

POLICE AND FIRE RETIREMENT PLAN

Minutes of the Board Meeting

THURSDAY

SAN JOSÉ, CALIFORNIA February 7, 2008

CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:35 a.m., on Thursday, February 7, 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
DAVE CORTESE
SCOTT JOHNSON

CHAIR
VICE CHAIR (Exited 11:50 am)
Trustee
Trustee
Trustee (Exited 9:40 am)
Trustee (Arrived 8:54 am)
Trustee

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	Jim Jeffers	-Attorney
Judy Powell	-Staff	Donna Busse	-Staff
Ron Kumar	-Staff	Rhonda Snyder	-Staff
Susan Perriera	-Staff	Mike Rosingana	-Retirees Assoc
Rajiv Das	-Board Doctor	Marty Hogan	-POA
Carol Bermillo	-Staff	Bruce DeMers	-PF Retirees
Udaya Rajbhandari	-Staff	Roger Pickler	-Staff
Randy Sekany	-Local 230	Eric Ramones	-SJFD
Andy Yeung	The Segal Company	Paul Angelo	The Segal Company
George Vega	-SJFD	Chris Platten	-L230 Attorney
Karin Carmichael	-Staff	Mike Moffett	-Fire retiree
Colleen Hy	-Staff	John Tennant	-SJPOA Attorney
Allen Dye	-SJPD	Aracely Rodriguez	-OER
Bob Cocilova	-Fire retiree	Bill Thomas	-SJREA
Thomas Boyle	-Attorney	Brian Long	-SJPD
Jim O'Keefe	-SJPD	Sandra Holloway	-SJPD
Lt. Dale Morgan	-SJPD	Sam Swift	-Attorney

REGULAR SESSION

ORDERS OF THE DAY

Chair Skeen called the meeting to order at 8:35 a.m. He announced that Item 14 and item 40.h would be heard together.

RETIREMENTS

1. Service

John R. Pointer, Police Officer, Police Department. Request for Service Retirement effective January 26, 2008; 25.96 years of service.

(M.S.C. Muncy/Heredia) to approve application. Motion carried 6-0-1. (Absent: Cortese).

Disabilities - None

2. Change in Status

James B. Randall, Retired Fire Captain. Request for change to Service-Connected Disability Retirement effective January 30, 2004; 30.31 years of service.

Captain Randall was present and was represented by *Mr. Swift*.

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

<u>Doctor's Name</u>	<u>Report Date</u>
Alfredo Fernandez	6/27/07
Robert Gamburd	10/27/06; 8/21/06; 7/21/06; 5/17/06; 2/6/06; 10/26/05; 7/8/05; 6/6/05; 6/10/96; 2/14/95; 12/6/94; 6/6/94
Lawrence Chan	8/9/06
John Smith	6/27/06; 5/17/06
Mark Culton	2/23/06
Andrew Durkin	7/20/05
Satish Sharma	6/1/05
Jonathan Ng	11/2/04; 10/27/04; 6/17/04
John O'Brien	5/14/04; 5/7/04; 5/6/04
Thomas Roberts	4/26/96
Glen O'Sullivan	10/21/94; 10/13/94
Charles Ho	7/27/94
<u>Medical Director</u>	<u>Report Date</u>
Dr. Rajiv Das	11/20/07; 3/9/07

Dr. Das stated that with *Mr. Randall's* condition he has the risk of having a stroke. Because he is on anti-coagulation medication he runs a high risk of bleeding.

Mr. Swift stated that previously orthopedic reports were submitted, but now the application is solely based on his heart.

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

Deferred Vested – None

Member Cortese arrived

DEATH NOTIFICATIONS

3. Notification of the death of Wilber (Ed) Bush, Retired Police Officer; retired 6/3/81, died 10/9/07 and survivorship benefits to Jeannette (Dena) Bush, spouse.

(M.S.C. Muncy/Heredia) to approve application. Motion carried 7-0-0.

4. Notification of the death of Nicholas Hyland, Retired Fire Engineer; retired 3/1/93, died 1/15/08 and survivorship benefits to Michele Hyland, spouse

(M.S.C. Heredia/Brill) to approve application. Motion carried 7-0-0.

NEW BUSINESS

5. **Approval to rescind the retirement application of Police Officer Peggy Vallecilla.** (Retirement application approved at January Board Meeting).

(M.S.C. Muncy/Heredia) to approve. Motion carried 7-0-0.

6. **Approval of Board Policy 220.3-P&F on Procurement of Legal Services.**

Member Heredia provided some background information explaining how this request came about. He requested that this item be placed into a matrix format that shows drafting service agreements, drafting Board approved resolutions, drafting plan amendments, and handling domestic relations matters to be sent to the City Attorney's Office. Then for the handling of interpreting the plan document, interpreting state and federal law, legal opinion on a variety of questions, litigation assistance, updates on current legal environment, advice on contract services, legal assistance on questions arising out of plan administration, and unlawful detainer(s) to be sent to the outside legal council. All matters pertaining to real estate should be sent to Nossoman.

Ms. Devencenzi stated that under the Charter the City Attorney provides all legal services to all City boards and commissions. There are some areas where outside legal services are used such as real estate, and the City Attorney's Office previously recommended that conflicts council be retained. However, most of the items the Board has identified belong in the City Attorney's Office.

Member Johnson expressed his concerns because it is not clear to him about who has the responsibility for each matter. He made several points regarding Brown Act issues, and if that shifts responsibility, then does it create a Charter conflict.

Member Heredia gave historical perspective on how outside legal came onto the Board with respect to the Pension Protection Act. He expressed the need to discuss realistic ways to coexist, and the need to have resources to support the Board.

Member Williams stated the same question keeps arising of who has what responsibility. He suggested that an interpretation of the language needs to be completed sooner rather than later. Trustees need to move this matter forward even if that means going to a court for direction or interpretation, so the Board can move past that issue.

Mr. Richeda suggested the Board work with the City Attorney, City Manager, and include Chairs/Vice-Chairs of the Board to collaborate on this issue at a retreat or workshop to mediate the matter.

(M.S.C. Heredia/Brill) to have meeting set up with both Board Chairs, Vice-Chairs, City Manager, City Attorney, City Auditor, and Secretary. Motion carried 7-0-0.

Member Williams exited

7. Discussion and request for Board direction on Steven Hendrickson, Interim City Auditor, notification of intent to initiate audit of Retirement Services Travel Expenses.

Member Heredia suggested that the Macias & Gini audit from last year be sent to City Council, and questioned why they are auditing the travel expenses again.

Mr. Richeda suggested the Board may consider formally inviting the City Auditor to describe the scope of the audit, why a new one is necessary, the estimated time to comply, what they expect from staff, and what issues they are looking at. Perhaps working with the Auditor to develop procedural guidelines for audits. Alternately, the Board could direct staff to write to the Rules Committee about the Board's position.

Member Brill wanted to know what the cost is to the City and to the Plan for staff's time to perform this audit.

Member Cortese suggested that if there are valid reasons for the Board's position on this matter, then with respect to the sequence of events, this should be agendaized for the Rules and Open Government Committee through the Clerk's Office prior to the Auditor's Work Plan being given the okay by the Rules Committee because a change in the work plan has to obtain Council approval.

(M.S.C. Heredia/Brill) to have the Chair send a letter to the Rules Committee to revisit the Auditor's Work Plan noting that the audit has been completed previously, discussing the issues and considerations of the Retirement Department, and requesting the Auditor come forward next month to explain in further detail this audit. Motion carried 6-0-1. (Absent: Williams).

8. Discussion and request for Board direction concerning the notification by the Director of Finance of the audit of outstanding department contracts.

Chair Skeen stated he did not know what exactly was being audited or what the underlying issues were pertaining to this item.

Member Johnson responded this is a City-wide audit of large contracts to make sure departments are getting what they are paying for, and ensure compliance. The recommendation being made to the Auditor is that they only review contracts of \$1 million or more. The audit is still in the process of development, so this is preliminary information.

Chair Skeen commented that this audit seemed to be laid out very thoughtfully, whereas the travel audit was more harshly put to Retirement. Why the difference in tactics?

Member Johnson stated that City-wide audits are done with more coordination. The Retirement Travel audit was done as a follow-up to the City-wide procurement card audit that pointed out some compliance issues, which they are following up on. He suggests that each department go through existing contracts to ensure proper practices are being followed for open encumbrances that are at \$1 million or more. He is recommending exclusions of contracts that have already been audited.

Member Cortese suggested that since the audit is still in the making that the Board give direction to staff to inform the Board of when it reaches the Rules Committee agenda.

This item is note and file.

9. Approval for Secretary to negotiate and execute the First Amendment to the Agreement with Saltzman and Johnson for outside legal counsel to increase maximum compensation for an amount not to exceed from \$100,000 to \$200,000.

Ms. Devencenzi reported that only the City Attorney can authorize and sign legal services agreements.

Member Brill requested to have a third legal opinion on the issue of hiring.

(M.S.C. Heredia/Brill) to approve and for a future agenda item to address the steps necessary to have a third party review this issue. Motion carried 6-0-1. (Absent: Williams)

10. Authorization for Secretary to negotiate and execute an agreement with The Segal Company to provide Operation Review & HIPAA Audit Services for a price not to exceed \$120,000. (To be shared 50/50 with Federated Retirement System).

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

11. Authorization for Secretary to negotiate and execute an agreement with The Wilfred Jarvis Institute to aid in team building within the department and in the development of long-range strategic plan for a amount not to exceed \$15,000 (to be shared 50/50 with Federated Retirement System).

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

12. Authorization for Secretary to negotiate and execute an agreement with Macias, Gini & O'Connell to provide audit of the Trust Funds and the City's Payroll Transmittal Process for an amount not to exceed \$55,000. (To be shared 65/35% with the Federated Retirement System).

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

13. Discussion and possible action on the City's Finance Department's Travel Reimbursement Timeline

Member Johnson requested deferral of this item to next month, so the payroll staff can revise the data and provide more specific information.

OLD BUSINESS / CONTINUED ITEMS

Member Cortese exited

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

Mr. Angelo reported that in general the contribution rates went down, mostly due to favorable investment returns. The current funded ratio is 99.7% for the pension plan. Several important points were made with regards to the rates:

- As of July 1, 2006, the benefit for Police members was changed. The City also approved a benefit change for Fire members to be effective July 1, 2008. Since the rates developed in this valuation will not be effective until July 1, 2008, Segal reflected both of these plan amendments in the calculations.
- The ratio of the valuation value of assets to actuarial accrued liabilities increased from 97.8% as determined in the June 30, 2005 valuation to 99.7% as determined in the June 30, 2007 valuation. The Plan's unfunded actuarial accrued liability has decreased from \$44.3 million as of June 30, 2005 to \$6.6 million as of June 30, 2007.
- The aggregate employer rate calculated in this valuation has decreased from 25.53% to 22.48% of payroll.
- The individual member rates are changing as a result of the new assumptions that were adopted based on the June 30, 2007 experience study. The average member rate calculated in this valuation has increased from 8.00% to 8.33% of payroll.
- The total unrecognized investment gain as of June 30, 2007 was \$294.3 million (versus an unrecognized gain of \$61.4 million in the June 30, 2005 valuation). This investment gain will be recognized over the next few years

Member Muncy asked if they showed the aggregate numbers for each the police members and the fire members separately.

Mr. Angelo replied they did not because to get the total amount for the health, plus the pension they had to add the same numbers for both.

Mr. Yeung did the calculation, and provided that the rates were for fire 11.79% and for police 12.23%.

Ms. Devencenzi asked about the 401(h) limits.

Mr. Yeung replied that the Plan cannot expend more than 25%, which they have not reached yet.

Chair Skeen requested that Segal provide a letter informing the Board with regards to the 401(h) limits and at what point the plan will hit the 25% limitation.

Vice-Chair Heredia stated that since Police are now negotiating the same benefit as Fire, Segal should move forward with studying the cost, and adjust the numbers if necessary in the valuation.

(M.S.C. Heredia/Brill) defer this item until there is clarification on the provisions relating to the ordinances implementing the Fire members' benefits. Motion carried 5-0-2. (Absent: Williams, Cortese).

(M.S.C. Heredia/Muncy) to have the actuary provide the 401(h) analysis. Motion carried 5-0-2.

Vice-Chair Heredia exited

(Out of Order)

40h. Segal presentation on impact of funding health costs over different horizons, i.e. 10 years, 15 years, 20 years or 30 years.

Mr. Angelo reported that the amount of liability shown on the Annual Required Contribution (ARC) changes based on the employers' level of commitment – that commitment determines whether the Plan can use the full discount rate or the weighted one. According to GASB, employers must recognize the unfunded liability as a liability on their expense statement and balance sheet. ARC is a payment on the normal cost. Contributions under the current funding policies are less than the minimum ARCs required under GASB. The Plan is partially

partially funded around 10% according to GASB rules, so the Plan can use a discount rate of 5.30%, which creates an ARC of 27.4% of payroll. If the Plan decided today to fund the ARC, then it could use the 8.00% discount rate.

This item is note and file.

(Back on Agenda)

15. Discussion and Board direction on draft ordinance(s) to implement new benefit formula and implement change in calculation of benefits for surviving spouse/domestic partner for members of Fire Department. who retiree or separate from service on or after July 1, 2008

Ms. Devencenzi stated she provided a list of questions raised during drafting of the ordinance regarding items not addressed in the arbitrator's award letter. She has sent those questions to the Office of Employee Relations and to Local 230 for answers and direction. There is a date set for mutual parties to meet to discuss those intentions on March 19th.

Mr. Sekany stated he had discussed *Ms. Devencenzi's* list with Local 230's legal counsel and would like to provide responses informally. He stated the assumption for years with a reciprocal agency do not count toward the 3% formula for the change in benefit formula. The new formula is intended to apply to service-connected disability retirements and the alternate formula would be 50% of final compensation; if the member has at least 20 years of service credit, the member would receive an additional 10% of final compensation plus an additional 3% of final compensation for each year of service in excess of 20 in an effort to preserve the exclusion of the first 50% of final compensation from income taxes. The new benefit formula is intended to apply to nonservice-connected disability retirement benefits. The new benefit formula does apply to "deferred vested" participants who leave City service on or after July 1, 2008. For the survivorship benefits, the intent was to increase the members' benefit to 90% with the modified 3% proposal, and increase the survivorship benefit to a cap of 45% but there is no change in the base benefit. The change also applies to members that die while active. Any other questions are still under review.

(M.S.C. Brill/Muncy) to approve *Ms. Devencenzi* drafting the finalized version of the new benefit ordinance with the aforementioned changes incorporated. Motion carried 4-0-3. (Absent: Williams, Cortese, Heredia)

16. Discussion on opinion of the actuary on the cost neutrality of ordinance amending the P&F Retirement Plan to permit members employed by the Fire Department to redeposit withdrawn contributions and purchase certain service credit.

(M.S.C. Brill/Muncy) to accept the report. Motion carried 4-0-3. (Absent: Williams, Cortese, Heredia)

STANDING COMMITTEE REPORTS/RECOMMENDATIONS

Investment Committee (Skeen, Heredia, Muncy)

17. Summary of meeting held 27 November 2007.
18. Summary of meeting held 12 December 2007.
19. Summary of meeting held 17 January 2008.
 - a. Approval of revisions to the Board's Proxy Voting Guidelines.

(M.S.C. Brill/Muncy) to approve Items 17-19a. Motion carried 4-0-3.

Real Estate Committee (Skeen, Heredia, Muncy)

20. Summary of special meeting held 4 October 2007.

21. Summary of the following Board of Directors meetings held 4 October 2007.
 - a. 3201 C Street Corporation
 - b. 3301 C Street Corporation
22. Summary of special meeting held 15 October 2007
23. Summary of special meeting held 18 October 2007
24. Summary of special meeting held 6 November 2007
25. Summary of the SJ Progress Point, LLC Board of Directors meeting held 14 November 2007
26. Summary of quarterly meeting held 12 December 2007
 - a. Approval of Kennedy's 2008 Tactical Plan
 - b. Approval of MIG's 2008 Tactical Plan
27. Summary of the following Board of Directors meetings held 12 December 2007
 - a. 1737 N. First Street Corporation
 - b. 3169 Dodd Road Corporation
 - c. 3201 C Street Corporation
 - d. 3301 C Street Corporation

28. Summary of special meeting held 17 January 2008

(M.S.C. Brill/Muncy) to approve Items 20-28. Motion carried 4-0-3.

Investment Committee of the Whole (Full Board)

29. Summary of meeting held 27 November 2007

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

Joint Solutions to Retiree Healthcare Committee

30. Synopsis and summary of meeting held 4 January 2008

(M.S.C. Brill/Muncy) to approve with correction to comments made by Mr. DeMers on page 2, to show that he was a trustee present at the time of discussion and reflect the employer agreed to pay. Motion carried 4-0-3.

31. Synopsis and summary of meeting held 15 January 2008

(M.S.C. Brill/Muncy) to approve. Motion carried 4-0-3. (Absent: Williams, Cortese, Heredia)

APPROVAL OF MINUTES

32. Special Joint Boards' Meeting held 29 November 2007
33. Monthly Board Meeting held 6 December 2007
34. Special Board Meeting held 20 December 2007
35. Monthly Board Meeting held 3 January 2008
36. Special Board meeting held 9 January 2008

(M.S.C. Brill/Muncy) to approve Items 32-36. Motion carried 4-0-3. (Absent: Williams, Cortese, Heredia)

PENDING ACTION LIST

37. Updated list as of 30 January 2008

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

BENEFITS REVIEW - None

CONSENT CALENDAR (Items 38-41)

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

PROPOSED AGENDA ITEMS

PUBLIC COMMENTS

EDUCATION & TRAINING

ADJOURNMENT

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

MARK SKEEN, CHAIR
BOARD OF ADMINISTRATION

ATTEST:

RUSSELL U. CROSBY, SECRETARY
BOARD OF ADMINISTRATION