

MINUTES  
RETIREMENT HEARING COMMISSION  
SPECIAL MEETING - October 26, 1987 - 9:30 P.M.

The Retirement Hearing Commission met in special session in Conference Room 103, 801 - 9th Street, on October 26, 1987 at 10:00 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  
MOTION GRANTED

David Mastagni, Attorney at Law, represented Daniel Ware, who was present. Tamara Milligan-Harmon, Deputy City Attorney represented Richard Antoine, who was present.

Mr. Mastagni and Ms. Harmon presented closing statements.

With the approval of the appellant, Mr. Mayberry moved the Commission adjourn to executive session. The motion was seconded by Mr. Russell and carried by the following vote:

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

NOES: None

The Commission reconvened. Mr. Russell read the following agreed findings of the Commission:

1. The Retirement Hearing Commission finds that the Ware case was pending at the time of the lunch meeting between Mr. Antoine and Judge Behe since it had not met final resolution.
2. There was insufficient evidence to establish full knowledge on the part of Mr. Antoine and Judge Behe that the case was still pending.
3. Mr. Antoine and Judge Behe should have known that the matter was still pending before the Retirement Hearing Commission.
4. Ex parte communications occurred between Mr. Antoine and Judge Behe, which were ill-advised and inappropriate.

5. Based on the evidence presented, the Commission makes no finding concerning whether Judge Behe was actually biased at the time that she submitted her recommended decision.

6. Based on the evidence submitted, the Commission finds that the ex parte communications between Judge Behe and Mr. Antoine give rise to the appearance of bias during the pendency of this case.

Mr. Russell moved that based on the above findings that the motion to reject the Administrative Law Judge's decision on Daniel Ware for Industrial Disability benefits be granted. The motion was seconded by Mr. Mayberry and carried by the following vote:

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

NOES: None

Mr. Russell moved that the matter be remanded back to the Office of Administrative Hearings with the following recommendations:

1. a new Administrative Law Judge be appointed;
2. the new Administrative Law Judge review the transcripts of the proceeding;
3. the new Administrative Law Judge be permitted to supplement said transcripts with additional testimony and evidence at his or her discretion; and

the purpose of the foregoing recommendation is to avoid the cost and time with a de novo hearing. The motion was seconded by Mr. Mayberry and carried by the following vote:

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

NOES: None

The Commission requested that William Carnazzo, Counsel to the Commission, prepare the findings and draft a letter to the Office of Administrative Hearings with the above recommendations. Mr. Carnazzo informed the Commission that if, at the discretion of the new Administrative Law Judge, new medical evidence is necessary, it would have to be submitted to the Retirement System Manager for reconsideration, in accordance with Sacramento City Code Section 34.1404.

After further discussion, Mr. Russell moved, to avoid a future problem of an appearance of impropriety, the Commission adopt a policy that there be no ex parte communications between counsels, whether it be the City's counsel or the appellant's counsel, with any Administrative Law Judge that submits proposed decisions to the Retirement Hearing Commission; and, that Mr. Carnazzo draft such a policy for review. The motion was seconded by Mr. Koutrouba. After a lengthy discussion, Mr. Russell withdrew his motion but requested that Mr. Carnazzo draft a proposed policy for the Commission's review.

There being no further business the meeting was adjourned at 12:05 p.m. to meet again at the call of the chair.