

FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM

Minutes of the Board Meeting

THURSDAY

SAN JOSÉ, CALIFORNIA

August 13, 2009

CALL TO ORDER

The Board of Administration of the Federated City Employees' Retirement System met at 9:06 a.m., on Thursday, August 13, 2009, in regular session at the Department of Retirement Services, 1737 N. First St., Suite 600 - San José, California.

ROLL CALL

Present:

DAVID BUSSE

Jeffrey Perkins

Matt Loesch

Ed Overton

Ash Kalra

CHAIR, Trustee

Trustee

Trustee

Trustee

Trustee

NOT PRESENT:

Pete Constant

Trustee (Excused)

ALSO PRESENT:

Russell U. Crosby

-Secretary/Director

Russ Richeda

-Attorney

Tamasha Johnson

-Staff

Debbi Warkentin

-Staff

Dan Haynes

-SJPD

Ron Kumar

-Staff

Rhonda Snyder

-Staff

Veronica Niebla

-Staff

Carol Bermillo

-Staff

Jesselle Holcomb

-Staff

Tom Reily

-OE3

Tim Callahan

-Retiree

Fed Vela

-Public

Karin Carmichael

-Staff

Allen DeMers

-HR

Roger Riffenburgh

-Public

Peter Souel

-Public

Ty Greaves

-Public

David Rodriguez

-Retiree

Amanda Ramos

-Staff

Toni Johnson

-Staff

Mollie Dent

-City Attorney

Carmen Racy-Choy

-Staff

Sofia Jalilie

-Medical Director substitute

Sandra Stultz

-SJPD

Ami Zibert

-SJPD

Keith DeFilippis

-Public

Ali Amiry

-Staff

Sandra Holloway

-SJPD

Ceara O'Fallon

-Staff

Maria Loera

-Staff

Yolanda Cruz

-MEF

Karen LeDoux

-OED

Bill Thomas

-Retiree

Rebecca Mitic

-SJPD

Steve Muller

-Public

Ricky Espinoza

-GS

Tom Butts

-Attorney

Bill Pope

-OE3

REGULAR SESSION

Chair Busse called the meeting to order at 9:06 a.m.

ORDERS OF THE DAY

Chair Busse stated under Items 1, Item C will be heard before Item B. Additionally, Items 3u and 3y should be noted that they have reciprocity.

RETIREMENTS

1. Disability Retirements for Hearing

a. **Ricky M. Espinoza**, Maintenance Worker I, Transportation Department.

Request for a service-connected disability retirement effective May 7, 2009;
26.77 years of service.

For the record **Ricky Espinoza** was present and was self-represented. The following medical reports were read into the record:

MEDICAL REPORTS - DR'S NAME	DATED
1. John Colman, M.D.	4/10/09, 4/8/09, 8/26/09, 7/2/08, 4/23/08, 8/3/07, 3/29/07, 9/28/06, 6/14/04, 6/27/02, 5/21/02
2. Robert Carson, M.D.	12/2/08
3. Terrence Delaney, M.D.	6/22/07, 5/24/07
4. Lavanya Kailar, M.D.	5/21/07, 8/11/06, 2/21/03, 1/20/03, 3/21/02, 3/5/02
5. Murray Solomon, M.D.	8/29/06
6. Eugene Baciocco, M.D.	1/19/03
7. Karl Nguyen, M.D.	4/18/02

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
Dr. Rajiv Das	7/2/09

Dr. Jalilie stated Mr. Espinoza's injuries were stable at the time and could be associated with an injury, but his particular condition tends to be seen with repetitive movement. Additionally, the extent of pain the applicant has is not associated with job duties.

Mr. Espinoza stated if he had not been injured then he would not have these problems. He stated he was involuntarily separated from the City when he had his last injury. He explained how he was injured, and that upon being told to take a few days off to recover from injury, his supervisor notified him not to return to work after a few days. A month after he received a letter of official notice of separation.

Mr. Demers stated the applicant had temporary work restrictions for an extended amount of time. When the employer was informed of permanent restrictions for the applicant the City began the interactive process, which took several months. The outcome of that process was that there were no permanent modified duty positions available and that is when Mr. Espinoza was notified of the intent to involuntarily separate.

(M.S.C. Loesch/Kalra) to approve. Motion carried 5-0-1. (Absent: Constant).

- c. **Ami Zibert, Public Safety Dispatcher II, Police Department. Request for a service-connected disability retirement effective January 16, 2008; 10.89 years of service.**

For the record **Ami Zibert** was present and was represented by *Mr. Butts*. The following medical reports were read into the record:

MEDICAL REPORTS - DR'S NAME	DATED
JOHN E. CARR, M.D.	05/22/2009; 11/13/2008; 03/08/2007 (2 RPTS)
GORDON A. BRODY, M.D.	02/07/2008; 01/31/2008 (4 RPTS); 01/10/2008; 11/29/2007 (2 RPTS); 07/30/2007; 06/07/2007; 04/19/2007; 03/01/2007; 12/28/2006; 10/20/2006; 08/17/2006; 05/25/2006; 10/27/2005
MARK CULTON, M.D.	07/20/2007
JOEL SAAL, M.D.	07/03/2007; 06/27/2007; 05/31/2007
JANA CRAIN, M.D.	08/11/2006
ROBERT SCHIER, M.D.	08/10/2006

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	06/09/2009; 04/03/2009; 08/06/2008; 06/09/2008; 04/02/2008

Dr. Jalilie stated the applicant has upper-condrialitis and radial tunnel syndromes, and she has undergone surgeries for those conditions. Her record has conflicting nerve studies. She stated the mechanism of injury component for radial nerve damage occurs with continuous typing, such as a dictation. Additionally, the medical literature states it cannot conclude keyboarding is associated with this condition.

Mr. Butts stated the applicant's position requires the use of three mice, two keyboards, and three different monitors, all while taking many phone calls quickly. Ms. Zibert did attempt to return to work, but she could not

tolerate it afterwards. She was told that with her restrictions there was not any permanent modified duty positions available and they request that the Board grant her a service-connected disability retirement.

M.S.C. (Overton/Kalra) to deny. Motion failed 3-0-2 (No: Busse, Loesch, Perkins). A discussion ensued regarding whether 4 votes are necessary for approval. Thereafter, a motion to reconsider was made.

M.S.C. (Perkins/Kalra) to reconsider the motion. Motion carried 5-0-1. (Absent: Constant)

M.S.C. (Loesch/Perkins) to approve a service-connected disability retirement. Motion carried 5-0-1.

- b. **Rebecca J. Mitic**, Public Safety Radio Dispatcher, Police Department. Request for a service-connected disability retirement effective June 11, 2009; 12.41 years of service.

For the record **Rebecca Mitic** was present and was represented by Mr. Butts. The following medical reports were read into the record:

MEDICAL REPORTS - DR'S NAME	DATED
GORDON BRODY, M.D.	08/14/2008; 04/28/2008; 03/18/2008 (10 RPTS); 01/24/2008; 10/29/2007; 09/11/2007; 07/12/2007; 06/07/2007; 04/26/2007
LAWRENCE CHAN, M.D.	07/27/2007; 05/15/2007
JOEL SAAL, M.D.	06/28/2007
TRIPTA SACHDEV, M.D.	03/20/2007; 02/15/2007; 01/15/2007; 09/27/2006;

MEDICAL REPORT FROM BOARD'S DIRECTOR	DATED
RAJIV DAS, M.D.	05/03/2009; 04/14/2009 (RESTRICTIONS)

Dr. Jalilie stated the applicant's complaints, and described the treatments undergone. She noted that Dr. Das' report asks the question if the cause was the nerve decompression, then why even after surgery the applicant continues to have pain. The medical literature finds twisting and gripping to be a main cause of this condition, so the restrictions were prophylactic.

Mr. Butts stated this case is similar to the previous one, with the exception of the time on typing restriction.

(M.S.C. Kalra/Loesch) to approve. Motion carried 5-0-1.

CONSENT CALENDAR (Items 2 thru 10)

The Chair pulled Items 5 and 9a at the request of **Vice-Chair Loesch**.

(M.S.C. Loesch/Perkins) to approve Consent Calendar. Motion carried 5-0-2.

Service retirements approved:

- Kathryn L. Boyd**, August 22, 2009
- Vilma S. Castro**, July 25, 2009
- Primus Delagarza**, June 27, 2009
- Lawrence E. Dionne**, July 1, 2009
- Deborah K. Erwin**, August 22, 2009
- Catherine V. Farnsworth**, September 5, 2009
- Doris E. Guerreiro**, July 25, 2009
- Irma E. Hernandez**, August 22, 2009
- Ned A. Himmel**, August 22, 2009 (w/Reciprocity).
- Hsiu-Wei S. Kang**, August 22, 2009
- Jean LaDuc**, July 25, 2009
- Gerald R. Lindemann**, July 25, 2009
- Francine M. Lopez-Inami** August 22, 2009

William D. Overstreet July 25, 2009
Martha E. Pignone August 22, 2009
Michael G. Roderick August 8, 2009(SCD Pending).
Jose S. Silva August 8, 2009
Isagani C. Tengson July 25, 2009
Oiva J. Warvi June 27, 2009
Leland R. Wheeler August 8, 2009

Deferred vested retirements approved:

James T. Chen, August 5, 2009 (w/Reciprocity)
Larry M. Enriquez Sr., July 21, 2009
Daniel H. Hendrix, June 13, 2009 (w/Reciprocity)
Nancy M. Johnson August 1, 2009
Christopher A. Rafferty June 30, 2009 (w/Reciprocity)

NonService disability retirements approved:

Denise G. Martin, August 13, 2009

5. **Board Minutes**

Approval of Minutes of June 11, 2009

(M.S.C. Loesch/Perkins) to approve minutes with a correction. Motion carried 5-0-1.

9. **Communication / Information**

a. Pending Actions

Vice-Chair Loesch commented on the reports listed as outstanding for himself.

(M.S.C. Loesch/Perkins) to approve. Motion carried 5-0-1.

DEATH NOTIFICATIONS (Item 11 - Moment of Silence)

The Chair stated there would be a moment of silence for the death notifications.

OLD BUSINESS (Item 12-17)

12. **Travel Audit compliance update.**

Mrs. Niebla stated there are currently three items that remain outstanding, and the Policy Committee will meet to address those.

13. **Authorization for Secretary to negotiate and execute an amendment to agreement with Macias, Gini & O'Connell for the following:** a) audit of City's payroll transmission process; b) to continue term through December 31, 2010; c) authorize Secretary to add/modify MGO's agreed-upon procedures as needed; and, d) increase not-to-exceed amount by \$30,000 for a total of \$100,000 (to be shared with P&F Plan on usage-per plan basis).

(M.S.C. Loesch/Overton) to approve. Motion carried 5-0-2.

14. a. **Adoption of a resolution determining that it would not be reasonable to pursue collection efforts for the recovery of Supplemental Retiree Benefit Reserve (SRBR) amounts that were overpaid to retirees in fiscal years ending June 30, 2000, 2001, 2002, 2005, 2006 and 2007; and**

Ms. Dent stated to clarify that the nature of the SRBR fund is unique in that it is a revolving fund. The first

overpayment of \$2.1 million in 2000 was due to a miscalculation in the fund balance, and if it had been discovered and corrected immediately it would have come back to the fund. Collection could cost as much as \$100 thousand. She will bring a resolution back to the Board on this matter.

(M.S.C. Loesch/Perkins) to adopt the memo and request a resolution come back to the Board. Motion carried 5-0-1.

- b. **Direction to staff concerning a recommendation to the City Council related to revising the formula for distribution of future SRBR payments to take into account any past over distributions.**

Member Overton stated the area of benefits administration should not be gotten into by the Board. The agreements on record have been established by the collective bargaining groups and City Council and changes should come from them.

Vice-Chair Loesch stated the Board should administer the benefits as given, and not push to enhance or detract benefits.

Ms. Dent stated to an extent those views are correct. She noted the balances in the SRBR fund are now correct. It is important that the distribution formula is followed. The Board's role is one that administers the benefits, but that has some history of making recommendations as necessary.

(M.S.C. Kalra/Overton) to recommend not going forward with this item. Motion carried 5-0-2.

15. Board review and action on recommendation to City Council regarding SRBR termination.

The Secretary stated this is to open up an informal discussion, as requested by the Board Chair.

Mr. Callahan stated he was promised a retirement when his employment began with the City, and he does not believe the Board, or City Council has the ability to terminate SRBR. He would request that a legal opinion be provided on this matter.

Chair Busse stated as a fiduciary, he feels that the SRBR fund is counter to the health of the Plan.

(M.S.C. Overton/Kalra) to recommend dropping this item. Motion carried 5-0-2.

16. Discussion of Board's disability retirement application denial process

Ms. Dent stated this item came up at the last Board meeting regarding the denial without prejudice, which is not applicable to this Board. She outlined the mechanisms for bring a disability back to the Board after denial.

Mr. Richeda stated the Board may want to consider reviewing Robert's Rules of Order, and alternate rules/procedures that may be more suitable for this Board to adopt.

This item is note and file.

17. Report on cash flow and liquidity analysis (Continued from April)

Mrs. Racy-Choy stated there is an \$11-12 million dollar trend the pension is paying; and the costs for administration, health, and manager fees tend to trend evenly. Occasionally, there may be some spikes associated with manager fees. Every month the Plan's employee contributions are \$2 million dollars. If there are any shortfalls then those are covered by selling investments. The cash flow is meeting the Plan's needs quite well.

The Secretary stated historical views can be brought back along with this item.

NEW BUSINESS (Items 18-21)

18. Update on Securities & Exchange Commission's inquiry of pension plans.

Ms. Dent stated the SEC made a written request in late June to both Plans for a variety of information related to placement fees in connection with Plan investments. Provided in the packet was a letter that granted a time extension for the requested information, as the original deadline did not provide enough time to respond, and as of 7/24/2009 the requested documentation was provided to the SEC. Additionally there was a verbal request related to real estate investments. The SEC requested the same information from several plans. She will provide the Board with a letter outlining what material was requested and provided.

Mr. Richeda noted AB 1564 that is pending in the Assembly and the potential regulation of placement agents. There is controversy throughout the country regarding managers paying to be considered for hire by a Plan, otherwise known as pay to play.

19. Report on City's prefunding of required contributions for Fiscal Year 2009-10 and reconciliation for Fiscal Year 2008-09.

Ms. Niebla stated the memo outlines the amount of the City's prepayment, how it has been invested, and the reconciliation report from last year's prepayment.

This item is note and file.

20. Approval of a change to Judy P. Miller's service retirement date from 7/25/09 to 6/27/09.

(M.S.C. Loesch/Overton) to approve. Motion carried 5-0-2.

21. Request for Board approval of the following trustees'/staff attendance at the educational conferences listed:

<u>Trustee/Staff</u>	<u>Conference Name/Location/Dates</u>
Ron Kumar	Public Engagement: The Vital Leadership Skill in Difficult Times – Cupertino – 30 June 2009
Rajiv Das	American Academy of Physical Medicine & Rehabilitation Annual Assembly – Austin, TX – October 21 thru 25, 2009
Russell Crosby	CalAPRS Administrators' Institute – Sept. 23 thru 25, 2009, Tahoe Vista, CA
Veronica Niebla	Tools for Stability in Uncertain Times – July 15, 2009 – San Jose, CA
Ali Amiry, Carmen Racy-Choy	CFA Continuing Education – August 12, 2009 – San Francisco, CA
Matt Loesch, Jeff Perkins Carmen Racy-Choy	Investment Consultant Due Diligence – July 28-30, 2009, Boston, MA

The Secretary stated that staff travel will be separated from the Trustee travel, for Board approval of trustee travel. Staff travel is only notification to the Board.

(M.S.C. Overton/Loesch) to approve. Motion carried 5-0-2.

STANDING COMMITTEES / REPORTS / RECOMMENDATIONS

- 22. Committee for Investments (Perkins/Loesch/Busse – alt/Constant)- last mtg 6/25/09**
 a. Summary of meeting held 25 June 2009

1. Approval of the Investment Committee's FY 2009-10 Workplan

Mr. Imamura stated he saw that there will be a new consultant and asked about active management. He stated he would like for beneficiary input to be considered by the Board in the future.

(M.S.C. Loesch/Overton) to approve. Motion carried 5-0-2.

b. Meeting held 13 August 2009

1. Approval for the Secretary to negotiate and execute an agreement with the consultant selected by the Investment Committee for a three year term and not to exceed annual amount of \$400,000 and to provide notice of termination of the agreement with

Strategic Investment Solutions, Inc.

Chair Busse stated the Investment Committee selected the Makita firm located in Boston.

(M.S.C. Overton/Perkins) to approve. Motion carried 5-0-2.

23. **Committee of the Whole (Full Board) – last meeting 6/25/09**

- a. Summary of meeting held 25 June 2009

(M.S.C. Loesch/Overton) to approve. Motion carried 5-0-2.

24. **Policy Committee (Busse/Overton/Constant – alt/Loesch) - TBD**

Chair Busse stated this meeting should be scheduled to address the remaining travel audit items, and video/audio recording recommendations to make meetings more accessible.

EDUCATION AND TRAINING FUTURE AGENDA ITEMS

Vice-Chair Loesch requested that staff perform a cost analysis regarding changing the meetings to City Hall.

25. PUBLIC/RETIREE COMMENTS

Mr. Callahan stated regarding the Cortex study that it seems the City wants more qualified decision makers on the Board, but he does not trust outside people without a defined benefit pension plan and no vested interest in the Plan. There are many thefts that have occurred by professionals, and the reform is not understood.

Mr. Rodriguez stated he reviewed some case law regarding the Pension Protection Act (PPA) and feels that pensions are protected. He does not like the idea of an outside company – Cortex – to provide that pension protection. He believes the representatives on the Board are concerned with the Plan and its membership, and a detached entity will not care.

ADJOURNMENT INTO CLOSED SESSION

Chair Busse adjourned the meeting at 11:47 a.m. into Closed Session.

CLOSED SESSION –

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO
GOVERNMENT CODE SECTION 54956.9 subsection (a):

Case Name: Estate of Albert Pinon

Name(s) of Parties(s) Involved: FEDERATED CITY EMPLOYEES RETIREMENT PLAN,
PATRICIA BYE AS ADMINISTRATOR OF THE ESTATE
OF ALBERT PINON

Court: Superior Court of California, County of Santa Clara

Case No.: I-08-PR-163445

Amount of Money or Other Relief Sought: \$4,441.82 plus interest.

DAVE BUSSE, CHAIR
BOARD OF ADMINISTRATION

ATTEST:

RUSSELL U. CROSBY, DIRECTOR
BOARD OF ADMINISTRATION