

STATE OF INDIANA ) SS:

BEFORE THE STATE BOARD OF THE PUBLIC  
EMPLOYEES' RETIREMENT FUND FOR THE 1977  
POLICE AND FIREFIGHTERS' PENSION AND  
DISABILITY FUND

IN THE MATTER OF PAUL A. PFENNING CAUSE NO. 

ADMINISTRATIVE ADJUDICATION

The above referenced matter came on to be heard in accordance with IC 4-22-1-1 by the duly appointed hearing officer, Burton L. Garten, on the 18th day of November, 1986 in the offices of the Public Employees' Retirement Fund, Suite 800 Harrison Building, 143 West Market Street, Indianapolis, Indiana 46204. Respondent, the Public Employees' Retirement Fund, was represented by H. Dudley Miller and the petitioner, Paul A. Pfenning was represented by Steven C. Hagen.

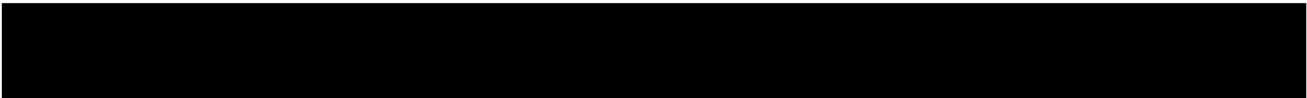
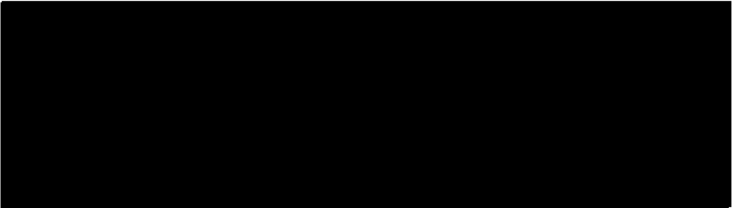
Testimony and exhibits were heard and admitted as evidence.

Burton L. Garten now recommends transfer of the hearing findings of fact and decision to the State Board for its final decision and disposition of said matter.

FINDINGS OF FACT AND DECISION AND CONCLUSIONS  
OF LAW ARE FOUND IN THE ATTACHED REPORT  
OF THE HEARING DATED NOVEMBER 18, 1986

ADMINISTRATIVE ORDER

Based on the foregoing, the State Board of the Public Employees' Retirement Fund does hereby deny membership to Paul A. Pfenning in the 1977 Police and Firefighters' Pension and Disability Fund, pursuant to IC 36-8-8-7, IC 36-8-8-19, and 35IAC 2-1.1-3(28).

  
  
Richard T. Doermer, Chairman  
Al H. Harding, Jr., Vice Chairman  
Myrl W. Deitch, Jr., Trustee  
Marie T. Lauck, Trustee  
Marjorie Meyer, Trustee

STATE OF INDIANA  
PUBLIC EMPLOYEES' RETIREMENT FUND  
143 WEST MARKET STREET, SUITE 800  
INDIANAPOLIS, INDIANA 46204

In the matter of receiving additional evidence for the review of the findings of fact and the initial determination of the Public Employees' Retirement Fund on the application for membership from the 1977 Police and Firefighters' Pension and Disability Fund under IC 36-8-8-12 and IC 36-8-8-13 by Paul A. Pfenning.

Reason for Action: PERF initial determination letter dated September 30, 1986 denying membership to Paul A. Pfenning from the 1977 Police and Firefighters' Pension and Disability Fund.

Hearing date: November 18, 1986 Place: Public Employees' Retirement Fund  
PERF Conference Room-Harrison Bldg.  
143 West Market Street  
Indianapolis, IN 46204

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FINDING OF FACT AND DETERMINATION

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The above matter coming to be heard before Burton L. Garten, duly appointed to conduct administrative hearings, are provided by the Administrative Adjudication Act, Indiana Code 4-22-1.

The Public Employees' Retirement Fund (respondent) was represented by H. Dudley Miller. Paul A. Pfenning, (petitioner) was represented by Steven C. Hagen.

PETITIONER'S EXHIBITS

Copy of:

1. A note dated October 6, 1986 from Donald J. Hooker, M.D. (1 page)

RESPONDENT'S EXHIBITS

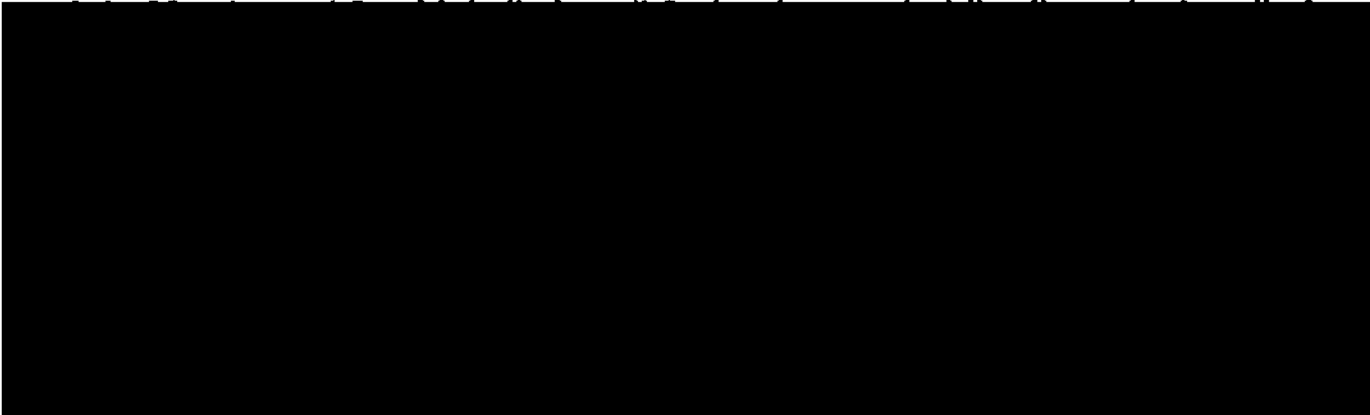
Copy of:

- A. The Physician's Report of Medical History and Physical Exam received by PERF on August 15, 1986 and again on September 15, 1986. (8 pages)

**FACTS:**

Paul A. Pfenning was a volunteer fireman for 24 years with the Ligonier Fire Department. He served 7 months as a full-time fireman prior to 1969. He was hired as a full-time fireman by the Ligonier Fire Department on May 25, 1986.

Mr. Pfenning took the physical and mental examinations required by the local board and statute. The Physician's Report of Medical History and Physical Exam signed by



He was denied membership by the initial determination letter of September 30, 1986.

**FINDINGS:**

Indiana Code 36-8-8-7 reads in part:

(a) Except as provided in subsections (d), (e), and (f) of this section:

- (1) A police officer who has not reached his thirty-sixth birthday; or
- (2) A firefighter who has not reached his thirty-sixth birthday;

who passes a physical examination and mental examination prescribed by the local board under section 19 of this chapter is a member of the 1977 Fund and is not a member of another pension fund.

Indiana Code 36-8-8-19 reads in part:

(a) The physical examination required by section 7 (a) of this chapter shall be administered by a licensed physician and must include a general medical history and at least the following physical examinations:

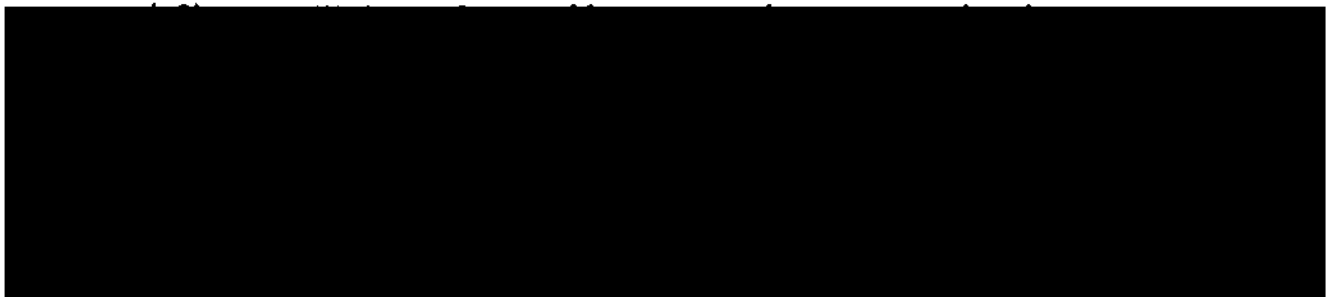
- (1) Visual testing by Snellen Chart
- (2) Pulmonary function test
- (3) Chest x-ray (posterior-anterior and lateral views)
- (4) Lumbosacral spine x-rays (anterior-posterior, lateral and oblique views)
- (5) Treadmill test
- (6) Twelve (12) lead E.C.G.
- (7) Urinalysis
- (8) V.D.R.L. test
- (9) Audiometric test
- (10) "Profile 4" tests from which liver, kidney, blood and metabolic tests may be detected

The PERF Board shall adopt minimum standards by rule under IC 4-22-2 that a police officer or firefighter must meet for the physical examination.

- (b) The mental examination required by section 7 (a) of this chapter shall be administered by a licensed physician or a licensed psychologist, who shall determine if the police officer or firefighter is mentally suitable to be a member of the department.
- (c) The employer shall pay for no less than one-half (1/2) the cost of the examinations.
- (d) Each local board shall name the physicians and psychologists who will conduct examinations under this section.
- (e) If a police officer or firefighter passes the physical and mental examinations and becomes a member of the department, copies of the results of the examinations shall be sent to the PERF Board, which shall retain them until the police officer or firefighter is found to be disabled, retires, or separates from the department. As added by P.L. 365-1983, SEC. 2.

35 IAC 2-11.3 reads in part:

As determined by the physician's examination of the applicant, the following conditions will result in rejection of the applicant except as otherwise indicated:



It has been established, pursuant to IC 36-8-8-7, that:

1. Mr. Pfenning did not pass all physical and mental examinations prescribed by the local board under IC 36-8-8-19.

It has further been established, pursuant to IC 36-8-8-19, that:

1. All required examinations have been conducted on Mr. Pfenning.
2. Copies of the results of the examinations have been sent to the PERF Board.

It has further been established, pursuant to 35 IAC 2-1.1-3(28), that:

DECISION AND CONCLUSION OF LAW:

Based on the evidence and testimony presented, and in view of the above facts and findings, I, Burton L. Garten, duly appointed Administrative Law Judge of the Public Employees' Retirement Fund, would recommend denying membership to Paul A. Pfenning in The 1977 Police and Firefighters' Pension and Disability Fund pursuant to IC 36-8-8-7, IC 36-8-8-19, and 35IAC 2-1.1-3(28).

*Burton L. Garten*

Burton L. Garten, Administrative Law Judge  
Public Employees' Retirement Fund

December 10, 1986