

**CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

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January 11, 2010

The Board of Retirement met in special session at 9:00 a.m. on Wednesday, January 11, 2010 at the Hilton Hotel, 1970 Diamond Blvd., Meeting rooms CDE, in Concord, CA.

Present: Terry Buck, Richard Cabral, Dave Gaynor, John Gioia, Brian Hast, Jerry Holcombe, Paul Katz, Sharon Naramore, William J. Pollacek, Jim Remick, Jerry Telles, and Maria Theresa Viramontes.

Staff: Marilyn Leedom, Retirement Chief Executive Officer; Silvina Leroux, Retirement Deputy Chief Executive Officer; Cary Hally, Retirement Chief Investment Officer ; Karen Levy, Counsel; Rick Koehler, Retirement Accounting Manager; Kathy Somsen, Retirement Benefits Manager; Toni Warren, Retirement Administration Manager.

Outside Professional Support: Representing:  
Harvey Leiderman Reed Smith LLP  
Paul Angelo Segal Company

Other Attendees:

Nancy Austin Contra Costa County Employees' Retirement Association (CCCERA) Staff			
Lori Barron	CCCERA Staff	Margie Breen	CCCERA Staff
Julie Carrasco	CCCERA Staff	Luz Casas	CCCERA Staff
Sherrina Cole	CCCERA Staff	Jerrie Davis	CCCERA Staff
Yolanda Fernandez	CCCERA Staff	Charice Hester	CCCERA Staff
Jessica Huffman	CCCERA Staff	Rhonda Jones	CCCERA Staff
Tracy Kroll	CCCERA Staff	Son Lu	CCCERA Staff
Joelle Luhn	CCCERA Staff	Nannette Mendoza	CCCERA Staff
Marge Rosenberg	CCCERA Staff	Kay Sofios	CCCERA Staff
Liz Walker	CCCERA Staff	Brianne Wilkins	CCCERA Staff

**PLEASE SEE SIGN-IN SHEET FOR ADDITIONAL ATTENDEES**

**1. Pledge of Allegiance**

Remick led all in the *Pledge of Allegiance*.

**2. Introductions by Board**

Board members, CEO, and Counsel were introduced.

Pollacek, Retirement Board Chairman, noted this was a special meeting of the Board of Retirement to consider issues relating to final compensation and retirement benefits, specifically, which elements are considered in "final compensation" calculations. He stated no action will be taken at this meeting. The meeting is for educational purposes only.

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Pollacek asked that the following be read into the official record and to have the Retirement Board Secretary include this notice in the official minutes of this Retirement Board Meeting:

**"NOTICE OF PERSONAL FINANCIAL INTEREST"**

"The following members of the Board of Retirement have personal financial interest in the matters before the Board at this meeting, by reason of their being active or retired members of CCCERA: Terry Buck, Richard Cabral, John Gioia, Brian Hast, Sharon Naramore, William J. Pollacek, James Remick and Jerry Telles. The following senior staff members of CCCERA have personal financial interests in the matters before the Board at this meeting by reason of their being active members of CCCERA: Marilyn Leedom, CEO; Silvina Leroux, Deputy CEO; Cary Hally, CIO; Rick Koehler, Accounting Manager; Kathy Somsen, Benefits Manager; and Karen Levy, Counsel. All of these individuals' interests are indistinguishable from the interests of the other active and retired members of the system and they need not recuse themselves from these deliberations."

Cabral noted he was aware of Item 3; however, he was unaware of Item 4, "Staff Presentation on current implementation regarding elements of final compensation as applied to calculating retirement benefits.

After comments from several Board members, Pollacek asked for the will of the Board on Agenda Item 4. It was **M/S/C** to keep the original agenda. (Yes: Gaynor, Gioia, Hast, Katz, Pollacek and Viramontes; No: Buck, Cabral, and Telles)

**3. Presentation Regarding Calculation of Final Compensation - Harvey Leiderman, Reed Smith LLP**

Leiderman stated today's meeting is an open and public discussion of the Board and for all interested parties having an interest in public pensions and how retirements are calculated. He noted he will use the commonly used term "Final Average Salary" (FAS) interchangeably with "final compensation" (the statutory phrase) and will discuss the System's implementation of FAS. The system's implementation of the Board's FAS policies will be discussed by Retirement's CEO in Item 4, along with current practices followed by CCCERA.

Leiderman displayed a slide presentation that was made public in hard copy and will be included in the public record of the meeting. He noted there would be discussion on the changes in the legal and economic landscape that affect Contra Costa County, noting the focus will be on the duties, responsibilities and authority of the Retirement Board. He discussed the 1997 Ventura decision in which the Supreme Court of California changed the law on how retirement calculations are made. He discussed the 1999 *Paulson* and *Walden* litigation settlement agreement reached between the County and the retirees at that time. The pre-September 1997 retired members who were bound by this judgment are not affected by the discussion of this meeting. This topic will be of interest to those who retired after that date, current active and deferred members and, possibly, future new hires.

Leiderman described how the law governing CCCERA provided a "filtering" process, separating all items of remuneration paid by the employers into items that were and were not to be included in calculating FAS. He gave the history of the policies adopted by CCCERA in December 1999 and thereafter and reviewed the statewide litigation and key court decisions occurring since 2000. He discussed CCCERA's current policies including employee cash-out of vacation, sick, administrative and other leave time annually during service and at termination. He highlighted how CCCERA staff had implemented the Board's policies and how those policies had been included regularly in materials provided to the members. Finally, he noted the three primary areas of concern at this time: terminal pay, conversion of non-cash items at retirement, and "straddling" two years in order to increase FAS in the final year of service.

Discussion followed on the Retirement Board's responsibility to calculate retirement benefits. Legal issues were discussed. It was noted advice on this subject should be given in closed session to protect attorney client privilege. Several Board members asked that this issue be discussed in open forum. Leiderman noted he could not waive the attorney client privilege and since the item was not agendaized, a vote cannot be taken at this meeting to waive attorney client privilege. At the request of one Board member, however, Leiderman discussed the likely arguments that different parties might make in court should the Board change or not change its policies.

Leiderman noted the Board should listen to both active and retired members, consider the employers views on their business of compensating their employees, and consider the public's view. He noted the Board's fiduciary responsibility is to the members and beneficiaries of this system, not to the public and the taxpayers.

Pollacek noted that all documents Leiderman presented will be made part of the record.

**4. Staff Presentation on Implementation of FAS**

Leedom noted the *Compensation for Retirement Purposes* policy was developed and implemented before the *Paulson* and *Walden* cases. The Board policy, on CCCERA's website, was implemented in 1997 and last revised in January 1998. There have been no changes to the policy since that date.

She then summarized the policy. She noted the Board of Retirement, in the interest of fairness, decided to apply the same terms of the *Paulson* Settlement to all members, regardless of their status. This included all active and deferred members of CCCERA. Leedom reviewed how staff has provided information regarding this policy to members, under the Board's direction. Virtually all communication regarding benefit calculations from the retirement system to its membership has reflected this 1997 policy, including the members' handbook, annual benefit statements, retiree seminars and retirement interviews. Based on the Board's 1997 compensation policy, CCCERA's actuaries have included an assumption for terminal pay when determining future retirement contribution rates, beginning in the first valuation following the *Paulson* settlement.

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These valuations are public documents, provided annually to all employers at CCCERA's annual actuarial meeting. The terminal pay assumptions have increased the employer and employee contribution rates paid to CCCERA to help fund these benefits. These contribution rates are used by CCCERA's staff to calculate what a member pays for such things as: purchase of service credit for military, public service, leaves of absence and conversion of service from one Tier to another.

Pollacek noted he has received written communications from retirees Douglas Pipes and Dennis Graves. These items will be included in the record of today's meeting.

Pollacek noted he would call on those wishing to comment in the following order: retired members or their representatives; active members or their representatives; employer members; and lastly, members of the general public. Speaking time will be limited to three minutes.

**5. Public Comment**

Pollacek then opened the floor to comments from the public. Over twenty-five individuals addressed the Board. Most speakers were retired members who opposed making changes to the current method of calculating FAS.

**6. Board Discussion and Direction**

Board members thanked the public for attending and held a general discussion on the subjects discussed by counsel, staff, members and the public.

Cary Hally, Chief Investment Officer, was introduced and applauded, noting his success in the investment returns for CCCERA. Pollacek stated CCCERA has been in the top 25% quartile for the past 5 and 10 year period.

It was M/S/C to adjourn. (Yes: Buck, Cabral, Gaynor, Gioia, Hast, Katz, Pollacek, Telles, Viramontes)

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William J. Pollacek, Chairman

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David Gaynor, Secretary