

# FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**April 13, 2006**

### CALL TO ORDER

The Board of Administration of the Federated City Employees' Retirement System met at 8:37 a.m., on Thursday, April 13, 2006, in regular session at City of San Jose's Council Chambers, 200 East Santa Clara St., San José, California.

### ROLL CALL

#### Present:

**DAVID BUSSE**

**Bill Thomas**

**Tim Callahan**

**Forrest Williams**

**Mike Yoshimoto**

**Jeffrey Perkins**

**CHAIR, Civil Service Representative**

**Vice Chair, Retiree Representative**

**Employee Representative**

**City Council Representative**

**Employee Representative**

**Public Member**

#### NOT PRESENT:

**David Cortese**

**City Council Representative (Excused)**

#### ALSO PRESENT:

**Edward F. Overton** -Secretary / Director

**Susan Devencenzi** -City Attorney

**Dr. Das** -Medical Staff

**Ron Kumar** -Staff

**Udaya Rajbhandari** -Staff

**Tamasha Johnson** -Staff

**Aleta Holcomb** - "

**Charles Gebhardt** -IBEW

**Doug Riccobond** -ABMEI

**Lee Price** -City Clerk's Office

**Sarah Nunes** -ES

**Rhonda Snyder** -Staff

**Colleen Hy** -Staff

**Tom Webster** -Staff

**Russ Richeda** -Outside Attorney

**Carolyn Landon** -General Services

**Sally Griffin** -Airport

**Susan Perreira** -Staff

**Roger Pickler** - "

**Paul Rooney** -General Services

**Dabbi Rooney** -Wife of P. Rooney

**Mike Pribula** -Staff

**Linda Dittes** -AFSCME

**Erik Lowner** - "

**Bob Leininger** -REA

## REGULAR SESSION

**The Chair** called the meeting to order at 8:37 a.m.

**The Secretary** introduced Barbara Hayman as the newest member of Retirement Services.

### RETIREMENTS

#### **Disability Retirement for Hearing Retirements per SJMC Section 3.28.1290**

**Yolande T. Vazquez**, Staff Technician, City Clerk's Office, effective March 9, 2006; 16.43 years of service.

*Mrs. Vazquez* was present.

**The Secretary** stated that Mrs. Vazquez makes her application based on Thoracic Outlet Syndrome affecting hands, wrists, elbows and shoulders-bilaterally. She is 46 years of age and has 16 plus years of service with the City. This case was heard last month and was continued to today, since that time there are three additional pieces of information.

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

| <u>Doctor's Name</u>                    | <u>Report Date</u>                                                                        |
|-----------------------------------------|-------------------------------------------------------------------------------------------|
| Deanice Beck, M.D.                      | 3/24/06 (Amendment to the 3/10/06 Report); 3/10/06;<br>12/12/05; 9/2/05; 8/1/05; 5/17/05  |
| Functional Capacity Eval.               | 1/20/06                                                                                   |
| Richard Ward, M.D.                      | 12/2/05                                                                                   |
| James Rhee, M.D.                        | 11/7/05 (Evaluation); 11/7/05 (Letter)                                                    |
| Summary of Symptoms-<br>Yolande Vazquez | 11/7/05                                                                                   |
| Brian Marten, M.D.                      | 6/17/05 (L. Shoulder X-ray); 6/17/05 (L. Wrist X-ray); 6/17/05<br>(L. Hand X-ray)         |
| Susan Scholey, M.D.                     | 4/29/05 (Wrist); 4/29/05 (Shoulder); 3/11/05; 1/26/05                                     |
| Jeffrey Siino, D.C.                     | 2/28/05                                                                                   |
| Rita Bermudez, M.D.                     | 2/11/05                                                                                   |
| Huu Dao, M.D.                           | 2/10/05                                                                                   |
| Questionnaire- Yolande<br>Vazquez       | 2/7/05                                                                                    |
| Paul Zic, D.C.                          | 3/1/05; 12/3/04; 10/7/04; 7/15/04; 7/1/04; 2/12/96; 10/23/95;<br>8/16/95; 2/11/99; 7/5/95 |
| Individual Ergonomics Plan              | 9/10/04                                                                                   |
| Letter from Yolande<br>Vazquez          | 2/3/06                                                                                    |
| <u>Medical Director</u>                 | <u>Report Date</u>                                                                        |
| Dr. Rajiv Das                           | 3/22/06; 2/7/06 (Supplemental); 2/3/06 (Updated); 1/31/06                                 |

**The Secretary** said that an additional memo was handed out this morning from Employee Services indicating that of the opportunities available to Mrs. Vazquez; she has declined consideration of the positions, as she feels she just cannot do them.

*Mrs. Vazquez* stated that she reviewed the job descriptions for the five positions and feels that based on the descriptions she cannot do those jobs, if she felt that she could she would have transferred a long time ago. Also, she must comply with the Workers Comp restrictions. She described to the Board her pain again, and described her work ethic.

*Mr. Webster* and *Mrs. Devencenzi* clarified what work restrictions are to be used in determining a position for Mrs. Vazquez. They determined that Dr. Das' restrictions would be used currently, but upon Mrs. Vazquez's return to work the Workers Comp restrictions would be used by the City.

**Member Williams** thanked Mrs. Vazquez for her years of service and explained that he understands that she is having difficulties, however he clarified that as a Board member the basis for granting a service connected disability retirement the Board must rely on the professional opinions of the doctor. In looking at this case and all the medical input, he asked how should they make a decision; on the medical evaluations or on the employee's words. He requested Dr. Das to go through the reports and explain if everything that can be done has been done.

*Dr. Das* explained that the issue is in finding an appropriate explanation for the level of symptoms. He did say that there was some indication of a vascular diagnosis, which is a pinched blood vessel in the neck,

however relating that diagnosis to her work is a big stretch.

**Member Williams** discussed with **the Secretary** the difference between a regular retirement and a service connected disability retirement, which was explained that the regular retirement will be reduced according to the number of years the person is under age 55 and with a disability retirement there is no offset.

**Member Perkins** discussed with *Mrs. Price* the details of *Mrs. Vazquez's* duties and the physical labor involved.

**Member Perkins** also stated that since *Mrs. Price* has contracted out the part of the job that was the most demanding and caused the majority of the symptoms that he was curious as to why she could not perform in that capacity now. He also asked about the conflicting work restrictions, as the Board follows one set and the City follows a different set of restrictions.

*Mrs. Price* stated that even though that part of the job has been contracted out there is still a lot of keyboarding, pinching, gripping, and other duties involved and that she tries to rotate the employees around.

*Mrs. Devencenzi* explained that as far as restrictions it is a catch 22, but it is the City's process.

*Dr. Das* stated that his restrictions are actually more restrictive than the Workers Comp restrictions, so there should not be any issue there.

**Chair Busse** asked if *Mrs. Vazquez* has physically visited the locations/departments of the positions being offered to her. He stated that the City can accommodate her work restrictions and she has not tried any of the options.

*Mrs. Vazquez* stated that she inquired about one of the positions but based on the description it seemed like a job that she would not be able to do. She did not visit, nor inquire about the other available positions because she also felt she would not be able to do them and she did not receive information from Employee Services until earlier this week.

*Mrs. Nunes* clarified that she met with *Mrs. Vazquez* one week after the previous Board meeting to discuss the available positions and at that time *Mrs. Vazquez* declined to follow-up on the jobs.

(M.S.C. Callahan/Yoshimoto) to approve item. Motion denied 2-4-1. (NO – Busse/Thomas/Perkins/Williams) (Absent – Cortese).

## **CONSENT CALENDAR (Items 2 thru 9)**

**The Chair** stated there were changes to the consent calendar. Item 2a is a Nonservice-Connected Disability for approval. Item 2b has a change in the retirement date, which will now be effective February 28, 2006.

(M.S.C. Callahan/Perkins) to approve Consent Calendar. Motion carried 6-0-1.

## **DEATH NOTIFICATIONS (Moment of Silence)**

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

## **NEW BUSINESS**

### **Approval of the budget for the Federated City Employees' Retirement System**

for fiscal year 2006-2007.

**Member Williams** stated that he noticed this budget is slightly higher than the prior year and wanted to know what caused this increase.

**The Secretary** explained the increase includes the assumption that all department vacancies will be filled.

(M.S.C. Williams/Thomas) to approve item. Motion carried 6-0-1.

### **Discussion on Russ Richeda's Memorandum on the Authority of the Board of Administration to Contract for Legal Services.**

*Mr. Richeda* stated that he has provided a memo for legal services for our information and that this does not need action now. He has summarized law pertinent to the issue. He reviewed the Pension Protection Act, history, cases, and the validity and power of the Board to do this. He said he noted some language in the City Charter, some information from the City Attorney's Office, and cited the Wesley case as being important to consider.

*Mrs. Devencenzi* said she disagreed with Mr. Richeda's conclusion and analysis of the Wesley case.

**Member Williams** requested that the Board be provided with a memo to the effect of the Board's authority in decision making and the separateness of the Retirement/Pension administrators.

*Mr. Imamura* requested to speak on this matter, as he requested the Board to explore this issue. He stated that he feels the Board has a responsibility and obligation to not hinder any future Boards and that he hopes this item does not go to rest. He felt that the Board should get their own outside legal counsel since the current attorneys are appointed by City Attorney, whom is appointed by City Council, which could become a problem at some point when Council changes.

**Member Callahan** expressed that the attorneys should revisit the Charter.

**Member Williams** stated that the Charter is the Boards basis and if there is an overwhelming desire to change it then that would need a vote. He thinks that this matter should be expressed to the City Attorney's Office to create some discussion and ensure everyone is on the same page.

**Member Perkins** stated that he supports Member Williams recommendation and that having certain rights brings about certain responsibilities. He said that everyone needs to take a step back and look at the entire process.

*Mrs. Devencenzi* clarified that she would provide some information on the Retirement Boards scope of authority and the request to contract for outside legal counsel but would like to bring that to the Board first, then decide if we want to take it before council.

### **OLD BUSINESS - None**

### **STANDING COMMITTEE / REPORTS / RECOMMENDATIONS**

**Investment Committee of the Whole** – next meeting 5/25/2006.

#### **Real Estate Committee**

a. Summary of meeting held 8 March 2006.

- ☐ Approval to hire and invest in American Realty Advisor's Stable Value Fund.

(M.S.C. Williams/Thomas) to approve item. Motion carried 6-0-1.

b. Summary of meeting held 5 April 2006.

- ☐ Approval to hire and invest in GE Asset Management's Closed-End Fund.

(M.S.C. Williams/Thomas) to approve item. Motion carried 6-0-1.

### **Committee for Investments – next meeting 4/17/2006.**

#### **Benefits Review Forum (BRF) oral update. (Thomas)**

**Member Thomas** stated the last meeting was an excellent one. He said there was a lot of discussion on upcoming legislation. He also thought that a review of some of the pending legislation would be good for the Board to become familiar with, as there are two bills in particular that relate to pension plan medical. There were also talks about making a change in retirement plans. He will report back the new information from the next meeting, which will be on April 26, 2006 at 9 am in the City Hall Wing room 262.

**Member Williams** inquired about the attendance at the Forum meetings.

**Member Thomas** replied that it is mostly alliances and consultants, but roughly about 25 are usually in attendance.

### **EDUCATION AND TRAINING**

**52<sup>nd</sup> Annual Employee Benefits Conference in Las Vegas, Nevada, from October 8-11, 2006.**

### **PUBLIC/RETIREE COMMENTS**

*Mr. Imamura* spoke during the discussion on Russ Richeda's Memorandum on the Authority of the Board of Administration to Contract for Legal Services.

### **FUTURE AGENDA ITEMS**

### **ADJOURNMENT**

There being no further business, at 9:53 a.m., **Chair Busse** adjourned the meeting.

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**DAVID BUSSE, CHAIRPERSON**  
**BOARD OF ADMINISTRATION**

**ATTEST:**

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**EDWARD F. OVERTON, DIRECTOR**  
**BOARD OF ADMINISTRATION**