

MINUTES  
RETIREMENT HEARING COMMISSION  
SPECIAL MEETING - JULY 16, 1987 - 9:00 A.M.

The Retirement Hearing Commission met in special session in Conference Room 103, 801 - 9th Street, on July 16, 1987 at 9:15 a.m.

PRESENT: Hermocillo, Koutrouba, Mayberry, Russell, Sequeira, Smith, Stamper

ABSENT: None

HEARING ON MOTION TO REJECT ADMINISTRATIVE LAW JUDGE'S DECISION ON DANIEL WARE  
FOR INDUSTRIAL DISABILITY BENEFITS

CONTINUED

The Commission received, from counsel, procedural guidelines for conducting the hearing.

K. William Curtis, Attorney at Law, represented Daniel Ware, who was present. Tamara Milligan-Harmon, Deputy City Attorney, represented Richard Antoine, who was present.

Mr. Curtis give his opening statement and reserved the right to call any witness whose name was not submitted in advance by the City Attorney's office.

Ms. Harmon reserved the right to defer her opening statement and moved to exclude all witnesses during the proceedings.

After discussion, Mr. Mayberry moved that all witnesses be allowed to remain during the proceedings. The motion was seconded by Mr. Koutrouba.

After further discussion the chair called for a vote:

AYES: Hermocillo, Koutrouba, Mayberry, Russell, Sequeira, Smith, Stamper

NOES: None

The chair requested that any declarations be submitted. Richard E. Snyder, Secretary to the Commission, submitted Judge M. Amanda Behe's declaration. Mr. Curtis requested permission to submit declarations from Mr. Don Horger and Attorney Phillip Bruce at the conclusion of his case.

Mr. Curtis called his first witness, Richard Chiurazzi, who was sworn by the court reporter. After direct, cross, redirect, and questions from the Commission, Mr. Chiurazzi was excused subject to recall.

Mr. Curtis called Richard Antoine. Ms. Harmon objected on the grounds of Sacramento City Code Section 34.1408 and Government Code of the State of California (Administrative Procedure Act) Sections 11513. William Carnazzo, Counsel to the Commission, reviewed with the Commission the cited sections. Mr. Hermocillo moved that Mr. Curtis not be allowed to call Richard Antoine as a witness pursuant to the government code. The motion was seconded by Mr. Stamper and was carried by the following vote:

AYES: Hermocillo, Koutrouba, Mayberry, Russell, Sequeira, Smith, Stamper

NOES: None

Mr. Curtis called John Holstedt, who was sworn by the court reporter. After direct, cross, redirect, and questions from the Commission, Mr. Holstedt was excused subject to recall.

Mr. Curtis called David Mastagni, who was sworn by the court reporter. During cross examination by Ms. Harmon, Mr. Mastagni was asked how he obtained the vehicle license number of Mr. Antoine's pick-up truck. Mr. Curtis objected to the question. After discussion, Mr. Mayberry moved that the question be disallowed. The motion failed due to a lack of a second. Ms. Harmon again posed the question. Mr. Curtis objected again. After discussion, Mr. Mayberry moved that the question be disallowed. The motion was seconded by Mr. Hermocillo and was carried by the following vote:

AYES: Hermocillo, Koutrouba, Mayberry, Russell

NOES: Sequeira, Smith, Stamper

During the continuance of the cross examination, Ms. Harmon asked Mr. Mastagni if he stated, during a meeting held in Ms. Harmon's office on

July 15, 1987, that it was his contention that the decision was still pending because it had not been ruled on by the Commission. Mr. Curtis objected on the grounds that the July 15, 1987 meeting was a settlement meeting. Ms. Harmon argued it was not a settlement meeting but a discovery meeting.

After discussion, Mr. Russell moved that the question be disallowed. The motion was seconded by Mr. Mayberry and carried by the following vote:

AYES: Hermocillo, Koutrouba, Mayberry, Russell, Sequeira, Smith, Stamper

NOES: None

After direct, cross, redirect, recross, and questions from the Commission, Mr. Mastagni was excused subject to recall.

The Commission adjourned for lunch.

The Commission reconvened.

Mr. Curtis submitted declarations from Mr. Don Horger and Attorney Phillip Bruce. Ms. Harmon objected to statements 3, 4 and 5 on Mr. Horger's declaration and asked that they be stricken as Mr. Horger is not an attorney and he is drawing a conclusion. After discussion, Mr. Hermocillo moved that statements 3, 4 and 5 be stricken. The motion failed due to a lack of a second. After further discussion, the Commission accepted Mr. Horger's declaration and "will view it for what it is worth."

Mr. Curtis rested his case.

Ms. Harmon called Mr. Curtis, who was sworn by the court reporter and who was represented by David Mastagni, Attorney at Law. After direct, cross, redirect, and questions from the Commission, Mr. Curtis was excused subject to recall.

Mr. Russell requested that Mr. Carnazzo, Counsel to the Commission, define the term ex parte communications. Mr. Carnazzo reviewed and distributed a copy of Government Code Section 11513.5. Mr. Sequeira requested

Mr. Carnazzo define the word pending. Mr. Carnazzo briefly reviewed Sacramento City Charter Section 34.1409 and stated that within the framework of that section it was the opinion of James Jackson, City Attorney, an issue could be consider pending, even though a proposed decision has been rendered, until acted upon by the Commission.

Ms. Harmon gave her opening statement. Ms. Harmon submitted declarations of Judge Karl Engeman and Chris Malek and reminded the Commission that Judge Behe's declaration was submitted earlier. Mr. Curtis had no objections to Chris Malek's or Judge Engeman's declaration but reserved the opportunity to get a supplemental declaration from Judge Engeman. Mr Curtis objected to Judge Behe's declaration because it was hearsay and requested a reasonable effort should be made to have her appear as a witness. After a lengthy dicussion, the Commission could see no purpose in obtaining a supplemental declaration from Judge Engeman and since the Commission has no subpoena power, the Commission could not require Judge Behe to testify.

Ms. Harmon called Linda Gonzalez, who was sworn by the court reporter. After direct, cross, and questions of the Commission, the witness was excused.

Ms. Harmon called Richard Antoine, who was sworn by the court reporter. During direct, Ms. Harmon submitted minutes of the Retirement Hearing Commission meetings pertaining to the Harold Redgate case to reflect that the Commission has never remanded a case back to the administrative law judge.

The Commission recessed for a short break.

The Commission reconvened. In order to accomodate the next witness, Mr. Antoine's testimony was continued.

Ms. Harmon called David Zarka, who was sworn by the court reporter. After direct, cross, redirect, recross, and questions from the Commission, Mr. Zarka was excused.

Because of the lateness of the hour this matter was continued, with agreement of all parties, to September 18, 1987 at 1:30 p.m., unless the parties could come to an agreement and so stipulate. The Commission advised Mr. Ware that his case could possibly be heard at the regular meeting held in October.

There being no further business, the meeting was adjourned at 5:30 p.m. to meet again at the call of the chair.