

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

CASE NO. 502007CA020000XXXXMB

PALM BEACH NEWSPAPERS, INC., d/b/a THE
PALM BEACH POST,
Plaintiff,

vs.

NOV 29 2007

THE SCHOOL BOARD OF PALM BEACH COUNTY, et al.,
Defendant.

ORDER GRANTING PEREMPTORY WRIT OF MANDAMUS

Plaintiff, Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post, seeks a writ of mandamus compelling Defendants, The School Board of Palm Beach County; Arthur C. Johnson, individually and as Superintendent of the School District of Palm Beach County and as the Secretary and Executive Officer of The Palm Beach County School Board; and Joyce Goodlett, individually and as Public Records Coordinator of the School District of Palm Beach County (collectively, "the Board"), to comply with a public records request seeking inspection of documents about participants in the Deferred Retirement Option Program ("DROP").¹ The Court grants the relief sought.²

On July 5, 2006, the Post asked the Board to inspect public records of the names of employees in DROP for the 2005-2006 and 2006-2007 school years and each employees' salary, future retirement date, title, school site, and start date. The Board refused, responding that the

¹ DROP is established by Florida Statute §121.091(13). Under DROP, an employee who has reached normal retirement age can elect to continue in employment for a designated additional period, forfeit the right to earn any additional service credit for retirement, and defer receipt of his or her retirement benefits until employment is terminated. Fla. Stat. §121.091(13).

² This Court has jurisdiction to issue extraordinary writs. Art. V, §5(b), Fla. Const. The Post seeks review of an executive, not quasi-judicial, decision. *See State v. Hanna*, 901 So. 2d 201 (Fla. 5th DCA 2005) (adverse licensing determination executive, not judicial or quasi-judicial). An administrative order is quasi-judicial if notice and hearing are required; the order is contingent on the showing made at the hearing; and a record is or could have been made. *See DeGroot v. Sheffield*, 95 So. 2d 912 (Fla. 1957). Consequently, the action is governed by Fla. R. Civ. P. 1.630. *See* Rule 1.630, Court Commentary, 1984 Amendment ("(e)xperience has shown that rule 9.100 is not designed for use in trial court. The times for proceeding, the methods of proceeding, and the general nature of the procedure is appellate and presumes that the proceeding is basically an appellate proceeding. When the extraordinary remedies are sought in the trial court, these items do not usually exist and thus the rule is difficult to apply . . ."). Consequently, the action is heard by a single judge. *Cf. McAlevy v. State*, 947 So. 2d 525 (Fla. 4th DCA 2006); A.O. 8.001-11/99 (three judge panels where appellate review of lower tribunal's action sought).

names and addresses of DROP employees are exempt from disclosure under Fla. Stat. §121.031(5).

The Post sued the Board on November 7, 2007, for a variety of alleged violations of the Florida Public Records Act, Chapter 119, Florida Statutes. In Count 1 it seeks, among other relief, a peremptory writ of mandamus directing the Board to produce the requested records of DROP participants. Following a November 13, 2007 hearing, the Board was given until November 15, 2007 (a date to which it agreed) to serve its Response. The Post was given five days to serve a Reply.

Under the Public Records Act, public records are subject to inspection unless specifically exempt. Fla. Stat. §119.07(1). If a record contains exempt information, the exempt portion only should be redacted and the remainder provided. Fla. Stat. §119.07(1)(d).³

The Board maintains that the information sought is exempt from public disclosure by Florida Statute §121.031(5), which provides that

(t)he names and addresses of retirees are confidential and exempt from the provisions of s. 119.07(1) to the extent that no state or local government agency may provide the names or addresses of such persons in aggregate, compiled, or list form to any person except to a public agency . . . Any person may view or copy any individual's retirement records at the Department of Management Services, one record at a time, or may obtain information by a separate written request for a named individual for which information is desired.⁴

The Board argues that a DROP participant is a retiree for purposes of the quoted exemption based on Florida Statute §121.091(13)(b)3., which provides⁵

(t)he DROP participant shall be a retiree *under the Florida Retirement System* for all purposes . . . However, participation in the DROP does

³ The Board apparently concedes the records are public records. See Fla. Stat. §119.01(11) ("public records" means items "made or received pursuant to law or ordinance or in connection with the transaction of official business . . ."); Op. Att'y Gen. Fla. 73-30 (1973) (assistant state attorneys' salaries are public record).

⁴ Fla. Stat. §121.031, which contains the exemption claimed by the Board, requires the secretary of the Department of Management Services to conduct an annual actuarial study which must include an analysis of the system's prospective assets and liabilities. See Fla. Stat. §§121.031(3), 112.63(1)(a). Presumably, the lists referred to are those that may be compiled to discharge this obligation. The District has not disclosed whether it has documents included in the request other than in "aggregate, compiled, or list form."

⁵ The Board is mistaken when it argues that "retiree" is defined, apparently by implication, in Florida Statute §121.021(44), which defines a "DROP participant" as one who retires and elects to participate in DROP. One can be retired for purposes of DROP participation but not a "retiree" because still employed.

not alter the participant's employment status and such employee shall not be deemed retired from employment until his or her deferred resignation is effective. . .

(emphasis supplied).

The Post responds that DROP participants are *not* retirees for purposes of the Fla. Stat. §121.031(5) exemption; instead, they are considered retirees *only* under the Florida Retirement System. The Post cites to the definition of "retiree" in Florida Statute §121.021(60) as the appropriate definition for the Florida Statute §121.031(5) exemption, which provides that

(t)he following words and phrases *as used in this chapter* have the respective meanings set forth unless a different meaning is *plainly* required by the context: . . . (60) "Retiree" means a former member of the Florida Retirement System or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member . . .⁶

(emphasis supplied)

Under this definition, DROP participants are not retirees since they have *not* terminated their employment. See Fla. Stat. §121.011(39)(b) ("termination" occurs when a DROP participant ceases all employment relationships with employers under the Florida Retirement System); Fla. Stat. §121.091(13)(b)3. (employer continues employment while deferring receipt of retirement benefits while a DROP participant); preamble to Fla. Stat. §121.091 (drawing distinction between termination of employment and participation in DROP).

The Court rejects the Board's contention that the definition of "retiree" under Florida Statute §121.021(60), which excludes DROP participants because they have not yet terminated their employment, is at odds with Florida Statute §121.091(13)(b)3.'s direction that DROP participants shall be retirees "under the Florida Retirement System for all purposes." As the Post points out, the Florida Retirement System is a retirement system established by statute and administered under Part I of Chapter 121. A DROP participant is retired, for purposes of continued accrual of retirement benefits, *and* employed. See Fla. Stat. §121.021(60). Stated differently, a DROP participant

⁶ "Who" is a relative pronoun that refers to a person, thus its antecedent must be "former member" and not "existing system." See Hopper, Gale, and Foote, *Essentials of English*, p. 9, §2B (1973). The phrase "who has terminated employment and is receiving benefit payments from the system in which he or she was a member" applies to *both* "a former member of the Florida Retirement System" and a former member of "an existing system". See *Wagner v. Botts*, 88 So. 2d 611, 613 (Fla. 1956) (grammar rules are part of an Act); *Broward Builders Exchange, Inc. v. Goehring*, 231 So. 2d 513, 515 (Fla. 1970) (Legislature is presumed to know grammar).

remains an employee but, *for purposes of determining retirement benefits*, is treated as if retired. Fla. Stat. §121.091(13)(c)3. Florida Statute §121.091(13)(b)3. simply makes clear that a DROP participant does not continue to accrue additional retirement benefits under the Florida Retirement System during the DROP employment. Instead, the benefits previously accrued become due, but their payment deferred while the DROP participant continues his employment.⁷ *See, also, State v. Parsons*, 569 So. 2d 437 (Fla. 1990) (courts should not resort to rules of statutory construction to defeat express statutory language unless two statutes are hopelessly inconsistent). The Chapter 121 definition of “retiree,” then, applies to the Florida Statute §121.031(5) exemption from §119.07(1) of the names and addresses of retirees kept in aggregate, compiled, or list form. DROP participants are not retirees under that definition because they have not terminated by their employment.

In summary, Fla. Stat. §§121.091(13)(b)3. and 121.021(60) are not in hopeless conflict: the former provides that a DROP employee’s benefits and obligations under the Florida Retirement System are determined as if he was not employed during his DROP employment; the latter provides that under the Florida Retirement System *Act*, a retiree is someone who is no longer employed. The requirements of Florida Statute §121.031 are intended to keep the Florida Retirement System solvent. They are not the system itself. Fla. Stat. §121.091(13)(b)3., then, by its express terms does not apply to Florida Statute §121.031(5)’s limited exemption; Florida Statute §121.021(60), by its express terms, does.

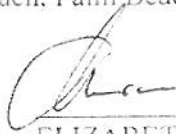
Based on the foregoing, it is

ORDERED AND ADJUDGED that the Clerk is directed to issue a Peremptory Writ of Mandamus directing Defendants, The School Board of Palm Beach County; Arthur C. Johnson, individually and as Superintendent of the School District of Palm Beach County and as the Secretary and Executive Officer of The Palm Beach County School Board; and Joyce Goodlett, individually and as Public Records Coordinator of the School District of Palm Beach County, to comply with the request for public records found at Exhibit 1 to Plaintiff, Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post’s Complaint within 48 days. *See* Fla. Stat. §119.11(2). The Court

⁷ Florida Administrative Code §§60S-11.001(1), 60S-11.004(5)(a), and 60S-6.001(52), cited by the Board, address calculation of benefits under the Florida Retirement System. As discussed earlier, Florida Statute §121.091(13)(b)3 incorporates the concept that DROP participants’ retirement benefits are calculated *as if* they retired when they elected DROP. The Code provisions are consistent with Fla. Stat. §121.091(13)(b)3., and not *inconsistent* with Fla. Stat. §121.021(60).

reserves jurisdiction to consider the other claims raised and to consider an award of attorney's fees.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida this
28 day of November, 2007.



ELIZABETH T. MAASS
Circuit Court Judge

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