Fla. 1st DCA 2004).





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of the agency's position anew in circuit court, *see generally State ex rel. Dep't of Gen. Servs. v. Willis*, 344 So.2d 580, 590 (Fla. 1st DCA 1977) (describing the Administrative Procedure Act of 1974 as providing an "arsenal of varied and abundant remedies for administrative error" including "judicial review of [agency] orders affecting a party's interests," which "lessened" "the occasions for [circuit court] intervention"), so we need not decide the issue here.

Nor for the same reason do we need to decide any issue of primary jurisdiction: neither appellant has contended that the doctrine of primary jurisdiction required the circuit court to defer to the Division's interpretation of the pertinent statutes (again, an interpretation that was no secret to the City). The doctrine of primary jurisdiction may come into play if a court is asked to resolve issues arising under a regulatory scheme that have been placed within the special competence of an administrative body like the Division of Retirement. *See generally Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290, 304, 96 S.Ct. 1978, 48 L.Ed.2d 643 (1976); *United States v. W. Pac. R.R.*, 352 U.S. 59, 63-64, 77 S.Ct. 161, 1 L.Ed.2d 126 (1956); *Talton Telecomm. Corp. v. Coleman*, 665 So.2d 914, 918 (Ala. 1995); *Austin v. Centerpoint Energy Arkla*, 365 Ark. 138, 226 S.W.3d 814, 817 (2006); *Pub. Serv. Co. of Colorado v. Mile Hi Cable Partners L.P.*, 995 P.2d 310, 312 (Colo.Ct.App. 844 1999); *Atl. Satellite \*844 Commc'ns, Inc. v. Duffy*, 183 Misc.2d 734, 705 N.Y.S.2d 170, 171 (N.Y.Sup.Ct. 2000); *Glover v. State*, 860 P.2d 1169, 1171 (Wyo. 1993).

In any event, considering the merits *de novo* today, we reach the same result as the Division of Retirement reached some years ago.



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Treatment



**From:** [Pedro Herrera](#)  
**To:** [Mark Berkowitz](#)  
**Cc:** [zigesti1@aol.com](mailto:zigesti1@aol.com); [Jessica De la Torre Vila](#); [Castronovo, Lisa](#)  
**Subject:** RE: Petition for Enhanced Disability Benefits, filed by Mr. Fred Ziegler  
**Date:** Friday, July 1, 2022 11:41:16 AM

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Mark,

The matter has been placed on the November 16, 2022 meeting agenda. The meeting is scheduled for 1pm. The Board has scheduled a time certain and will hear this matter first before proceeding to its regular business.

Please submit to me and Lisa Castronovo (cc'ed here for your convenience) all materials/documents you wish the Board to review with respect to your client's claim at least 2 weeks prior to the meeting date.

Feel free to reach out to me directly should you have any questions or comments.

Kindly,

Pedro

**PEDRO A. HERRERA**  
**PARTNER**

---

**SUGARMAN SUSSKIND BRASWELL & HERRERA**  
**150 ALHAMBRA**  
**SUITE 725**  
**CORAL GABLES, FL 33134**  
**OFFICE: (305)529-2801**  
**FAX: (305)447-8115**

---

**From:** Pedro Herrera  
**Sent:** Thursday, June 30, 2022 3:50 PM  
**To:** Mark Berkowitz <markberk57@gmail.com>  
**Cc:** [zigesti1@aol.com](mailto:zigesti1@aol.com); [Jessica De la Torre Vila <jess@sugarmansusskind.com>](mailto:jess@sugarmansusskind.com); [Castronovo, Lisa <castronovol@mydelraybeach.com>](mailto:castronovol@mydelraybeach.com)  
**Subject:** RE: Petition for Enhanced Disability Benefits, filed by Mr. Fred Ziegler



Mark,

I will relay to the administrator and get back to you once we have a date.

Kindly,

Pedro

**PEDRO A. HERRERA**  
**PARTNER**

---

**SUGARMAN SUSSKIND BRASWELL & HERRERA**  
**150 ALHAMBRA**  
**SUITE 725**  
**CORAL GABLES, FL 33134**  
**OFFICE: (305)529-2801**  
**FAX: (305)447-8115**

---

**From:** Mark Berkowitz <[markberk57@gmail.com](mailto:markberk57@gmail.com)>  
**Sent:** Thursday, June 30, 2022 2:39 PM  
**To:** Pedro Herrera <[PHerrera@sugarmansusskind.com](mailto:PHerrera@sugarmansusskind.com)>; [zigesti1@aol.com](mailto:zigesti1@aol.com);  
[larry@judgelarryseidlin.com](mailto:larry@judgelarryseidlin.com); Mark Berkowitz <[markberk57@gmail.com](mailto:markberk57@gmail.com)>  
**Subject:** Re: Petition for Enhanced Disability Benefits, filed by Mr. Fred Ziegler

Pedro:

**Re: Fred Ziegler Petition**

We are requesting a hearing on Mr. Ziegler's claim. Please let me know when the Board can take this matter up on its Agenda.

Thank you,

Mark Berkowitz  
(954) 527-0570 (o)  
(954) 294-9132 (c)

On Thu, Jun 30, 2022 at 12:44 PM Pedro Herrera <[PHerrera@sugarmansusskind.com](mailto:PHerrera@sugarmansusskind.com)> wrote:

Mark,



On behalf of the Board of Trustees for the Delray Beach Police Officers' Retirement System I am writing regarding your petition on behalf of Mr. Ziegler for enhanced benefits. As you were made aware back in March 2022, the Board had placed this matter on its agenda and requested that you provide any and all materials supporting your client's claim to the Board for review in anticipation of that meeting. Unfortunately, despite several follow-ups, neither I nor the Retirement System's administrator received any input from you. Further, the Board did not receive any response as to why you would not be submitting any materials or that you would not be attending the meeting to present your client's claims.

The Trustees have asked that I follow up with you again and confirm whether your client still wishes to have a hearing with the Board or whether your client has elected to drop his claim. Should we not receive a response from you within the next ten calendar days, the Board will consider this matter closed.

Kindly,

Pedro

**PEDRO A. HERRERA**  
**PARTNER**

---

**SUGARMAN SUSSKIND BRASWELL & HERRERA**  
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**OFFICE: (305)529-2801**  
**FAX: (305)447-8115**

---

**From:** Pedro Herrera  
**Sent:** Thursday, March 31, 2022 3:03 PM  
**To:** Mark Berkowitz <[labor@markjberkowitz.com](mailto:labor@markjberkowitz.com)>  
**Cc:** Jessica De la Torre Vila <[jess@sugarmansusskind.com](mailto:jess@sugarmansusskind.com)>; Gelin, Lynn <[GelinL@mydelraybeach.com](mailto:GelinL@mydelraybeach.com)>; Castronovo, Lisa <[castronovol@mydelraybeach.com](mailto:castronovol@mydelraybeach.com)>  
**Subject:** RE: Petition for Enhanced Disability Benefits, filed by Mr. Fred Ziegler

Mr. Berkowitz,

Pursuant to my email from earlier today I am confirming that we have placed this matter on the agenda for the meeting currently scheduled for May 25, 2022 @ 9am. Should you wish to present any materials for the Board to review as part of your presentation, please forward to the Board's administrator (cc'ed here for your convenience) and she will include in the Trustee's backup materials. We would ask that any such materials be provided at least 2 weeks prior to the meeting to allow sufficient processing time.



Should you have any questions or comments, please do let me know.

Kindly,

Pedro

**PEDRO A. HERRERA**  
**PARTNER**

---

**SUGARMAN SUSSKIND BRASWELL & HERRERA**  
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**SUITE 300**  
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**OFFICE: (305)529-2801**  
**FAX: (305)447-8115**

---

**From:** Pedro Herrera

**Sent:** Thursday, March 31, 2022 12:55 PM

**To:** Mark Berkowitz <[labor@markjberkowitz.com](mailto:labor@markjberkowitz.com)>

**Cc:** Jessica De la Torre Vila <[jess@sugarmansusskind.com](mailto:jess@sugarmansusskind.com)>; Gelin, Lynn  
<[GelinL@mydelraybeach.com](mailto:GelinL@mydelraybeach.com)>; Castronovo, Lisa <[castronovol@mydelraybeach.com](mailto:castronovol@mydelraybeach.com)>

**Subject:** FW: Petition for Enhanced Disability Benefits, filed by Mr. Fred Ziegler

Mr. Berkowitz,

As you may be aware we were recently appointed as outside legal counsel for the City of Delray Beach Police Officers' Retirement System. We are in receipt of your petition for disability benefit enhancement filed with the Board on or about February 8, 2022. The Board next meets on May 25, 2022 at 9am. Although I have not yet confirmed with the Chairperson who is responsible for finalizing the agenda, the expectation is that this matter will be placed on that agenda for discussion. Once we have had an opportunity to finalize the agenda, the Retirement System's administrator will reach out to you to confirm.

Please feel free to reach out to me directly should you have any further questions or comments in the interim.

Kindly,

Pedro

**PEDRO A. HERRERA**



**PARTNER**

---

**SUGARMAN SUSSKIND BRASWELL & HERRERA**  
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**From:** Mark Berkowitz <[labor@markjberkowitz.com](mailto:labor@markjberkowitz.com)>

**Date:** March 31, 2022 at 11:20:13 AM EDT

**To:** "Gelin, Lynn" <[GelinL@mydelraybeach.com](mailto:GelinL@mydelraybeach.com)>, [zigesti1@aol.com](mailto:zigesti1@aol.com),  
[larry@judgelarryseidlin.com](mailto:larry@judgelarryseidlin.com), Mark Berkowitz <[markberk57@gmail.com](mailto:markberk57@gmail.com)>

**Subject: Re: Petition for Enhanced Disability Benefits, filed by Mr. Fred Ziegler**

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Ms. Lynn D. Gelin  
City Attorney  
City of Delray Beach  
200 NW 1st Avenue  
Delray Beach, Florida 33444

**Re: Mr. Fred Ziegler**  
**Petition for Enhanced**

**Disability Retirement Benefits**

**Request for a Hearing before**

**the City Police Retirement System Board of Trustees**

Dear Ms. Gelin:

Please see the attached correspondence, which is being sent on behalf of Mr. Fred Ziegler.

Respectfully

submitted,

P.A.

Mark J. Berkowitz,

(954) 527-0570 (o)

(954) 294-9132 (c)

--

**Mark J. Berkowitz**

Attorney, Mark J. Berkowitz, P.A.

[\(954\) 527-0570](tel:(954)527-0570) | [labor@markjberkowitz.com](mailto:labor@markjberkowitz.com)

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Website: [www.markjberkowitz.com](http://www.markjberkowitz.com)**

**Via E-mail: [castronovol@mydelraybeach.com](mailto:castronovol@mydelraybeach.com)**

Ms. Lisa Castronovo  
Pension Administrator  
City of Delray Beach  
Board of Trustees for the Police Retirement System  
100 NW 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

October 31, 2022

**Re: Mr. Fred Ziegler  
Petition for Disability Retirement Benefits Enhancement  
Dated February 8, 2022  
Courtesy Copy of the Petition and the Attached Exhibits**

Dear Ms. Castronovo:

On February 8, 2022, the Petitioner, Mr. Fred Ziegler, filed a Petition for Disability Retirement Benefits Enhancement, primarily based on an Attorney Opinion Letter, dated May 15, 2020, which was issued by the former counsel to the City of Delray Beach, Board of Trustees, of the Police Retirement System ("BOARD"), Ms. Janice Rustin, of the Law Firm of Lewis,

Longman and Walker.<sup>1</sup> In addition to the Opinion Letter, issued by Ms. Rustin, and the Petition, we had also submitted several additional Exhibits, which were attached to the Petition.<sup>2</sup>

The pertinent EXHIBITS, included, the BOARD Minutes, dated September 22, 1999; and applicable case law, issued by the First District Court of Appeal, in *Department of Management Services v. City of Delray Beach*, 40 So.3d 835 (Fla. 1<sup>st</sup> DCA 2010). In preparation for the meeting of the BOARD, on November 16, 2022, 1:00 p.m., and for the BOARD's convenience, I am resending these documents; specifically, the Petition and the associated EXHIBITS, are attached to this email. If there have been any recently filed pleadings in this matter before the BOARD, I would appreciate it if you could forward those documents to me in advance of the upcoming BOARD meeting.

The Petitioner, Mr. Ziegler, retired from active-duty service on August 1, 1990, and based on the analysis as contained in the Attorney Opinion Letter, the Petitioner should receive the benefits enhancement. It is important to point out that, at its meeting of September 22, 1999, the BOARD interpreted the relevant section of Ordinance 29-99, to memorialize, that all members who retired prior to the date of the 1999 Ordinance, including disability retirees, were eligible for the benefits enhancement. In accordance with the Attorney Opinion Letter, the adjustment percentage should be equal to the benefit enhancement percentage in effect, on the date, the annuitant was due to receive it:

- (i) For adjustments that should have been made on or after July 7, 2015, the retirement benefit enhancement is 1% of the member's benefits; and
- (ii) For adjustments that should have been made prior to July 6, 2015, the retirement benefit enhancement is a percentage of the member's benefits that is based on the annual premium tax revenues, as set forth in that year's actuarial valuation report.<sup>3</sup>

Therefore, consistent with the thorough legal analysis, as set forth in the applicable Attorney Opinion Letter, the Petitioner, Fred Ziegler, respectfully requests that the BOARD grant

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<sup>1</sup> The Attorney Opinion Letter was attached to the Petition, as **EXHIBIT A**.

<sup>2</sup> On January 14, 2022, due demand was also made on the Pension Administrator for the granting of the enhancement benefit (*see*, **EXHIBIT D**, to the Petition), however, there has been no response to the demand.

<sup>3</sup> In addition, the adjustment amount should include an interest rate, as determined by the BOARD; although the Plan does not address the rate of interest for a correction, but the Plan provides that interest paid to members for a refund of their contributions is either 3% or 5%, depending on the members years of service.



his Petition for Disability Retirement Benefits Enhancement,<sup>4</sup> as a disability retirement annuitant. This legal analysis comports with pertinent Plan Documents and the applicable ordinances.

Respectfully submitted,

/s/ Mark J. Berkowitz

Mark J. Berkowitz, on behalf the Petitioner,  
Fred Ziegler

cc: Fred Ziegler  
via Email

Pedro Herrera  
Counsel for the Board  
via Email

---

<sup>4</sup> Attorney's fees under Fla. Stat. Section 185.05(5), can only be granted in a judicial or administrative proceeding, under Chapter 120.