

# POLICE AND FIRE RETIREMENT PLAN

## Minutes of the Board Meeting

**THURSDAY**

**SAN JOSÉ, CALIFORNIA**

**November 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, November 6, 2008, in regular session at Department of Retirement Services, 1737 N. First St, Suite 600 - San Jose, CA.

### ROLL CALL

#### Present:

**KEN HEREDIA**

**BILL BRILL**

**BRET MUNCY**

**SCOTT JOHNSON**

**FORREST WILLIAMS**

#### VICE CHAIR

**Trustee**

**Trustee**

**Trustee (Arrived 8:55 am)**

**Trustee (Exited 9:18 am)**

### NOT PRESENT:

**MARK J. SKEEN**

**DAVE CORTESE**

**CHAIR (Excused)**

**Trustee (Excused)**

### ALSO PRESENT:

**Russell Crosby**

**-SECRETARY**

**Russell Richeda**

**-Saltzman & Johnson**

**Tamasha Johnson**

**-Staff**

**Antonio Guerra**

**-Mayor's Office**

**Karin Carmichael**

**-Staff**

**Aracely Rodriguez**

**-OER**

**Mike Rosingana**

**-P&F Retirees**

**Gregory Toscano**

**-SJFD**

**Rhonda Snyder**

**-Staff**

**Andy Yeung**

**-The Segal Co.**

**Mollie Dent**

**-City Attorney Office**

**Debbi Warkentin**

**-Staff**

**Donna Busse**

**-Staff**

**Veronica Niebla**

**-Staff**

**Thomas Boyle**

**-Attorney**

**Sam Swift**

**-Attorney**

**Linda Charfauros**

**-SJFD**

**Ron Kumar**

**-Staff**

**Jim Jeffers**

**-Attorney**

**Bruce DeMers**

**-P&F Retirees**

## REGULAR SESSION

### ORDERS OF THE DAY

Vice-Chair Heredia called the meeting to order at 8:35 a.m.

**Ceremonial Item:** Presentation of commendation to Kenneth Heredia for his service to the P&F Retirement Plan.

The Secretary read the recitals into the record and presented the Commendation.

Vice-Chair Heredia stated he appreciates all the work and dedication from retirees and senior staff.

### RETIREMENTS

#### 1. Service

- a. **Thomas H. Afflixio**, Battalion Chief, Fire Department. Request for Service Retirement effective November 1, 2008; 29.27 years of service. **(SCD Pending)**

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

- b. **Rosa Garcia**, Police Officer, Police Department. Request for Service Retirement effective November 1, 2008; 25.01 years of service.

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

- c. **Louis P. Medrano**, Firefighter, Fire Department. Request for Service Retirement effective November 15, 2008; 28.67 years of service.

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

- d. **Russell S. Pacheco**, Police Officer, Police Department. Request for Service Retirement effective November 1, 2008; 27.76 years of service.

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

- e. **Paul M. Sprague**, Fire Captain, Fire Department. Request for Service Retirement effective November 1, 2008; 25.47 years of service. **(SCD Pending)**

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

- f. **Gregory Toscano**, Fire Engineer, Fire Department. Request for Service Retirement effective November 15, 2008; 28.27 years of service. **(SCD Pending)**

Vice-Chair Heredia congratulated Mr. Toscano.

Mr. Toscano stated he loves the City and working for SJFD. It has been great and thanked everyone.

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

- 2. **Disabilities - None**
- 3. **Change in Status - None**
- 4. **Deferred Vested - None**

**DEATH NOTIFICATIONS - None**

### **NEW BUSINESS**

- 5. Adoption of Resolution No. 3454 declaring excess earnings as of 30 June 2008 for the purpose of transfer to Supplemental Retiree Benefit Reserve.

*Mr. Yeung* stated every year they recommend the amount for distribution from the SRBR. The 2007-08 net asset value for the retirement account was \$2.5 billion, based on the draft financial statements for the year ending June 30, 2008. The benefit disbursements are to be based on the SRBR regular interest earnings in each plan year. At the end of each plan year, 10% of the System's "excess" earnings are credited to the SRBR. The Segal Company recommends that \$2.8 million be set aside for distribution in 2008-09, and the remaining SRBR balance will then be \$32.3 million.

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

(Out of Order)

9. Update on the lump sum payment of City-required retirement contributions to the P&F Retirement Plan.

**Vice-Chair Heredia** asked how benefit improvements that are approved in between the time that the City pays the money and the reconciling of the City's books are factored into the reconciliation of the lump sum payment.

*Mr. Yeung* stated there have been previous occasions when benefit enhancements occurred mid-year. Segal performs a calculation to determine the amount and then that amount is spread across the year. The same thing happened with this Plan 2 years ago and that piece was added in.

6. Request for Board direction concerning Samuel Swift's letters regarding Medical Director's requirement of completion of forms from disability applicants' physicians.

*Mr. Swift* stated the 2-page form Dr. Das has requested to be provided by applicants raises significant issues. The form requires each applicant to have their treating physician complete a separate form for each body part, which then goes back to Dr. Das. Physicians typically charge for filling out the forms. In workers comp claims the physician gets compensated within the claim; however Dr. Das' form is outside of workers comp, so the fees, which range from \$15-\$75 dollars per form, are to be paid directly by the applicant. Specifically, there are two cases in which Mr. Swift has supplied to Dr. Das narrative reports from the applicant's treating physicians and QME reports detailing restrictions and permanent status. When he requested that Dr. Das perform the next step, i.e., an examination of his clients, Dr. Das refused due to the applicant not providing the form. Mr. Swift stated he believes the process to be that a person files a disability retirement application, which triggers the release of the files from risk management to Dr. Das within a few months. The medical reports in those files are chronologically kept, even with several injuries to multiple body parts. The Medical Director should then schedule an exam and generate a report generating the work restrictions that are sent to the applicant's respective Department. The Department would then determine if it is able to accommodate the work restrictions so the applicant can maintain employment. Then the application and supporting documentation would go to the Board for a decision. Initially, risk management sends medical reports to Dr. Das, but then they do not send updates, so Dr. Das has stale information as the applicant continues to receive treatment for each medical condition. Mr. Swift stated that he assumes that this is partly why Dr. Das created this form. He would recommend that risk management be asked to provide updates, as he understands the need to have current information from the treating physicians. With regards to Dr. Das' form, someone has to pay to use it and it shouldn't be his clients.

#### **Member Johnson arrived**

*Dr. Das* stated while Mr. Swift addressed the process suitably, yet another reason for the form is convenience. Panel QMEs are valuable in workers comp proceedings, but they are consultants, not treating physicians. If litigation came about the treating physician is presumed correct and they set the work restrictions because they are working with the patient on a regular basis. The forms offer a common evaluation basis for every applicant; their physician can identify the basis for the application so it's not up for interpretation, thereby creating transparency and also setting the work restrictions. Dr. Das stated that currently, as the Medical Director, he receives the applicant's medical reports, reads through them, and interprets the information to make recommendations. In the past, Dr. Das has requested updated medical reports from workers comp but those efforts were unsuccessful. Another issue that arises in each case is determining whether the applicant is ready to move forward. This issue requires a determination that each body part as to which the applicant is basing the

disability have reached maximum medical improvement. The problem is the medical reports do not always address all of the body parts. The goal is to make the process function smoothly, not to impede or hinder applicants, and he thinks the forms help with that. As a practicing physician, Dr. Das has filled out forms for patients, and it is usually not expensive since it's relatively simple.

**Vice-Chair Heredia** asked whether the form causes delays to applicants. He likes the form to the extent that they provide clarity in situations where medical opinions oppose one another.

*Mr. Swift* stated that in some cases the forms cause delay because Dr. Das will not set the applicant up with an appointment for an examination.

**The Secretary** asked who authored the forms. He stated there are 2 key boxes on the last of the first page – they ask if restrictions are for pain control or to prevent damage. That is a very important element because the records are not always clear.

*Dr. Das* stated he authored the form and it has been in use for about 2 years. He stated that procedurally he would have brought it to the Board prior to implementation had he known at the time, as **Member Brill** suggested. The form is sent to the applicant as soon as they file for disability, and he is happy to perform the examination when all body parts are reported as having reached maximum medical improvement; this way when he sees the applicant they are ready to go to the Board instead of having to return to his office for multiple visits. He stated he could handle that situation on a case by case basis. If he sees the applicant and all the body parts referenced in the application are not permanent and stationary status then he would be happy to provide the Board with whatever information is available.

**Member Williams exited**

**Vice-Chair Heredia** stated if an applicant already can't get through the system because they are waiting for approval, then adding another form is not streamlining the process. He feels Dr. Das could fill out the form when he receives the medical records since that is what he is paid to do. He is also concerned about Dr. Das not wanting to examine an applicant multiple times. One time may be enough, but to object to require information that he already has is not appropriate. Many factors are not being considered and it seems that the form is stopping the Medical Director from examining a patient. If an applicant requests to be on an agenda for a specific date, they should be placed on it and if the Board cannot make a recommendation based on the information contained in the packet at that time, then that's what happens.

*Mr. Richeda* stated that, if the Board felt the form was useful, the Municipal Code appears to authorize the Board to pay for completion for the form. The form appears to be useful, in that it; provides input to the Board from the treating physician.

*Ms. Dent* stated if the Board paid for the form to be completed, a treating physician may still decline to complete the form. The applicants must be examined by the Medical Director per the Code.

*Mr. Jeffers, Mr. Swift* and *Mr. Boyle* stated they represent many applicants that have come before the Board over the last 15 years, and over 90% of their clients don't make it to the Board because they are still waiting to be examined by Dr. Das. They expressed that the disability process in and of itself is a traumatic experience for many applicants.

**Vice-Chair Heredia** requested the Secretary set up a meeting with the appropriate people to meet and discuss the legality and cost associated with the use of the form.

7. Approval of request from Robin Montgomery, ex-spouse of Police Officer Rudolf Agerbeek, for a Reduced Retirement Option effective 1 October 2008 under Part 17, Section 3.36.3600 of the SJ Municipal Code.

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

8. Approval of 2007-08 draft of Police & Fire Retirement Plan's Comprehensive Annual Financial Report (CAFR).

**The Secretary** stated there was a comment on the transmittal letter, which mentions the prepayment approved for 8/1/2008. The Board took action this fiscal year to adopt a prepayment, an Ordinance was approved, and payment was subsequently made. Contained in the report is a draft of the outside auditor's opinion letter which has been replaced with the final version, which was issued yesterday by the auditor. The new letter will be available at the Audit Committee meeting. He also recognized staff - Mrs. Niebla, Mr. Kumar, and Mrs. Busse – for their efforts.

**Member Johnson** stated staff did a great job working with the Auditor and coordinating with the City.

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

10. Update on the soundness of the P&F Retirement's investment portfolio.

**The Secretary** stated that progress is being in moving the Board's investment portfolio towards the new investment allocations.

**Member Johnson** stated this is valuable information since next week the City Manager will be focusing the City's economic update on the retirement plans. It is important to continue to communicate since the market is in flux and to continue providing information to the members so they feel comfortable with the Board's response to economic developments. He requested if the actuary can come to speak to the Board regarding long term yield and assumptions.

**Vice-Chair Heredia** stated that the suggestion is great and directed that an item be agendaized for realized and unrealized losses.

**The Secretary** stated everyday there are realized losses. The appropriate focus is upon contribution rates. It should also be recalled that investment gains and losses are smoothed over 5 years so the effect is lessened and there are still gains from prior years. We can have some studies done with that information.

**Member Muncy** stated it would be a disadvantage to the Board to have only the actuary present; so if possible the Board's investment consultant should attend as well.

There was discussion regarding not only placing information on the status of the retirement fund in the newsletter for retirees but also explaining why investment performance is being discussed since in the past it had not been discussed.

11. Election of temporary Chair to preside over December's Retirement Board Meeting.

(M.S.C. Brill/Johnson) to elect Member Muncy as the Chair for the month of December. Motion carried 4-0-3.

**OLD BUSINESS/CONTINUED-DEFERRED ITEMS**

12. Authorization for Secretary to negotiate and execute amendment to the agreement with Avery & Associates, executive recruitment firm, to increase the amount by \$7,000 to a total not-to-exceed amount of \$31,400. (To be shared with Federated System 50/50)

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

13. Authorization to Secretary to execute an agreement with NEPC, LLC, Investment Consultants, for a total not-to-exceed amount of \$2.5 million.

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

14. Travel Audit compliance update.

**Vice-Chair Heredia** stated all the priority one audit recommendations are completed and a majority of the priority two items have also been completed.

**Member Johnson** stated the Banishing Beauracracy Task Force is meeting to create the draft travel policy and he will provide it to the Board for approval.

*This item is note and file.*

**STANDING COMMITTEES / REPORTS / RECOMMENDATIONS**

**Investments Committee (Skeen, Heredia, Muncy)**

15. Summary of committee meeting held 15 July 2008
16. Summary of committee meeting held 27 August 2008
17. Summary of committee meeting held 18 September 2008

*These items are note and file.*

**Real Estate Committee (Skeen, Heredia, Muncy)**

18. Summary of committee meeting held 18 September 2008
19. Summary of the following Boards of Directors meeting held 18 September 2008.
  - a. SJ Progress Point, LLC
  - b. 3169 Dodd Road Corporation
  - c. 3201 C Street, LLC
  - d. 3301 C. Street, LLC
  - e. 1737 North First Street

*These items are note and file.*

**Investment Committee of the Whole (Full Board)**

20. Summary of committee meeting held 27 August 2008

*This item is note and file.*

**Solutions to Retiree Healthcare Committee (Skeen, Heredia, Muncy) – None**  
**Audit Committee (Brill, Heredia, Johnson)**

21. Summary of meeting held 20 October 2008.

*This item is note and file.*

**CONSENT CALENDAR (Items 22-29)**

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

**PROPOSED AGENDA ITEMS**

**PUBLIC COMMENTS**

**EDUCATION AND TRAINING**

**ADJOURNMENT**

There being no further business, **Vice-Chair Heredia** adjourned the meeting at 10:44 am.

---

**KEN HEREDIA, VICE-CHAIR**  
**BOARD OF ADMINISTRATION**

**ATTEST:**

---

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