FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM

Minutes of the Board Meeting

THURSDAY | **SAN JOSÉ, CALIFORNIA** | **February 12, 2009**

CALL TO ORDER

The Board of Administration of the Federated City Employees' Retirement System met at 8:35 a.m., on Thursday, February 12, 2009, in regular session at the Department of Retirement Services, 1737 N. First St., Suite 600 - San José, California.

ROLL CALL

Present:

DAVID BUSSE	**CHAIR, Civil Service Representative**
Matt Loesch	**Employee Representative**
Jeffrey Perkins	**Public Member**
Patrick Skillsky	**Employee Representative**
Pete Constant	**City Council Representative**
Ash Kalra	**City Council Representative**
Ed Overton	**Retiree Representative**

ALSO PRESENT:

Russell U. Crosby	**-Secretary/Director**	Donna Busse	-Staff
Russ Richeda	-Attorney	Mollie Dent	-City Attorney
Tamasha Johnson	-Staff	Pete Patron	-Retiree
Debbi Warkentin	-Staff	Karin Carmichael	-Staff
Bill Thomas	-Retiree	Elizabeth Pappy	-Attorney
Allen DeMers	-HR	Rajiv Das	-Board Medical Director
Ron Kumar	-Staff	Bob Leininger	-SJREA
Amanda Ramos	-Staff	Rhonda Snyder	-Staff
Veronica Niebla	-Staff	Ali Amiry	-Staff
Carol Bermillo	-Staff	Trish Glassey	-CEO
Leslie Thompson	-GRS	David Rodriguez	-Retiree
Linda Dittes	-AFSCWE	Jesselle Holcomb	-Staff
Sandra Stultz	-SJPD	Martin Tran	-Staff
Ceara O'Fallon	-Staff	Bill Pope	-OE3
Tom Reilly	-OE3	Alex Gurza	-OER
Aracely Rodriguez	-OER	Allison Suggs	-OER
Pam Hemminger	-SJPD	Carmen Racy-Choy	-Staff

REGULAR SESSION

Chair Busse called the meeting to order at 8:35 a.m. He stated Item 1 will be heard immediately following the time certain Item 12.

ORDERS OF THE DAY

Chair Busse welcomed **Members Kalra** and **Overton** to the Board.

(Out of Order)
RETIREMENTS
CONSENT CALENDAR (Items 2 thru 8)

(M.S.C. Loesch/Constant) to approve Consent Calendar. Motion carried 7-0-0.

Service retirements approved:

Ricardo Abundiz, December 20, 2008
Mark Bunnell, February 7, 2009
Michele Y. Campos, February 21, 2009

Patricia Lloyd, February 21, 2009
Kenneth A. Stone, February 7, 2009
Mary M. Tobin, February 7, 2009

Deferred Vested retirements approved:
Elizabeth C. Harris, February 22, 2009 **(w/Reciprocity)**

DEATH NOTIFICATIONS (Item 9 - Moment of Silence)

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

OLD BUSINESS (Item 10-14)

10. Travel Audit compliance update.

Mrs. Niebla stated recently staff has submitted a written response on the status of the travel audit recommendations to the City Manager's Office. The Policy Committee will be meeting to review the City Travel Policy.

11. Update on the soundness of the Federated Retirement's investment portfolio.

Mr. Kumar stated a memo has been distributed this morning showing for the calendar year 2008 ending with a portfolio return of -23.8%, compared to the S&P with a return of -37.0%.

Item is note and file.

12. Acceptance of GRS' Report on Actuarial Valuation of Retirement Health Benefits as of 30 June 2007 (GASB 43/45) and authorization to forward on to City Administration.

Ms. Leslie Thompson, GRS, presented the valuation as of June 30, 2007 for San Jose Federated City Employees' Retiree Health Care Plan. There are two Federated Retirement System valuations that GRS performs for the retiree medical plan; the Policy and the GASB valuations. The Policy valuation has been in effect for years, it projects premiums for 15 years. The GASB valuation is based on standard valuation techniques, and it was first conducted in response to new GASB reporting requirements for retiree medical benefits. Effective 7/1/2007, the GASB valuation is using the cost sharing policy as described in the Municipal Code. So, the cost split between the City and the employees is 50/50 for medical costs and 8/3 for dental. The GASB discount rate is 6.60%; if the plan had full prefunding the discount rate would be 8.25%. The value of full prefunding would be a reduction in the ARC

Member Loesch asked what drove the short-term medical inflation trend down from the 2006 GASB valuation report. He also wanted to state this report is for the City's reporting on their balance sheet, not to set rates.

Ms. Thompson stated that the short-term medical trend assumption decrease reflects the Plan's experience.

Member Overton stated the executive summary shows employee contributions of near $9 million, so where did the additional receivables come from and how is that dealt with.

Ms. Thompson stated the additional receivable comes from the 50/50 split from applying the Municipal Code.

The Secretary thanked Mrs. Racy-Choy for her work in refining the assumptions with Ms. Thompson resulting in a valuation with lower amounts.

Mr. Gurza stated as of 6/30/2006 the total contribution was 17.0% of payroll, and as of 6/30/2007 it is

15.2% of payroll based on two factors – medical trend and the determined rate. If the City and employees decided to fully fund the ARC with the 8.25% rate, would 8.25% still be a reasonable assumption given the current market conditions. He would like to have a 5-year phase-in with numbers to see, if possible.

Mrs. Racy-Choy stated she has the phase-in numbers but needs to review them. She stated what matters are to fund appropriately for benefit security. The interest rate is not an issue in this valuation because the interest rate being used is 6.6% but for the next pension valuation a discussion on capital market assumption, interest rates, etc. should follow asset allocation modeling performed by the Plan's investment consultant.

The Secretary stated there will be more discussion regarding the 8.25% rate used, as it may be too high given the performance.

(M.S.C. Constant/Loesch) to approve. Motion carried 7-0-0.

(Back on Agenda)
RETIREMENTS

1. Disability Retirements for Hearing

Pamela Hemminger, Public Safety Dispatcher II, Police Department. Request for a Service - Connected Disability Retirement effective May 1, 2006, 12.30 years of service.

Mrs. Hemminger was present and was represented by *Ms. Pappy*.

For the record the following medical reports have been received:

1. Kai-Uwe Mazur, M.D.	10/20/08 (x3), 10/15/08, 11/14/07, 10/3/07, 7/17/07, 6/11/07, 12/20/06
2. Warren Chin, M.D	4/7/08
3. Kevin Satow, M.D.	1/10/07
4. Frederick Finseth, M.D.	10/13/06, 6/8/05
5.Todd Weitzenberg, M.D.	9/7/06, 7/6/06, 4/8/05, 3/17/05, 2/24/05
6. Harvey Moskovitz, M.D.	6/23/05
7. Gordon Brody, M.D.	3/21/03
8. Samuel Brown, M.D.	6/25/02, 4/11/02

Ms. Pappy stated that it is her client's constitutional right to have a service-connected disability. Mrs. Hemminger was a dispatcher for 16 years; however the calculation by the City adds up to less years. She committed a significant amount of time and effort to the City and feels entitled to due process for the final determination. Dr. Das does not believe Ms. Hemminger's injuries to be job related. Prior to Dr. Das joining the City, similar carpel tunnel cases consistently were approved by the Board. Human Resources have a report on their website that discusses the use of ergonomic training to reduce the incidence of carpel tunnel. There is overwhelming medical evidence that suggests Mrs. Hemminger should be granted a service connected disability.

Mr. Demers stated Human Resources requested the Police Department to respond to accommodation of forceful gripping restriction because that is something that can be accommodated. Every department has to be able to accommodate restrictions that are reasonable.

Dr. Das stated that, if you are looking clinically, you try to compare imaging studies done to the pathology in order to determine the extent of abnormality. Nerve conduction studies have been done regarding effects of typing on a keyboard, and those studies have shown little or no hand symptoms, which is different from

Carpel Tunnel. Carpel Tunnel has been related to forceful wrist fluxion.

Member Constant exited

Ms. Sultz from the Police Department stated Mrs. Hemminger was voluntarily separated. The department cannot accommodate restrictions because of the emergency nature of the work performed which makes the work time sensitive.

Mr. Demers stated every department is required to accommodate reasonable restrictions.

Mr. Gurza stated the term voluntary separation is part of a negotiated provision outlined within the union contract regarding the maximum time allowed to be out. The time allowed is generally 12 months, for medical reasons the time is slightly different, but the City cannot hold a position for an indefinite period of time.

Chair Busse stated the testimony for this matter will now be closed and it will be continued next month as a time certain Item.

13. Authorization for Secretary to negotiate and execute a Continuation Agreement with Macias, Gini & O'Connell for audit of trust funds & City's payroll transmittal process; to continue term of agreement to 8/31/09; modify Exhibit A; and, to increase the not-to-exceed amount payable by $15,000 to $70,000. (To be shared 35/65% with P&F – FCERS ($24,500)/P&F ($45,500)).

(M.S.C. Overton/Perkins) to approve. Motion carried 6-0-1. (Absent: Constant)

14. Discussion and action on the Supplemental Retiree Benefit Reserve (SRBR) distribution for fiscal year ending June 30, 2008.

Mrs. Niebla presented information depicting the assets and liabilities, as well as, how they are accounted for and split out into the SRBR. She explained that employee and employer contributions are allocated to the pension/health and COLA funds in accordance with the San Jose Municipal Code. The employee contributions come into the pension and health plan, but ultimately end up in an employee reserve. There is a similar relationship for employer contributions that also come in under the pension/health, and COLA, which end up in a general reserve account. Pension payments made out to retirees are drawn out of the general reserve. The health payments for retirees are drawn out of the health general reserve. Mrs. Niebla described the Fund structure as set forth in the Municipal Code.

Member Perkins exited

Mrs. Racy-Choy stated the money is invested in one pot; assets are not tagged for health, pension, or COLA. From an investment perspective we have one pool of assets, we have an asset allocation that is determined through the asset liability study, and we invest based on the proposed asset allocation from that study. However, accounting follows a process to allocate, among other things, net investment income among different pools. When we are mentioning the general reserve, the employee contributions, and the SRBR account, these are sub-accounts within the pension account. Current year interest is credited on the SRBR fund and then if there is a distribution, the distribution reduces the fund. Note for Fiscal Year 07-08 the ending balance was $27.7 million, but after correction the balance is roughly $19.9 million, so that is the impact of the adjustments.
The first issue was the unrealized gain/loss treatment starting from fiscal year ending June 30, 2005. The pension and health general reserve includes an unrealized gain/loss account; this was roughly 10% of the total bucket as of June 30, 2008. That portion was not being credited with its appropriate level of interest,

hence overstating the excess earnings. The Municipal Code says interest shall be credited to the General Reserve and the general reserve is to be based on the System's audited reports for each fiscal year. Since our audited financials include the unrealized gains/losses as a component of the general reserve, staff and the external auditors felt this adjustment needed to be made. The impact of the adjustment is to reduce the SRBR 2008 distribution by roughly $3.0 million.

The second adjustment was to interest crediting. The best methodology is to credit interest on a daily basis because it would reflect the fact that as you earn money you have more money and you are crediting interest on gradually larger amounts; however, this is cumbersome, so as an approximation for daily crediting typically what is done is to credit interest on the average of the beginning of period and end of period balance. There were inconsistencies between the interest crediting formulas used for the various reserves causing certain reserves to be over credited with interest while under crediting others. The interest crediting corrections were made to all reserves beginning fiscal year ending June 30, 2005, with the exception of the SRBR reserve, which was corrected starting June 30, 1999. Applying the interest crediting formula across the previously mentioned reserves reduced the Federated SRBR distribution in 2008 by roughly $1.7 million.

The third correction involves the "Retiree Medical Benefits Fund", which was not being credited with actual investment income because its income was being included in the excess earnings calculation; consequently, in years where there were excess earnings, the Retiree Medical Benefits Fund only received 90% of the excess earnings that would have been credited to it in the absence of the SRBR. The Municipal Code requires that "all earnings and interest attributable to such contributions 'for medical benefits', shall be placed in the medical benefits" fund. This section was added to the Municipal Code as part of the tax clarification ordinance adopted in 2006. Therefore, for purposes of the 2008 distribution we have excluded the Retiree Medical Benefit Fund investment income and health contributions from 1997 through 2008 from the excess earning calculation; this correction reduced the 2008 distribution by about $3.1 million. Given that the Retiree Medical Benefit Fund has not been receiving its full investment income since the inception of SRBR in 1986; the correction should have gone back to 1986 not 1997. However, the Plan's financials do not split the Retiree Medical Benefit Fund assets before 1997. Therefore, if we are to correct the error going back to 1986, we would have to rely on estimates of the Retiree Medical Benefit Fund assets from the period 1986 to 1996.

Lastly, over-distributions were identified in fiscal years ending June 30, 2000, 2001, 2002, 2005, 2006, and 2007. The total over-distributions with interest add up to $5.4 million as of June 30, 2008. The $6,633,000 distribution made in the fiscal year ending June 30, 2000 should have been $4,574,000, which was 30% of the SRBR fund balance as of June 30, 1999, $15,052,000; hence, there was an over-distribution of $2.1 million. Benefit calculations are an area of expertise of the actuarial profession and to have delegated that responsibility to the accounting staff without the oversight of the Plan actuary was inappropriate. Staff should have performed the calculation internally only with actuary performing an annual review of the calculation, which is why one of the first recommendations mentioned in the memo to the Board is that the Board direct that the next SRBR distribution calculation be handled by the Plan's actuary. If the Board accepts the report, the Administration, City Attorney's Office and outside conflicts counsel will be presenting options related to recovery of past over-distributions, including any interest due thereon, to the Board in March.

Ms. Dent stated for the record that legal counsel has advised Member Overton to recues himself on this item due to a potential conflict of interest. Legal will be looking into obtaining a legal opinion regarding retiree participation concerning the SRBR, since it is one the few action the Board takes that has a direct financial impact on retirees.

Member Loesch asked if the correction of $3.1 million will be credited back to the Health account.

Mrs. Racy-Choy stated the $3.1 million pertains to the amounts from 1997-2000 and will go back into the Health account.

Ms. Dent stated there will need to be a discussion about how this will be reported on the next financial statement because at least on the next set of financials the net balances will be different. She added the provision in the Municipal Code in 2006 captures most of the $3.1 million under discussion, but when the Code was amended in 2006 it became very clear that the earnings were suppose to be credited to the Retiree Healthcare account. Prior to 2006, this was an IRS issue and their guideline is unclear but it is stated in the memo. The $2.1 million over-distribution part in 2000 was not due to the errors discussed in this memo, but due to a misapplication of the distribution formula in a council resolution for those periods of 1999, 2000, and 2001.

Mr. Richeda stated the Board should flag for future consideration the time period of 1984-1997 to make a determination and a record of that determination, separate and apart, from the report that has been provided.

Mrs. Niebla stated the excess earnings allocated to SRBR as of 1999, which are not transferred until July 1st of the next Fiscal Year were included in the balance to calculate the distribution. In 1999, the 10% of excess earnings were allocated to SRBR, which were to be effective as of July 1st for $7 million, but the $7 million balance was included with the $15 million balance at the end of 1999 to calculate the 30% distribution. If you are strictly following the Municipal Code or the City Council Resolution it does state the balance is as of the audited financial statements ending June 30, 1999, which had a balance of $15 million and not $22 million, so it was counted twice.

Chair Busse asked if this was an error that should have been detected by the auditors.

Mrs. Racy-Choy stated the auditors should have noticed at least the overpayment of $2.1 million in 2000.

Member Kalra asked if the aforementioned corrections are going to be changes in the methodology to make it more efficient or is it correcting the methodology that has been used. He asked where the error in execution derived from.

Mrs. Racy-Choy stated the methodology is not changing. Everything will be in line with the Municipal Code, and distribution resolutions. The error was in the application of the Municipal Code.

The Secretary stated staff should not have been involved. An actuary should always perform benefit calculations. Organizational drift may have contributed.

Mr. Leininger stated this may have a major impact. There are 1200 pensions that are less than $15,000 per year. He suggested reviewing the statute of limitations, and exploring the auditor's E&O insurance.

(M.S.C. Kalra/Loesch) to accept staff's memo and recommendations that the Board direct that the next SRBR distribution calculation be handled by the Plan's actuary, the Board direct staff to bring back corrected Resolution(s) in accordinance with the above analysis, and state that the distribution for the fiscal year ending June 30, 2008 will be $149,000; and the Board direct staff and the attorneys to present options related to recovery of past over-distributions, including any interest due thereon, and non-recovery options of past over distributions to the Board in March. Motion carried 5-0-2. (Absent: Constant, Perkins)

NEW BUSINESS (Items 15-17)

15. Approval to conduct a Request for Qualifications for actuarial services

(M.S.C. Loesch/Skillsky) to approve. Motion carried 5-0-2. (Absent: Constant, Perkins)

16. Approval of a change to Rosalinda Perez's service retirement date from 1/24/09 to 3/7/09.

(M.S.C. Loesch/Overton) to approve. Motion carried 5-0-2.

17. Discussion and possible action regarding establishing medical benefits for

Barbara Ramsey

Mrs. Busse stated Barbara Ramsey emailed her regarding customer service issues she experienced with staff. She stated she was told incorrect information about her medical coverage. Although Ms. Ramsey was informed that the Board cannot grant a medical benefit she is not eligible for, she wished to bring the matter forward. Fortunately, Ms. Ramsey is eligible under PERS for medical coverage and there was no lapse in her coverage.

The Secretary stated this was a mistake made by a long serving member of staff, so this was not a training or ongoing issue. The staff member had two similar cases and the information was blended in her mind when she misspoke.

(M.S.C. Overton/Skillsky) *note and file this item.* Motion carried 5-0-2.

18. **Request for Board approval of the following trustees' attendance at the** educational conferences listed:

Trustee	Conference Name/Location/Dates
Dave Busse	CalAPRS Trustee's Roundtable, San Jose, CA - 2/6/09 CalAPRS General Assembly, Monterey, CA - 3/1/09 to 3/3/09
Ash Kalra	Principles of Pension Management, Stanford, CA - 3/24/09 to 3/27/09
Matt Loesch	CalAPRS Trustee's Roundtable, San Jose, CA - 2/6/09 CalAPRS General Assembly, Monterey, CA - 3/1/09 to 3/3/09 IMN Public Funds Summit, Dana Point, CA – 3/16/09 to 3/18/09 IFEBP - CAPPP (Certificate of Achievement in Public Plan Policy), Chicago – 6/9/09 to 6/12/09
Patrick Skillsky	Principles of Pension Management, Stanford, CA - 3/24/09 to 3/27/09
Russell Crosby	IMN's Public Funds Summit & Awards Dinner – Dana Point, March 15 thru 18, 2009. CalAPRS' Administrators' Roundtable – San José- 1/30/09
Donna Busse	CalAPRS' Benefits Roundtable – San José – February 6, 2009
Ali Amiry	Seix Due Diligence – Upper Saddle River, NJ – February 2009

(M.S.C. Loesch/Kalra) to approve. Motion carried 5-0-2.

STANDING COMMITTEES / REPORTS / RECOMMENDATIONS (Items 19-22)

19. **Committee for Investments (Perkins/Loesch/Busse – alternate/Vacant)**
20. **Committee of the Whole (Full Board) – last meeting 11 December 2008**
21. **Real Estate Committee (Skillsky– alternate/Busse)**
    a. Summary of meeting held 29 January 2009
        1. Approval of the 2009 Business Plan and Budget for Milpitas Warehouse

(M.S.C. Loesch/Skillsky) to approve. Motion carried 5-0-2.

22. **Policy Committee (Busse/Perkins/Constant)**

EDUCATION AND TRAINING

PUBLIC/RETIREE COMMENTS

FUTURE AGENDA ITEMS

ADJOURNMENT

There being no further business, at 11:40 a.m., **Chair Busse** adjourned the meeting.

DAVE BUSSE, CHAIR
BOARD OF ADMINISTRATION

ATTEST:

RUSSELL U. CROSBY, DIRECTOR
BOARD OF ADMINISTRATION