

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**March 6, 2008**

### **CALL TO ORDER**

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:35 a.m., on Thursday, March 6, 2008, in regular session in the Department of Retirement Services' Conference Room, 1737 North First Street, Suite 600, San José, California.

### **ROLL CALL**

#### **Present:**

**MARK J. SKEEN**

**KEN HEREDIA**

**BRET MUNCY**

**BILL BRILL**

**FORREST WILLIAMS**

**CHAIR**

**VICE CHAIR**

**Trustee**

**Trustee**

**Trustee (Exited 9:10 am)**

### **NOT PRESENT:**

**DAVE CORTESE**

**SCOTT JOHNSON**

**Trustee (Excused)**

**Trustee (Excused)**

### **ALSO PRESENT:**

**Russell Crosby**

**-SECRETARY**

Tom Webster

-Staff

Susan Devencenzi

-City Attorney

Debbi Warkentin

-Staff

Russell Richeda

-Saltzman & Johnson

Tamasha Johnson

-Staff

Amanda Ramos

-Staff

Donna Busse

-Staff

Ron Kumar

-Staff

Rhonda Snyder

-Staff

Susan Perriera

-Staff

Mike Rosingana

-Retirees Assoc

Rajiv Das

-Board Doctor

Carol Bermillo

-Staff

Bruce DeMers

-PF Retirees

Jeanne Groen

-HR

Udaya Rajbhandari

-Staff

Roger Pickler

-Staff

Randy Sekany

-Local 230

Maria Loera

-Staff

Andy Yeung

The Segal Company

Corina Fernandez

-Staff

Karin Carmichael

-Staff

Steve Hendrickson

-Interim City Auditor

Linda Charfauros

-SJFD

Lt. John Carr

-SJPD

Thomas Boyle

-Attorney

Veronica Niebla

-Staff

Sandra Holloway

-SJPD

Michael Houston

-Auditor's Office

Toni Johnson

-Staff

Chris Constantin

-Auditor's Office

Robert Nalett

-SJPD

Jorge Oseguera

-Auditor's Office

Mark Danaj

Human Resources

Paul Hackleman

HR Consultant

## **REGULAR SESSION**

### **ORDERS OF THE DAY**

**Chair Skeen** called the meeting to order at 8:36 a.m. He announced that Item 15 would be heard first.

**The Secretary** introduced the newest member of staff Veronica Niebla, Senior Accountant.

(Out of Order)

**OLD BUSINESS / CONTINUED ITEMS**

**15. Further discussion and action on City Auditor's notification of intent to initiate audit of Retirement Services Travel Expenses.**

*Mr. Hendrickson*, Interim City Auditor, reported to the Board that the City Auditor's Office sent a letter to the Retirement Boards describing in detail the process they would use in performing the audit of travel expenditures.

**Chair Skeen** requested that he provide some history about how the audit on travel got on the Auditor's agenda.

*Mr. Hendrickson* responded that in September 2006 a procurement card audit was performed and the travel items were reviewed as well. There were some items that appeared to merit further audit, so their office requested a review and audit at that time. This is typical practice if there are items that come up requiring follow up. Also, there were some recommendations that were made, which the Auditor's Office is not aware of the Board adopting, so the Auditor's Office took the next step to request that the auditing of travel expenses be added to the work plan by the Rules Committee. The City Auditor's Office does not feel that the audit done by Macias & Gini was sufficient, as it appeared to be an audit of the paper trail – were all the expenses being filed, procedures followed, and paper work processed according to policy. The audit that the Auditor's Office envisions delves deeper into the policy – is it sufficient, is travel being done in accord with the policy – so this audit will look at not only the paperwork but also the propriety of the expenses.

**Vice-Chair Heredia** expressed that he recalls the procurement card audit differently. The Board did take action on the recommendations that came out of that audit. He stated that there is clearly a lack of communication.

*Mr. Hendrickson* responded that during the audit provided by Macias & Gini, a sample of travel occurrences was collected to review the paperwork. They looked to see if the forms were filled out correctly, they looked at the travel documents prior to travel and then compared that to the documents supplied after the travel was completed, and the reconciliations of that occurrence. The City Auditor's Office wants to look at the paperwork, controls, policies, and the conversations pertaining to the travel occurrences. They will begin by doing a preliminary survey, which could take a few weeks to gain an understanding of the Retirement Plans' policies and procedures. Then the information obtained would be used to outline an audit program determining which parts to review and setting the scope. If they review the reimbursement process and find issues then they may include that as part of the audit. The same process used for all departments will be utilized for this audit.

**Member Brill** requested the timeline the Auditor's Office has planned for this audit, and if they intend to refine the Board's travel policy, which the Board sets.

*Mr. Hendrickson* replied that they plan to look at the last 2-3 years of travel expenses and that it is possible that they may look at the policy to see if it needs refining. Responding to a question, *Mr. Hendrickson* stated that constructive travel, which is combining a Board conference with personal pleasure, is not considered misuse of resources so long as it is separated out through the controls and policies in place.

**Vice-Chair Heredia** stated that there is a difference of attorney opinions, but there needs to be a discussion on how to cooperate going forward in resolving matters. The Board knows the audit is going to take place, but would like there to be better communication. He recalled there was one recommendation from the Macias & Gini audit that was for the Board to form an audit committee, which the Board did.

**Chair Skeen** noted that the audit committee was formed at that time.

*Mr. Richeda* noted that Mr. Hendrickson stated that Mr. Luna had attended a prior Board meeting and also spoke with staff regarding the audit and requested any documents the City Auditor's office can provide. Also, if there was any form of communication did it suggest adding this audit of travel expenses to the work plan?

*Mr. Hendrickson* stated that Mr. Luna appeared on October 5<sup>th</sup> and 16<sup>th</sup> to advise he was making recommendations.

*Mr. Oseguera* stated that Chris Constantin from the City Auditor's office had been communicating with Retirement Services about the travel audit through email with Mr. Webster, and he has that string of emails available. Mr. Constantin indicated he did not know how to communicate to the Boards. Once that communication occurred with Mr. Webster there was no feedback given to him, so they expected that the communication had been forwarded to the Boards. He stated the Auditor's Office did what they were supposed to.

*Mr. Webster* responded that at the October 5<sup>th</sup> Board meeting Mr. Luna arrived late and the Board had already heard the item. The communication received from the City Auditor's Office only pertained to the Macias & Gini audit and the issues that they looked at. Also, if Mr. Constantin did send an email with regards to an audit, he did not feel it was an issue since the information provided by Macias & Gini was relayed to the Auditor's Office.

**Member Williams exited**

**Mr. Richeda** asked about each department presenting its own unique situations, which is true of the Retirement Services Department, so we would want to alert the Auditor's Office to the pertinent background information on travel. The Auditor stated that making comparisons to other systems would be made.

*Mr. Hendrickson* stated that in comparing this Plan to similar Plans they may conduct a survey or make site visits, but there are various methods used to obtain information.

**Chair Skeen** requested that when they perform their surveys on other systems that they also compare the performance of those Plans.

*Mr. Sekany* stated that he supports the concept of communication but has a real concern based on the history of a lack of dialogue. He would urge the Board to ensure they are provided the opportunity to do a comprehensive and thorough communication and review process of the final report of the audit prior to public release.

**Vice-Chair Heredia** stated going forward that they can cooperate because it is important that the Auditor's Office interact with the Board's Audit Committee to understand any findings that come out of this audit.

(M.S.C. Heredia/Brill) to move forward with the audit and continue to improve communications. Motion carried 4-0-3. (Absent: Cortese, Williams, Johnson).

(Back on Agenda)

**RETIREMENTS**

**1. Service**

- a. **Robert F. Bennett, Sergeant, Police Department. Request for Service Retirement effective 22 March 2008; 28.72 years of service. (SCD Pending)**

(M.S.C. Muncy/Heredia) to approve application. Motion carried 4-0-3.

- b. **Charles A. Hahn, Lieutenant, Police Department. Request for Service Retirement effective 8 March 2008; 27.12 years of service.**

(M.S.C. Muncy/Brill) to approve application. Motion carried 4-0-3.

**Disabilities - None**

**2. Change in Status**

**Robert P. Nalett, Jr., Retired Sergeant. Request for change to a Service-Connected Disability Retirement effective 10 February 2007; 25.00 years of service.**

**Sergeant Nalett, Jr.** was present and was represented by *Mr. Boyle*.

For the record, the following medical reports have been received:

<u>Doctor's Name</u>	<u>Report Date</u>
Gregory Altemose	12/12/06; 1/31/07; 2/1/07; 3/20/07; 9/25/07
Jonathan Ng	3/19/01; 8/11/04; 1/16/07; 7/12/07 (2 rpts); 7/13/07
E. Wissner	10/30/06
Rachel Bailon	10/28/06
<u>Medical Director</u>	<u>Report Date</u>
Dr. Rajiv Das	2007

*Dr. Das* stated that with *Mr. Nalett's* condition he has the risk of fainting episodes and cannot perform in uncontrolled environments.

*Mr. Boyle* stated the department currently has no positions available for him.

**Member Muncy** asked *Mr. Nalett* to elaborate on the last few weeks prior to going out on disability.

*Sergeant Nalett* replied that he suffered a heart attack, had a pace-maker inserted, and has undergone several additional procedures on his heart.

(M.S.C. Muncy/Brill) to approve application. Motion carried 4-0-3.

**Deferred Vested – None**

**DEATH NOTIFICATIONS**

3. **Notification of the death John S. Mosunic, Retired Sergeant, retired 1/7/93; died 2/1/08 and request for survivorship benefits to Kathryn D. Mosunic, spouse.**

(M.S.C. Brill/Muncy) to approve benefit payments. Motion carried 4-0-3.

**NEW BUSINESS**

4. **Approval of draft ordinance increasing retirement benefits for members of the Police & Fire Department Retirement Plan who are employed in the Fire Department.**

*Ms. Devencenzi* stated that there are continuing discussions between Local 230 and the City, and the parties would be meeting on the 14<sup>th</sup> and possibly the 19<sup>th</sup>.

**Vice-Chair Heredia** stated that everything that was in the arbitration award absent survivors should be included in this ordinance. Also, the language should be changed in the third whereas because it is not factually correct if Fire Chiefs are in Unit 99, and they are outside of the bargaining unit.

*Mr. Webster* stated they are aware that the agreement is not settled, but his concern is being able to implement the benefit by July.

*Mr. Sekany* stated that the union and Employee Relations are meeting to discuss the issue of the inclusion of senior staff (which are currently unrepresented in Unit 99) and survivorship. He would like there to be a separate ordinance for survivorship. Also, they would prefer the ordinance be amended to include language specifically stating it applies to members of Local 230 bargaining unit.

*Ms. Devencenzi* stated that those recommendations can go forward but she feels it will slow down the approval process.

**Member Brill** expressed there are some gaps to fill in and he understands the time constraints; however he feels they should take the time to do it right.

(M.S.C. Heredia/Brill) to include Mr. Sekany's recommendations within the ordinance text to send forward to Council. Motion carried 4-0-3.

5. **Approval of an ordinance amending the Police and Fire Retirement Plan to add a definition of "normal retirement age" and to add a provision relating to the election to pay for health insurance premiums on a pre-tax basis up to the limit provided in Internal Revenue Code Section 402(l).**

*Ms. Devencenzi* reported that in May a lengthy memorandum was provided and the Board decided to provide a pre-tax benefit relating to the health insurance premiums for City sponsored health plans. The Plan however did not set a retirement age, so this ordinance would amend the Plan to add a "normal retirement age" definition. Spouses and dependents are covered while the member is alive, but after death they become excluded and the same applies to members that are deferred vested. When the member files his or her taxes the member will can elect a special credit for health insurance premiums to be on a pre-tax basis. The retiree can take an amount up to \$3000 to report on lines 16a/b on the tax form.

*Mr. Richeda* added that the change was because the Retirement Plan does not have to do 1099 reporting.

**Chair Skeen** requested that this be added to the website as an educational topic.

(M.S.C. Muncy/Brill) to approve ordinance. Motion carried 4-0-3.

6. **Action on request by David Keneller, Retired Police Captain, to pay monthly premium under the Pension Protect Act of \$376.01 to Genworth Financial for long-term care policy.**

*Mr. Keneller* expressed concern about the ordinance only pertaining to City sponsored programs for the health insurance premium pre-tax benefit. He stated Genworth, which is a Long Term Care plan he would like to use, is a qualified plan. He believes the Pension Protection Act makes this mandatory, so based on that he is opting to proceed with his request.

*Mr. Richeda* stated he disagreed with Captain Keneller's interpretation of the law. The provisions of the Public Pension Act and relevant IRS Code provisions make it optional for the sponsor so we chose not to participate.

*Mr. Green*, a Prudential representative stated that Congress said a retired public safety officer can choose from qualified long-term care plans, and IRS says this plan qualifies.

(M.S.C. Heredia/Brill) to recommend staff provide a report in collaboration with legal counsel on how to make a determination on tax qualified status of a health plan, provide due diligence, and review the potential costs. Motion carried 4-0-3.

**7. Notification of the upcoming retirement of Susan Devencenzi and request for Board direction on determination of her replacement from the City Attorney's Office.**

**The Board** congratulated Ms. Devencenzi and wished her well in her retirement.

*Ms. Devencenzi* stated they are working on obtaining a temporary person to perform her duties.

**8. Request for Board action on Russ Richeda's legal opinion entitled "Authority of the City Auditor with Respect to the Board of Administration or Retirement Staff."**

This item was discussed as part of the City Auditor's item #15, heard first.

**9. Request for change of retirement effective date of Jorge Gonzalez, Retired Sergeant, from January 20, 2008 to January 27, 2008.**

(M.S.C. Muncy/Heredia) to approve request. Motion carried 4-0-3.

**10. Approval of Department of Retirement Service's Budget Proposal for the Fiscal Year 2008-2009.**

*Mr. Webster* stated in the past there had been a separate meeting and presentation for the Budget, however due to the numerous meetings as of late staff provided additional details to include in the material. The budget is basically the same as last year's.

**The Secretary** explained the budget assumes staffing the Deputy Director position, an additional analyst, and, in conjunction with Human Resources Department, a wellness program to include retirees. Also, there will be equipment upgrades so the department can deliver better customer service to the membership, and more security for data systems.

(M.S.C. Heredia/Brill) to approve 2008-09 budget. Motion carried 4-0-3.

**12. Segal's memo regarding testing the medical and dental contributions for compliance with IRC Section 401(h).**

*Mr. Yeung* reported that the Plan is in compliance with section 401(h).

*Mr. Richeda* asked how many years it would be before the Plan hit the 25% limit.

*Mr. Yeung* stated that they will continue to test and watch the 401(h) limits.

**Chair Skeen** responded that it would be \$4.6 million before the Trust hits the 25% at the current rate or 2% of payroll before the ceiling was reached.

*This item is note and file.*

(Out of Order)

14. **Approval of The Segal Company's actuarial study for the two-year period ending 30 June 2007 and establishment of rates of contributions to be effective 1 July 2008**

**Vice-Chair Heredia** stated that there were still some outstanding issues to resolve prior to acceptance.

*Mr. Yeung* stated the reason the rate went down is because of the adherence to policy. He can maintain the current rate and provide a letter for adoption.

(M.S.C. Heredia/Brill) to defer item and have Segal provide information on what the rates would be if the Board did not reduce the contributions for medical and dental benefits. Motion carried 4-0-3.

(Back on Agenda)

13. **Acceptance of Board-approved special actuarial study results by Plan's actuary on Police Member Retirement Benefit Improvement (3% at 20 years and increased survivorship benefit of 45%) and Board authorization to forward on to POA and Employee Relations.**

**Chair Skeen** requested that member Muncy meet with Mr. Tennant to facilitate a meeting between the POA and Local 230 regarding whether the Board should set separate contribution rates for Police and Fire members or use a combined calculation.

## **OLD BUSINESS / CONTINUED ITEMS**

16. **Approval of Revised Policy 220.3-P&F on Procurement of Legal Services.**

**Chair Skeen** stated that he had a memorandum from Mr. Doyle requesting this item be deferred, as there are meetings in progress between members of the Board and Mr. Doyle which will address issues raised or being raised.

(M.S.C. Heredia/Brill) to defer item. Motion carried 4-0-3.

17. **Discussion and possible action on the City's Finance Department's Travel Reimbursement Timeline. (Defer to April)**

**Chair Skeen** stated this will be deferred.

(Out of Order)

**Presentation of Commendation to Susan J. Devencenzi for her service to the Police and Fire Department Retirement Plan for over 23 years.**

**Chair Skeen** presented the Commendation and read the recitals to Ms. Devencenzi.

**11. Presentation by City's Healthcare Consultant on Stakeholder Group Outreach for Retiree Healthcare (To be heard at the end of the agenda).**

*Mr. Danaj* stated that a report will be presented to the City Council with options to fund the retiree healthcare liability. The City is currently providing opportunities for education of and feedback from stakeholders. There is a website on the City's homepage at [www.sanjoseca.gov/retireehealthcare](http://www.sanjoseca.gov/retireehealthcare). He introduced Paul Hackleman as the City's lead consultant, who currently is the Benefits Manager for San Mateo County, active in the International Foundation of Employee Benefit Plans, and was named as benefits manager of the year in 2006 by the Business Insurance Publishing.

*Mr. Hackleman* reported that healthcare costs are increasing at 3 times the rate of wages or CPI. GASB was rolled out to larger entities first and then to smaller entities. San Jose is among the first; so strategies are still very new and there will be more. He has held educational and feedback sessions with several groups. He has some key takeaways from these sessions: 1. It is critical that GASB is not financed on the backs of current retirees. 2. This is a growing issue and something needs to be done and it is important to understand the liabilities and address them. 3. It is important that costs are controlled; so innovative solutions should be sought versus shifting costs through benefit reductions or elevated contributions. 4. Any process selected going forward should be a collaborative one, with input from all stakeholders. 5. All groups are in agreement that finding a way to get to fully funded status is important. 6. To be pro-active in identifying high risk health members – which can assist in controlling costs via wellness/disease management programs. 7. To continue to solicit stakeholders ideas/input at each milestone. 8. To have more flexibility in the available plans. 9. To seek investment return growth. 10. To continue to proceed cautiously and to plan thoroughly.

**Vice-Chair Heredia** requested any legal opinions on this topic be provided, if possible.

*Ms. Devencenzi* stated that Jones Day issued an opinion marked confidential; however the City Council has waived the attorney-client/privilege, so it is available upon request and she will send it to the Secretary for distribution.

(Back on Agenda)

**STANDING COMMITTEE REPORTS/RECOMMENDATIONS**

**Investment Committee (Skeen, Heredia, Muncy) – None – last meeting 25 February 2008**

**Real Estate Committee (Skeen, Heredia, Muncy) – None – last meeting 25 February 2008**

**Investment Committee of the Whole (Full Board) – None – last meeting 25 February 2008**

**Joint Solutions to Retiree Healthcare Committee – None – last meeting 22 February 2008**

Future meeting dates: 3/19 @ 9:00 a.m.; 4/4 @ 8:30 a.m.; 4/16 @ 9:00 a.m. and 4/30 @ 2:00 p.m.

**18. APPROVAL OF MINUTES**

Monthly Board Meeting held 7 February 2008

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3.



**PENDING ACTION LIST**

37. Updated list as of 27 February 2008

(M.S.C. Heredia/Muncy) to approve. Motion carried 4-0-3.

**BENEFITS REVIEW**

20. Summary of Meeting held January 2008

**CONSENT CALENDAR (Items 21-23)**

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3.

**PROPOSED AGENDA ITEMS**

**PUBLIC COMMENTS**

**EDUCATION & TRAINING**

24. **Notification of the IFEBP's Portfolio Concepts and Management to be held** at Wharton-Philadelphia, May 19 thru 22, 2008 and Hedge Funds, Real Estate & Other Alternative Investments to be held at Wharton West- San Francisco, June 23 thru 25, 2008.

**ADJOURNMENT**

There being no further business, the **Chair** adjourned the meeting at 12:38 pm.

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**MARK SKEEN, CHAIR**  
**BOARD OF ADMINISTRATION**

**ATTEST:**

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**RUSSELL U. CROSBY, SECRETARY**  
**BOARD OF ADMINISTRATION**