

POLICE AND FIRE RETIREMENT PLAN

Minutes of the Board Meeting

THURSDAY

SAN JOSÉ, CALIFORNIA

January 5, 2006

CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:42 a.m., on Thursday, January 5, 2006, in regular session in the Department of Retirement Services' Conference Room, 1737 North First Street, Suite 580, San José, California.

ROLL CALL

Present:

MARK J. SKEEN, CHAIR

BILL BRILL

MARK BURTON

BRET MUNCY

DAVID CORTESE

CINDY CHAVEZ

Fire Employee Representative

Civil Service Representative

City Administration Representative

Police Employee Representative

City Council Representative

City Council Representative

Absent:

KENNETH HEREDIA, VICE CHAIR Retiree Representative

ALSO PRESENT:

Edward F. Overton -SECRETARY / DIRECTOR

Dr. James Rhee -Medical Staff

Kevin O'Connell -Macias, Gini & Co.

Bill Hallmark -Mercer

Dale Morgan -SJPD

Anne Ortiz -CMO

Randy Sekany -Local 230

Tony Vizzusi -SJPD

Frank Diaz -Fire Dept.

Mike Moffett -Fire Dept. (rt.)

Tamasha Johnson -Staff

Colleen Hy - "

Susan Devencenzi -City Attorney

Russ Richeda -Saltzman & Johnson

Aracely Rodriguez -OER

Michelle Rathbun -Mercer

James Jeffers -Attorney

Diane Harris -SJPD

Jim Spence -AORPF

Roger Pickler -Staff

Karin Carmichael - "

Judy Powell - "

Amanda Ramos - "

Udaya Rajbhandari - "

REGULAR SESSION

ORDERS OF THE DAY

The Chair called the meeting to order at 8:42 a.m.

RETIREMENTS

Service

Patrick D. Bowers, Fire Engineer, Fire Department. Request for Service Retirement effective December 31, 2005; 25.34 years of service. (SCD Pending)

(M.S.C. Muncy/Brill) to approve application. Motion carried 6-0-1. (Heredia absent)

Rudy Cabigas, Fire Captain, Fire Department. Request for Service Retirement effective January 28, 2006; 29.74 years of service. (SCD Pending)

(M.S.C. Muncy/Brill) to approve application. Motion carried 6-0-1.

Howard Carter, Police Officer, Police Department. Request for Service Retirement effective January 31, 2006; 20.48 years of service.

(M.S.C. Brill/Muncy) to approve application. Motion carried 6-0-1.

Marvin M. Coffey, Fire Captain, Fire Department. Request for Service Retirement effective January 28, 2006; 28.03 years of service.

(M.S.C. Brill/Muncy) to approve application. Motion carried 6-0-1.

Donald O. DeMers, Jr., Sergeant, Police Department. Request for Service Retirement effective January 3, 2006; 31.59 years of service.

(M.S.C. Brill/Burton) to approve application. Motion carried 6-0-1.

Kevin P. Fagalde, Sergeant, Police Department. Request for Service Retirement effective January 28, 2006; 25.00 years of service.

(M.S.C. Brill/Muncy) to approve application. Motion carried 6-0-1.

Gary D. Johnson, Lieutenant, Police Department. Request for Service Retirement effective January 14, 2006; 28.33 years of service.

Lieutenant Johnson was present.

(M.S.C. Muncy/Brill) to approve application. Motion carried 6-0-1.

David Keneller, Police Captain, Police Department. Request for Service Retirement effective January 28, 2006; 29.04 years of service.

The Chair stated that this item has been withdrawn.

Greg Korver, Police Officer, Police Department. Request for Service Retirement effective January 14, 2006; 26.56 years of service.

(M.S.C. Muncy/Brill) to approve application. Motion carried 6-0-1.

Steven Marcotte, Sergeant, Police Department. Request for Service Retirement effective December 31, 2005; 30.06 years of service. **(SCD Pending)**

(M.S.C. Muncy/Brill) to approve application. Motion carried 6-0-1.

John Savala, Sergeant, Police Department. Request for Service Retirement effective January

28, 2006; 28.94 years of service.

The Chair stated that this item has been withdrawn.

Anthony C. Vizzusi, Sergeant, Police Department. Request for Service Retirement effective January 28, 2006; 29.07 years of service.

The Chair stated that this item has been withdrawn.

Clarence R. Wells, Fire Captain, Fire Department. Request for Service Retirement effective January 30, 2006; 29.04 years of service. **(SCD Pending)**

(M.S.C. Brill /Muncy) to approve application. Motion carried 6-0-1.

Disabilities - None

Change in Status

Frank Diaz, Retired Firefighter. Request for change to Service-Connected Disability Retirement effective January 29, 2005; 23.74 years of service. (Cont'd from December)

Firefighter Diaz was present and was represented by *Sam Swift*.

Mr. Diaz is making a change in application based on problems with his neck, lower and upper back, right knee, right foot, right arm and hearing.

The following medical reports have been received:

| <u>Doctor's Name</u> | <u>Report Date</u> |
|----------------------------|--|
| Frederick Wilson, D.P.M. | 7/28/05; 12/29/04; 10/28/04; 1/12/93; 12/28/92 |
| Fulton Chen, M.D. | 11/22/04; 6/11/04; 2/26/04; 12/16/03; 10/31/03; 8/8/02; 6/27/02 |
| Eduardo Lin, M.D. | 8/24/04 |
| Matthew D. Lynn, M.D. | 8/11/04 |
| James D. Fontaine, M.D. | 3/25/03; 2/7/03; 1/30/03 |
| Ron D. Schmidt, D.C. | 1/11/03 |
| Michael R. Tekautz, M.D. | 12/24/02 |
| Gary W. Platt, M.D. | 11/26/02 (2 Reports) |
| Jonathan Posin, M.D. | 7/10/02 |
| Fred William Fifield, D.C. | 3/18/02 |
| Joseph Bistrain, M.D. | 3/17/02 |
| David Mednick, D.P.M. | 12/24/94 |
| Rita P. Segal, D.C. | 8/30/94 |

| <u>Retirement Medical Director</u> | <u>Report Date</u> |
|------------------------------------|--------------------|
| Rajiv Das | 11/8/05 |

Dr. Das detailed Mr. Diaz' injuries and work restrictions.

Mr. Swift detailed Firefighter Diaz' injuries over the last 15 years and his work history with the City.

(M.S.C. Muncy/Chavez) to approve application. Motion carried 6-0-1.

Stephen Ronco, Retired Lieutenant. Request for change to Service-Connected Disability Retirement effective July 31, 2004; 29.07 years of service.

Lieutenant Ronco was present and represented by *Mr. Jeffers*.

The Secretary stated that Lieutenant Ronco requested a change in retirement to service-connected disability retirement based on upper & lower back and left & right shoulder injuries. Lt. Ronco is 52 years of age.

The following medical reports have been received:

| <u>Doctor's Name</u> | <u>Report Date</u> |
|------------------------------------|-----------------------------------|
| Oscar Abeliuk | 3/20/05 |
| Grady Jeter | 7/2/01; 5/22/02; 3/19/04; 6/25/04 |
| Aaron Hammons | 2/25/04 |
| Drew Sullivan | 3/7/03 |
| Andrew Durkin | 5/31/01 |
| Ernest Thomas | 3/22/01 |
| | |
| <u>Retirement Medical Director</u> | <u>Report Date</u> |
| Rajiv Das | 9/15/05; 8/16/05 |

The Secretary explained that in Dr. Das' report for the Retirement Board, his reports conclude that Mr. Ronco should avoid repetitive lifting, repetitive bending and stooping, and repetitive use of the right and left arms. The Department says they can provide modified duty for him meeting his medical restrictions.

Dr. Das went through his report describing his various injuries.

Mr. Jeffers detailed Lt. Ronco injuries and work history.

Lt. Ronco restated the injuries mentioned and how he felt that he cannot perform at the level he feels he should be performing at in his position as a Lieutenant.

Member Muncy asked why the cancer was mentioned, if it was work related, and if it was going to be a part of this disability application.

Mr. Jeffers stated that he mentioned it just as part of Lt. Ronco's state of health and possible inability to make meetings.

The Board and *Dr. Das* discussed the restrictions and the fact that the Department has work that can accommodate modified duty with Lt. Ronco.

Lt. Morgan stated that they do have an administrative position for Lt. Ronco available and several other positions, as well that can accommodate the current restrictions.

(M.S.C. Chavez/ Muncy) to approve application. Motion carried 6-0-1.

Deferred Vested - None

DEATH NOTIFICATIONS

Notification of the death of Arthur MacLean, Retired Fire Captain; retired 11/26/57; died 11/5/05.

NEW BUSINESS

Approval of request from Employee Relations authorizing Board actuary to conduct a study of the recently negotiated retirement benefit enhancement for the P&F Plan members who are in classifications in the Police Department. All costs to be paid for by the City.

The Board, *Ms. Devencenzi* and *Mr. Richeda* discussed liability and responsibility issues pertaining to the Board's fiduciary duties, and some questions that came up were:

Does the police MOU provision raise any legal issues under the California Pension Protection Act?

Does the police MOU provision raise any legal issues under the city charter? I believe Susan is also reviewing this issue.

Do the issues raised in Mr. Platen's January 4, 2006 correspondence to Mr. Overton concern the Retirement Board as opposed to the City? In other words, if the process by which the City and the POA entered into this MOU provision rendered the provision illegal or void, would that affect the Retirement Board and its responsibilities?

What are the Board's overall legal responsibilities with respect to retirement decisions made by the bargaining parties?

Ms. Devencenzi explained the timing of the whole process for the new benefit to be effective on July 1. She stated that by March we would need to have a draft ordinance to present to the Board, then we would have 60 days, and an ordinance would need to be to council by May.

Member Cortese spoke to the legal side of this analysis, asked what would happen if the plan was not amended, and wanted to understand how the monies for MOU/POA/City to be honored in terms of contributions while reserving an equivalent amount of money so that contributions are still equal over to the fire side?

Ms. Devencenzi responded that when benefits are negotiated with the employee organizations', representing them is a plan and if those benefits are different then what the plan documents say then we amend the plan document in order to implement what has been negotiated at the table. What we have now is a benefit agreement that has been made by only one of the employee organizations, so in order to implement that we have to amend the plan because otherwise we have no authority to pay those benefits. She stated that she must advise the Board that without amending the Code/plan benefits will not be paid.

Ms. Devencenzi and **the Board** discussed the amending of the plan and equalizing of contributions, as well as any Code provisions and the intent of the language in the plan and in the City's Charter. There was also discussion pertaining to any legal analysis to happen before or after the study, and if there has been legal analysis - what did it pertain to. *Mr. Rios* gave some insight to the legal basis his group covered on their end and what he saw as pertinent now.

Member Cortese asked for clarification on the issue of whether a retirement provision in an MOU may amend or supersede the Municipal Code, assuming a situation where conforming amendments were not made to the Municipal Code.

Several other questions were: Does the Police MOU provision raise fiduciary issues as to employee contribution rates? Does the Police MOU provision raise fiduciary issues as to the retirement system's investment portfolio and investment assets? Would the system's investment portfolio need to be segregated? Does the Police MOU raise any issues under the Internal Revenue Code? Are the vested rights of the non-POA members of the retirement system adversely affected by the Police MOU provision?

Member Burton asked **the Secretary** if there has ever been any differences of benefits between groups or tiers within benefits and in the past when benefits have increased when are they implemented and what is the determining factor for that.

The Secretary stated that he cannot recall a time that there has been any different benefits within groups or retirees. He also said that in some situations in the past the Board had decided to wait on implementation or do it immediately but GASB rules came in and said that they need to have implementation to be consistent, so they started doing that the following July.

Mr. Gurza stated that the City has every intent to implement this, pay these benefits and they are hoping to get this done before July 1. City is obligated to meet and confer with its ten bargaining units which affect working conditions-rates, hours, salary, and benefits. However, when we reach an agreement on those things there are different documents that may need to be amended to reflect those changes and the vast majority are in the MOA, the other area may be in a City policy. The municipal code should be amended for retirement benefits and have agreed with police officers association to change the benefit and going through process now to come to Board to ask actuary to study it and fully anticipated that there would be Municipal Code amendments. The benefit itself is not complicated but because it only applies to police there are additional changes than what has always been done in the past. Since we fully understood that amendments would need to be done we did look at the City charter to make sure there no violations. In the past the plans have been mostly consistent but medical benefits have been negotiated differently. The analogy is the rate the City paid for that enhancement was paid only by those groups that were receiving it and it is similar in this police benefit enhancement. Would be glad to answer any questions of Mercer to help in this process.

Member Cortese stated that he would like to know how to separate out investment dollars.

Mr. Gurza stated that it is similar to what we have now with commingled funds used for real estate. However, how it is done is to be figured out by the actuary, as that is part of the assignment.

The Board, *Ms. Devencenzi*, *Mr. Richeda*, *Mr. Gurza*, and *Mr. Sekany* discussed fiduciary responsibility and details of how to direct Mercer to perform this study and figure out all the cost, and how to separate out investment money. They also discussed having Mercer come to a meeting to hear and answer the questions

and concerns being raised, as well as, to have Mercer listen to today's discussion. And light discussion pertaining to letter sent by Attorney.

Mr. Tenant wanted to state that police officers want this study done, and that is part of the due diligence. He feels that the study needs to go forward, do the legal analysis parallel to the study, but do it now rather than later so that we know if this separation of benefits can/occur now.

Member Chavez stated that her concern is what is being interpreted on the streets, the actions taken by council and how that can affect the City's general fund if this is not done in a timely process. She recommended moving forward with these caveats: 1. Mercer to come to next meeting to take in input and questions raised and a tape of this meeting be reviewed by Mr. Hallmark with list of questions formulated from this meeting to be provided, 2. Retirement staff to complete concurrently, an analysis of the municipal codes - to understand what the implications are related to taxes and other issues raised today and the legal analysis as it relates to the fiduciary responsibility of this Board, 3. To have Mr. Hallmark understand that as he moves forward with this study, he is to provide in writing an explanation of all methodologies used with a special emphasis on the investment methodology changes both in terms of contribution rates and withdrawal rates, 4. Retirement staff to prepare a response to Mr. Platen's letter.

Member Cortese wanted to clarify that the Board's attorney should do the legal analysis with staff. He also would like to see a committee formed of certain Board members, attorneys and representatives from Employee relations, POA, and Firefighters Association to sit with Mercer to cover all these issues raised today.

(M.S.C. Chavez/Brill) to approve study with caveats. Motion carried 6-0-1.

Authorization to Secretary to negotiate and execute an agreement with Avery associates to conduct an executive recruitment for the deputy director vacancy for a price not to exceed \$26, 000 (to be shared 50/50 with Federated Retirement)

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

Approval of budget increase to cover expansion of office space in the not to exceed amount of \$150,000 for construction costs or \$6,550 rent increase for the fiscal year ending 30 June 2006.

The Secretary stated that his recommendation to cover the expansion cost would be to increase the rent for the fiscal year ending 30 June 2006.

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

OLD BUSINESS / CONTINUED ITEMS

Request for action on Russ Richeda's legal opinion on authority of the Board of Administration to contract for legal services.

Mr. Richeda explained Member Heredia requested this. He explained that the California Pension Protection Act has some wording in it that supports the Board having authority over the extent of legal counsel it seeks. The Charter has similar wording in it, subject to interpretation.

Member Burton stated that this seems similar to the San Diego situation, which is now in litigation.

Ms. Devencenzi stated that the San Diego charter actually speaks to the Retirement Board and San Jose's Charter does not.

The Board discussed how the history of this request came about and how it was more of a form verses contract process.

(M.S.C. Burton/Cortese) to approve request to contract for legal services without any limitations. Motion carried 6-0-1.

STANDING COMMITTEE REPORTS/RECOMMENDATIONS

Investment Committee (Skeen/Heredia/Muncy – Alt: Burton)

☉ Summary of meeting held 2 December 2005.

- Approval to grant an Investment Policy exception for INTECH to limit their individual security variation to the lesser of 10 times or 2.5% more than the benchmark weight.

(M.S. C. Burton/ Muncy) to approve item. Motion Carried 6-0-1.

Real Estate Committee (Skeen/Heredia/Muncy – Alt: Burton) – next mtg. 3/16/06

- Approval of MIG's 2006 Tactical Plan.

(M.S. C. Muncy/Burton) to approve item. Motion Carried 6-0-1.

- Approval of Kennedy Associates' 2006 Tactical Plan.

(M.S. C. Muncy/Burton) to approve item. Motion Carried 6-0-1.

Investment Committee of the Whole (Full Board)

☉ Summary of meeting held 2 December 2005.

(M.S. C. Muncy/Burton) to approve item. Motion Carried 6-0-1.

APPROVAL OF MINUTES

Monthly Board meeting held 1 December 2005.

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

PENDING ACTIONS LIST

Updated list as of 21 December 2005.

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

BENEFITS REVIEW

Summary of meeting held 7 December 2005.

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

CONSENT CALENDAR

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

PROPOSED AGENDA ITEMS PUBLIC COMMENTS

Mr. Spence stated that there was a glitch in the way the new health benefits were implemented for Part B, and retirees were receiving calls from Blue Shield requesting personal information. He thanked Carol Bermillo for taking all of the retiree calls, as a result of that glitch. Carol stated that a complaint would be lodged with BRF.

EDUCATION & TRAINING – None

ADJOURNMENT

There being no further business, at 11:34 a.m., **The Chair** stated the meeting would be adjourned.

MARK J. SKEEN, CHAIR
BOARD OF ADMINISTRATION

ATTEST:

EDWARD F. OVERTON, SECRETARY
BOARD OF ADMINISTRATION