

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**October 5, 2006**

### CALL TO ORDER

The Board of Administration of the Police and Fire Department Retirement Plan met at 8:44 a.m., on Thursday, October 5, 2006, 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, CHAIR**

**KENNETH HEREDIA, VICE CHAIR**

**BILL BRILL**

**LARRY LISENBEE**

**DAVID CORTESE**

**BRET MUNCY**

**CINDY CHAVEZ**

**Fire Employee Representative**

**Retiree Representative**

**Civil Service Representative**

**City Administration Representative**

**City Council Representative**

**Police Employee Representative**

**City Council Representative**

### ALSO PRESENT:

**Edward F. Overton -SECRETARY / DIRECTOR**

Russ Richeda -Saltzman & Johnson

Roger Pickler -Staff

Tamasha Johnson -Staff

Donna Busse - "

Mike Pribula -Staff

Jim Spence -SJPOA

Karin Carmichael -Staff

Carol Bermillo -Staff

Judy Powell -Staff

Toni Johnson -Staff

Aracely Rodriguez -OER

Chris Constantin -Auditor's Office

Tom Webster -Staff

Susan Devencenzi -City Attorney

Debbi Warkentin -Staff

Udaya Rajbhandari - "

Ron Kumar - "

James Chadwick - SJ Mercury News

Jack Salois -Retiree's Assoc.

Amanda Ramos -Staff

Jim Jeffers -Attorney

Eduardo Luna -Auditor's Office

Maria Loera -Staff

Susan Perriera - "

## REGULAR SESSION

### ORDERS OF THE DAY

The Chair called the meeting to order at 8:44 a.m. He also moved Item 4 to be heard right after Item 6a.

### RETIREMENTS

Service - None

Disabilities - None

Change in Status - None

Deferred Vested - None

DEATH NOTIFICATIONS - None

### NEW BUSINESS

**Authorization to reimburse Mary Law, survivor of Booker Law, for overpayment for monthly medical coverage.**

**The Secretary** stated that Blue Shield offered to split the difference, which means that they would be paying about \$6,000 of the \$12, 000 that is owed to Mary Law. Normally, they only go back three months.

**Member Heredia** said that something went wrong with her enrollment and she stayed in the family category even though she no longer had any family, and asked if Blue Shield will pay back half to make a deal; where did they get the amount from? And he asked if the recommendation is to pay the other half from our Plan?

**The Secretary** explained that the amount was a negotiated settlement between DRS staff and them. They contended that their policy is three months. He stated that the Plan would pay the other half.

**Chair Skeen** asked if staff found out what occurred in this case, and if there are something in place to detect and prevent this from happening in the future?

**The Secretary** replied that staff did find out how this happened and they have gone through and reviewed all of the coverage's and they will be reviewed on a regular basis. He knows that the last child aged out and was taken off of her benefits but in her premium whomever did that should have went in and made an adjustment to that premium and didn't do it.

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

### **Discussion on hearing disability retirement applications in closed session.**

**The Secretary** said that normally disability retirements are heard in open session unless there is a social stigma attached to the disability and the application, then the person has a right to ask that it be heard in closed session.

*Mrs. Devencenzi* said that she reviewed an Attorney General's opinion that was dealing with a county retirement board but the analysis is relevant to us and granted it's not a court opinion but it still carries a lot of weight in court. In this case it was a county retirement board meeting in closed session under the personnel section of the Brown Act. There is an exception that allows somebody to go into closed session to consider the appointment, employment, discipline, and performance evaluation of an employee, and the way the Attorney General analyzed it is that when an employee comes forward with a disability retirement application, the retirement board's decision is an employment decision in that if the board finds that the employee meets the eligibility requirements the persons employment will stop. On the other hand, if the retirement board denies the application then the person stays in employment status. What would be odd, is that if we decide to meet in closed session this rule would not apply if someone comes in with a change in status, in other words someone that is already retired no longer is an employee, so the personnel exception would not apply. A big difference with many of the county systems, which wasn't taken into account, is that they use a hearing officer system, so the evidence is actually heard by the hearing officer, the arguments are made there, and the hearing officer's decision then comes to the Board for action, so what the board would then be doing is to go into closed session to consider the medicals as part of their decision on the hearing officers recommendation.

**Member Heredia** asked about the current way is if an applicant would like to have their hearing in closed session they make that request to the Board and it will be approved or denied at that time?

*Mrs. Devencenzi* said that the personnel exception has not been used because it really was not clear until this opinion that basically says we could. We had taken a position that if there was a situation where disclosure of the information would be a problem, for example, if you had an applicant with AIDS there is a law about not disclosing AIDS related information, or if there were some kind of stigma attached, for example, if there had

been an allegation of sexual harassment or assault that was related to a disability then that would be heard in closed session. They take a very narrow view of when we could go into closed session, which is basically in line with the public policy. The courts will construe any situation that goes into closed session very narrowly, and they will liberally construe any provision that opens it up or makes access for the public greater. The written medical reports will not be public access, however the discussion will be and there is a big difference in that the reports may have other information that does not pertain to the disability in question but the discussion will be a brief overview of the disabling injury. The biggest problem with privacy rules according to the Brown Act that says unless there is an exception in the statute, closed sessions are prohibited.

**Member Heredia** expressed that his concern is that if an applicant has some medical issue, and they may be job incurred, but there is still a right of privacy that they need not just turn over to the public just because of the way we do our business.

*Mr. Richeda* stated that the privacy issue is on one hand and the public's right to know is on the other hand, and he thinks that public rights to know via Proposition 159 in the Constitution, under this is recognition and is part of the Brown Act. This issue is difficult to harmonize.

**Member Heredia, Member Lisenbee, Mr. Brill, Chair Skeen, and Mrs. Devencenzi** discussed the current procedure used for closed session and what approach to use.

*Mr. Chadwick* said the concern came up last week and so he spoke first with Mr. Doyle, the City's Attorney, and was told that the understanding is that there is no exception for routinely holding disability retirement hearings in closed session. He is familiar with the Attorney General's opinion mentioned earlier, and he is concerned about the basis for that decision, as it implies that you can hold a closed session on anything that effects the status of an employee, and it does that because a requirement in the Brown Act holds that after a closed session is held the body report out to the public in a public session any action that was taken that effects the status of an employee. That is the part in the Brown Act that talks about what you have to reveal after the closed session, its not actually about what you can discuss in a closed session and that is more limited and the Brown Act says that what you can discuss in closed session is limited to the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against an employee, so those are the topics that can be discussed in closed session. And merely effecting the status of an employee is not listed in what can be discussed in closed session, and the Brown Act talks about coming out and reporting any effect on the status, it is pretty clear, that anything that happens in closed session gets reported, so they avoid having a situation where there is some semantic distinction about what's being done, whether dismissal or appointment, they want to make sure that it's reported out. The reporting out requirement doesn't allow a closed session on it just because it affects the status of an employee, so he wants to make sure that the distinction in the Brown Act is clear because he doesn't believe that is something the Attorney General's opinion gives sufficient credence to in this opinion. He also would like to say that the Board has been doing this for a long time and they have been open and there has been very few request, and only a couple that have been in closed session these past few years because of this concern about stigma, given that there has not been any public harm or unduly invading people's privacy that has impaired there performance or rights in their retirement. Also, the press will not be here that frequently, and there are people that want to make sure that decisions are being made fairly and openly.

*Member Cortese* asked how Mr. Chadwick would make a further distinction with regards to modified duty positions when we have to discuss their performance, past performance, and ability to perform given what you stated since they are an employee.

*Mr. Chadwick* agreed that the Brown Act is going to be construed very narrowly, regardless of Proposition 159, so with that in mind and looks at the evaluation of performance as one that's retrospective, you are evaluating the past performance, which can be made in closed session but it is not about a prospective change in status that decision is a different kind of decision it is one about retirement, which is not covered by the Brown Act.

**Member Heredia** requested that there be some kind of guidelines addressed by the attorney's when requests for a closed session are made, so they know when it can be approved.

*Mrs. Devencenzi* said that one of the ways to satisfy the right to privacy and the closed session requirements is that we have gone into closed session on a very narrow and limited basis. They could conduct business in an open session and only discuss the part that was private information in closed session. Also, if you look at it from if you were in an accident and were suing, you would go to court and basically are putting your medical condition(s) at issue and essentially that is what somebody is doing when they come to the Board, there is no absolute right to a disability retirement, you have to show that you are entitled to that retirement and it's the applicants burden to do that.

*Mr. Jeffers* suggested that procedurally, perhaps we could have discussions and make a decision and then at the following meeting make a resolution with the Board's findings of an applicants' request, which still satisfies the public's right to know.

*Mr. Chadwick* stated that with regards to this, when someone submits a claim, generally the public needs to know what the claim information is because they need to be informed of what went into the decision not just what the outcome of the decision was.

**The Board** continued to discuss the overlap of privacy versus the public right to know issues and the Attorney General's opinion, as well as the Brown Act rules. **The Board** requested for the December meeting a report outlining the Board's duties for closed session hearings.

**Request by the Retiree's Association for approval of actuarial analysis and costing for three benefit enhancements, including reimbursement of medi-care payments, continuation of medical benefits for survivors, and continuation of survivor benefits for after retirement marriages.**

**The Secretary** stated that the Retiree's Association representative is present and their actuary. We wanted to have both parties present so there could be complete understanding of what is being requested.

*Mr. Solaris* said that their attorney is not present, but they did not want that to hold up the process.

*Mr. Angelo* stated that they had a brief discussion over the telephone with the Secretary regarding this item and an email with a little bit of information. They want to be clear on how much of this is tied to the retirement marriages, which is the term used for people that get married after they have retired and looking for some kind of survivor coverage within a coverage, as a result of their post-retirement marriage. Traditionally, your marital status at the date of retirement determines your eligibility for survivor benefits, there's a lot of evolution of that. We want to be clear on just taking existing benefits and extending them to post-retirement marriages or are there some additional benefits being looked at for people that were married at retirement.

*Mr. Young* said that he knows that not all retiree members are drawing a Part B premium because there is a Cap on how much medical subsidy can be paid from by the Plan, so he assumes that part two of this request

will extend the benefit to everybody. Another question would be how many new survivors would become eligible to draw a benefit from the Plan.

**Member Heredia** said that what is meant from the memo pertaining to that is to current retirees only, so only to retirees as of the implementation of this ordinance. So anyone that is retired at the date of implementation it would extend to coverage for the Part B premium. He said that Item one was valued before so that data may be accessed to assist in narrowing down the information.

*Mr. Young* stated that he would like to write back to the Secretary their understanding of what is being asked so that the request is clearly defined of what will be included in the study. He thinks the notes should be sent within a week. They anticipate having the GASB43/45 study for the November meeting, so by the December meeting should have this study available because it is important to reestablish the baseline and owning the Plan with the conclusion of the GASB 43/45.

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

## **OLD BUSINESS / CONTINUED ITEMS**

### **Oral update on medical care providers' RFP from Human Resources representative.**

*Mr. DeLong* said that City Administration has put forward a recommendation to retain Kaiser, Blue Shield, and Pacific Care/Horizons as the City's medical carries beginning on January 2007. A memo is agendized to go before Council at the October 17<sup>th</sup> meeting. The rates are determined; there was a lot to consider this time, as every Plan was put up to bid. We have 13 Plans total, 4 active employee plans, 4 non-Medicare retiree plans, and 5 medi-care plans and we have rates determined for each one of those. Basically we are looking at Blue Shield HMO at 5%, for the non-Medicare plan at 6% increase for Kaiser 8% increase for the PPO and POS plans that are available both to the active employees and retirees. The medi-care plan rate increases that we have are competitive. Virtually, there will be no disruption; Plan design stays the same with a number of enhancements. People will see the same plan that they saw last year but only better with some of the enhancements we have been able to acquire, not in plan design but in things such as Kaiser agreeing to what we call 08's for retirees that are not medically vested in the system, they will allow people to come onto their plan. For instance if they don't have 15 years of service with the City or 37.5% final average salary and secure coverage at 100% cost to the retiree. That is something that in the past couple of years, Kaiser has not allowed but we were able to leverage that. The deductible will remain the same, Medi-care Part B wrap will be looked at and they will be providing the City with assistance for the actuarial analysis. Medi-care Part D will be a wrap as opposed to a subsidy, with the wrap they will be taking into account the Medi-care Part D reimbursement through the medi-care plan; they will be determining whether we are a qualified plan.

**Member Heredia** said that retirees were advised not to enroll in medi-care Part D themselves, that they would be enrolled through their medical plan provider and that the provider would pay any medi-care part D premiums.

*Mr. DeLong* stated that arrangement will remain the same.

### **(Out of Order)**

#### **Update on excess earnings benefit.**

**The Secretary** stated that this is the 415 M plan that we have been discussion and it is in the hands of

Employee Relations and they have informed us this morning that they will be sending it out to the bargaining groups.

*Mrs. Devencenzi* stated that this doesn't seem to be the most recent draft.

**Member Heredia** said that he has concerns about if anyone currently exceeds the 415 M limits and he was told that the 415 limits only apply to the portion of the pension that is funded through employer contribution. The part that he has a specific exception to is that there is a statement in the memo saying the City is getting a contribution credit because you acknowledge that the contributions into the system were excessive, and he was not in favor of giving any one a credit for anything, so not real clear.

**The Secretary** explained that the portion of the benefit that gets excluded from the 415 is the portion that is post-tax, so that employer contributions does not become a factor after all the retirees who were working in 1987 move on. It is only that portion of the benefit that is attributable to the post-tax portion of the contribution that the employer is already paying taxes on and is excluded from the 415 limits. This is done as a future situation because the limit is indexed to inflation however we did run up against a federated employee that we have to not allow all of her benefits as a transfer from another system because it exceeded the maximum, so in the future we will be having this issue becoming more real. The Secretary said regarding the credit for the contributions is that the intent was to set up an unfunded excess benefit arrangement that cannot be funded so that the benefits are technically paid for by the City and to make the City whole we would say to the City to the extent that you pay benefits out to a retiree you can take credit for that against the contributions you owe the plan. The employee is getting the pension they would otherwise get absent the 415 limits, so they are getting what they pay for. Only a portion is going to be paid for by the City and the City gets to take credit for the fact that it already paid for this benefit once and we are asking them to make the direct payments to the employer on actually they can be paid through the Plan, but we are asking them to pay again, so the City gets to take credit for the fact that they already put in contributions for this person's benefit, so now they are being asked to pay the benefit itself.

*Mr. Richeda* said that the Board could ask Seagal to make a presentation on this 415 and on these excess governmental arrangements for the retreat.

**Chair Skeen** stated to Seagal that maybe they could make a presentation at the retreat and make sure that the bargaining units are aware that this will be on the agenda, so that they may attend if desired. Also, that Mrs. Devencenzi provides a most recent draft to staff and that it be agendaized next month, in addition to the retreat.

## **STANDING COMMITTEE REPORTS/RECOMMENDATIONS**

### **Investment Committee (Skeen/Heredia/Muncy)**

- Summary of meeting held 21 September 2006.
  - a. Approval to modify Mini-Tender policy language in Plan's Investment Policy Statement.

**The Secretary** stated that this is the approval of the mini-tender policy language that has been approved by the Committee and reviewed by legal counsel.

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

**(Back on Agenda)**

**Adoption of Resolution No. 3179 to implement Board-approved changes to the Police & Fire Department Retirement Plan's Investment Policy Statement.**

The Secretary stated this memorializes the policy changing, including the previous one – the mini-tender policy, and ability of the Board to make exceptions to the policy and to add Fitch rating to your benchmark.

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

**Real Estate Committee (Skeen/Heredia/Muncy – Alt: Vacant)**

- Summary of meeting held 21 September 2006.

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

*This item is note and file.*

**Investment Committee of the Whole (Full Board) – next meeting November 15, 2006.**

**APPROVAL OF MINUTES**

**Monthly board meeting held 7 September 2006.**

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

**PENDING ACTIONS LIST**

**Updated list as of 26 September 2006.**

Chair Skeen indicated that Item 4 has been completed and that it will be moved to finalized status. Also, he stated that the Director position should be added to the pending items.

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

**BENEFITS REVIEW**

**CONSENT CALENDAR**

Chair Skeen pulled items 12b and d.

**City Auditor's final report on audit of the City's Procurement Plan Program.**

The Secretary stated that Item 12b is the report from the City Auditor on the audit of the City's Procurement Card Program. In the process there were a couple of issues that related to Retirement, and a recommendation

to ask the Board to recommend to the Rules Committee that an audit of the Retirement Travel Program be put into the auditor's work plan.

**Member Heredia** asked to have the City's Auditor provide to Retirement's auditor, since they are currently doing an audit on our travel policy, they should look at the items that were questioned by the City.

*Mr. Luna* just wanted to make sure that he understands that the motion is to refer the findings to the outside auditor.

**Chair Skeen** stated that is correct.

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

### **Quarterly Financial Packet for the Quarter ending 30 June 2006.**

**Member Heredia** asked if Item 12d is a recap of the 05-06 Budget adopted and actual, and noted that we under spent our budget by \$5 million.

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

## **PROPOSED AGENDA ITEMS**

### **PUBLIC COMMENTS**

### **EDUCATION & TRAINING**

**Notification of CalAPRS' Trustees' Roundtable to be held in Santa Barbara on 13 October 2006.**

## **ADJOURNMENT**

There being no further business, at 9:40 a.m., **The Chair** stated the meeting would be adjourned.

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

**ATTEST:**

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**EDWARD F. OVERTON, SECRETARY**



**BOARD OF ADMINISTRATION**