

**CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

Page 1

February 10, 2010

The Board of Retirement met in regular session at 9:00 a.m. on Wednesday, February 10, 2010 in the Conference Room of the Contra Costa County Employees' Retirement Association, 1355 Willow Way, Suite 221, 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.

**Outside Professional Support:**      **Representing:**  
Harvey Leiderman      Reed Smith LLP  
Rebecca Byrnes      County Counsel  
Bob Helliesen      Milliman

**Other Attendees:**

Margie Breen	Contra Costa County Employees' Retirement Association (CCCERA) Staff
Luz Casas	CCCERA Staff
Chih-Chi Chu	CCCERA Staff
Karen Davis	CCCERA Staff
Tracy Kroll	CCCERA Staff
Joelle Luhn	CCCERA Staff
Kelli Ingersoll	CCCERA Staff
Lorna Thomson	Self
Wendy Lack	Self
Talbot Carleton	Oaktree Capital Management
Steve Kaplan	Oaktree Capital Management
Gene Daniel	Retiree
Lucy Fogarty	Contra Costa County Superior Court
Satomi Cadena	Contra Costa County Retired Employees' Association (CCCREA)
Michelle Johnston	Auditor Controller
Farrell Holderman	Contra Costa County Grand Jury (CCC Grand Jury)
Linda Chew	CCC Grand Jury
Matt Bennett	CCC Grand Jury
Jerry Mulcahy	CCC Grand Jury
Kevin Cough	CCC Grand Jury
Cheryl Alexander	Delta Diablo Sanitary District
Cathryn Freitas	Contra Costa County Sanitary District (CCCSD)
Randall Musgraves	CCCSD
Harjit Nahal	Auditor Controller
Tina Kaufmann	Auditor Controller
Marie Rulloda	Auditor Controller
Bob Rey	Retiree

**CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

Page 2

February 10, 2010

Bill Cullen	Retiree
David Rolley	Local 1
Rollie Katz	Local 1
John Keel	San Ramon Valley Fire Fighters Association
Kris Hunt	Contra Costa County Tax Payers Association
Mary Ann Mason	County Counsel
Laura Strobel	County Administrators Office (CAO)
Lisa Driscoll	CAO
Jim Bickert	Deputy Sheriff's Association
Rick Radin	Contra Costa Times
Ed Irwin	Retiree Support Group
Vincent Wells	Local 1230
Mary Lou Williams	CCCREA

**1. Pledge of Allegiance**

Buck led all in the *Pledge of Allegiance*.

**2. Employee Recognition**

Pollacek recognized Joelle Luhn for 10 years of service.

**3. Public Comment**

David Rolley, President of Local 1, urged the Board to withhold action on the compensation policy, even for new hires.

**4. Approval of Minutes**

It was **M/S/C** to approve the minutes of the January 27, 2010 meeting. (Yes: Buck, Cabral, Gaynor, Gioia, Hast, Holcombe, Katz, Pollacek, and Telles)

**5. Routine Items**

It was **M/S/C** to approve the routine items of the January 27, 2010 meeting. (Yes: Buck, Cabral, Gaynor, Gioia, Hast, Holcombe, Katz, Pollacek, and Telles)

Viramontes was present for subsequent discussion and voting.

**6. COLA Increase**

Leedom reviewed the recommendation from the Segal Company regarding the possible cost of living increase (COLA) for retirees. Rounded to the nearest .5%, the current recommendation is for a 2.5% increase effective April 1, 2010. It was **M/S/C** to adopt the actuary's recommendation of a 2.5% COLA effective April 1, 2010. (Yes: Buck, Cabral, Gaynor, Gioia, Hast, Katz, Pollacek, Telles, and Viramontes)

Discussion followed on the use of the COLA bank, if available, to bring the total COLA to the maximum of 3% (for Tier 1 and 3).

**7. Presentation Oaktree Capital Management**

Steve Kaplan/Talbot Carlton - Kaplan waived the confidentiality of the report provided for this meeting. He reviewed Oaktree's Private Investment Fund, noting the company was founded in 1995 and has over 72 billion dollars of assets under management.

Carlton noted the Oaktree Private Investment Fund 2009 will act as a fund of funds, and will invest in the underlying funds as follows:

Opportunities Fund VIII	60%
Principal Fund V	30%
Mezzanine Fund III	10%.

Kaplan reviewed distressed debt investing, noting the types of distressed debt. He then reviewed the performance of Oaktree, discussing the aggregate annual returns, both before and after fees. Kaplan noted Oaktree's goal is to have controlling ownership in companies and to help negotiate a plan of reorganization where debt is manageable.

**8. Recommendation Oaktree**

It was **M/S/C** to invest \$40 million in the Oaktree Private Fund 2009 L.P. (PIF 2009) subject to legal review of contract, successful onsite visit and to authorize the CEO to sign contracts. (Yes: Buck, Cabral, Gaynor, Gioia, Hast, Katz, Pollacek, Telles, and Viramontes)

**9. Meeting Dates**

After Board discussion of possible dates and concern that many Board members would be missing meetings, it was **M/S/C** to move the March 24 meeting to March 31. (Yes: Buck, Cabral, Gaynor, Gioia, Hast, Katz, Pollacek, Telles, and Viramontes)

It was **M/S/C** to move the April 14 meeting to April 21. (Yes: Buck, Cabral, Gaynor, Gioia, Hast, Katz, Pollacek, Telles, and Viramontes)

**10. Terminal Pay**

Leiderman provided a handout setting forth the legal test for including pay items in final average salary calculations and summary examples from the pay practices of three employers. Katz expressed concern that CCCERA had not agendized the possible action that might be taken on retirees and active members of CCCERA. Discussion followed on the means to add an item to the agenda. Katz requested that the Board take emergency action to add this item to the agenda. Leiderman stated he did not believe there was an emergency under the Brown Act that would authorize the Board to add another item to the agenda without 72 hours notice.

*CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION*

Page 4

February 10, 2010

Gioia stated that the Board was trying to focus on new hires and was not going to be addressing the issue of retirees and active members at this time, so retired and active members did not need to come to the meeting.

Pollacek advised Katz his item could be added to a future agenda if he wished.

Levy noted if the policy, "Compensation for Retirement Purposes" was revised only for new hires, the existing policy would stay in place for all current members.

Leiderman stated that employers determine how their employees are compensated and the Board determines which items of compensation are to be counted in calculating final compensation for retirement pay. Leiderman used the example of overtime to demonstrate an employer pay item that everyone agrees should not be included in final average salary computations. He noted one of the Board's duties is to determine what is includable in final average salary.

Discussion followed on vacation sell back and the ways an employee may sell back vacation to the employer if the total sell back does not exceed the amount that can be earned in one year. Discussion also occurred regarding this particular pay item and that not every employee has the ability to sell back vacation.

Leiderman reviewed his handout, noting the differences between items offered by different collective bargaining units and their exclusion or inclusion in final average salary. He reviewed his interpretation of current case law, noting the Board should only count what an employee receives in cash during service, not at termination. Leiderman gave examples of vacation sales during service and terminal pay, and which ones should be included in final average salary and which ones should be excluded or limited.

Discussion followed on the case law regarding terminal pay issues. Some Board members questioned the noted case law, questioning whether these cases were specifically stipulating that terminal pay 'must' not be included in determining final pay for retirement benefits, the verb 'may' was used in the court decision.

Leiderman discussed his understanding of the case law, noting that the case *In re: 'Retirement Cases'* outlines that terminal pay must not be included in final average salary. He also referred to the *Salus, Hudson and Mason* cases which are consistent with *In re: 'Retirement Cases'* regarding pay which may only be received at termination, and therefore cannot be counted in final average salary calculations.

Leiderman stated that, originally, terminal pay was a gray area. However, the law was refined in *re: 'Retirement Cases.'* Leiderman noted that other CERL systems have excluded terminal pay since the 1997 Ventura decision.

Leiderman reviewed simple changes to the existing Policy that would be in line with his discussion of pay items. Essentially, the Board would need to change statements found in

*CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION*

Page 5

February 10, 2010

Paragraph 4(a) and (b) as follows: (a) Annual 'Cash-out': The value of accrued time, such as vacation, holiday or sick leave that is earned and cashable by the employee each year under cash-out' agreement, is includible in compensation earnable; and (b) Lump sum at Termination: Only the portion of accrued time (such as vacation, holiday or sick leave) that is paid in the form of a lump sum at termination and that represents time earned and cashable during the final compensation period is includible in compensation.

Questions arose on the 2% Advance Executive differential previously offered by the County. Levy clarified the record on the 2% key employee incentive, noting the Board of Supervisors passed a resolution last year to eliminate it.

Discussion followed on whether the Board should waive attorney client privilege. Leiderman stated that he would prefer that the Board not waive the privilege. He stated that there are potential litigants present; this is a public session and discussing the Board's specific legal advice could compromise the Board's interests in any subsequent litigation. Leiderman reiterated that the Board has not taken ANY action on this subject as of today's date. He also emphasized that the public needs to understand that no action has been taken, whether in open or closed session.

Discussion followed on how to define a new hire for purposes of a change to CCCERA policy. Possibilities included hire date or date of membership in CCCERA. Leiderman suggested that the definition of 'new hire' would either be an individual's date of hire by the employer, or date of CCCERA membership, on or after a certain date to be determined by the Board.

It was M/S/C to go to Public Comments. (Yes: Buck, Cabral, Gaynor, Gioia, Katz, Pollacek, Telles, and Viramontes)

**Public Comment**

Pollacek then opened the floor to comments from the public.

Rollie Katz noted he disagrees with Leiderman's interpretation of case law and argued in favor of terminal pay.

Dave Rolley spoke against changing current policy.

Mary Ann Mason - County Counsel suggested the following elements be considered determining final pension: membership date (as opposed to hire date), potential reciprocity issues, and using the term 'earnable' (as opposed to earned as applicable to final compensation).

Bill Cullen - feels the Board should do nothing. He noted that when this Board made the original decision and listened to legal counsel, the issue at that time was whether a pay item was 'paid in case.' Cullen suggested if we do otherwise, CCCERA could end up in court.

Kris Hunt - Spoke in favor of changes to be in compliance with current law.

**CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

Page 6

February 10, 2010

It was *M/S* to keep the current policy ("Determining Which Items are Compensation for Retirement Purposes") in effect. A substitute motion was made, *M/S/C* to provide direction to counsel to return with a draft amendment to the policy "Determining Which Items are Compensation for Retirement Purposes" for new hires, consistent with the legal interpretation of recent court decisions. (Yes: Gaynor, Gioia, Katz, Pollacek, Viramontes; No: Buck, Cabral, Telles; Abs: Hast)

Cabral, Telles and Hast were not available for subsequent voting or discussion.

***CLOSED SESSION***

The Board moved into closed session pursuant to Govt. Code Section 54957 to consider the Medical Advisor and or staff's recommendation regarding disability retirement applications.

**11. Disability Retirements**

It was *M/S/C* to accept the counsel's recommendation and grant the following disability benefits:

(a) Betty Adams, Service Connected (Yes: Buck, Gaynor, Gioia, Holcombe, Katz, Naramore, Pollacek, Remick, and Viramontes).

Cabral and Telles were available for subsequent voting or discussion.

**12. Disability Retirements**

It was *M/S/C* to accept the ALJ's recommendation to deny the application for Carla Lindh-Kowall. (Yes: Buck, Gaynor, Gioia, Katz, Pollacek, Remick and Viramontes; Abs: Cabral and Telles)

**13. Disability Retirements**

It was *M/S/C* to accept the counsel's recommendation and grant the following disability benefits for Deborah Siino. (Yes: Buck, Gaynor, Gioia, Katz, Pollacek, Remick, Telles and Viramontes; Abs: Cabral)

The Board moved into open session.

Gioia was not available for subsequent voting or discussion.

**14. Office Reconfiguration**

Leedom reviewed a recommendation to proceed with the office remodel in the benefits portion of the office, creating offices for the Programmer/Analyst and the Benefits Coordinator. It was *M/S/C* to approve the recommendation, subject to further reference checks on the contractor. (Yes: Buck, Cabral, Gaynor, Holcombe, Katz, Pollacek, Remick, and Telles)

Viramontes was not present for subsequent voting or discussion.

**15. Staff Recommendation Goldman Sachs**

Hally presented recommendation for a target reallocation to provide funds for the Goldman Sachs (GSMA) Broad Opportunistic Credit portfolio. It was **M/S/C** to approve the staff recommendation. (Yes: Buck, Gaynor, Holcombe, Katz, Pollacek, Remick, and Telles; No: Cabral)

**16. Conferences**

- (a) It was **M/S/C** to authorize the attendance of Naramore, Pollacek, Remick and one staff member at the Limited Partners Meeting, Carpenter Community Fund, April 28-30, 2010, Newport Beach, CA. (Yes: Buck, Cabral, Gaynor, Holcombe, Katz, Pollacek, Remick, and Telles)
- (b) It was **M/S/C** to authorize the attendance of Buck, Cabral, Hast and one staff member at the Limited Partners Meeting, Credit Suisse, March 1-2, 2010, New York, NY. (Yes: Buck, Cabral, Gaynor, Holcombe, Katz, Pollacek, Remick, and Telles)
- (c) No one was able to attend the Corporate Governance Round Up, LA Trustees Network, March 1-2, 2010, Los Angeles, CA.
- (d) It was **M/S/C** to authorize the attendance of Naramore and Remick at the Annual Conference, NCPERS, May 1-6, 2010, Las Vegas, NV. (Yes: Buck, Cabral, Gaynor, Holcombe, Katz, Pollacek, Remick, and Telles)

**17. Miscellaneous**

- (a) Staff Report - Leedom noted that CCCERA had participated in the benchmark study completed by ACERA and would be presenting the results at a future Board meeting. She also noted that some of the SACRS retirement associations would be working with CEM Benchmarking to perform a similar study. She noted CCCERA would be working with items identified in the ACERA study, complete ongoing projects and would consider participation in the CEM study in the future.

Leedom noted an update from Energy Investors Fund regarding an investment in Fund 1 and Fund 2 was in the Board members' mailboxes.

Leedom advised the Board of the receipt of a request from Central Contra Costa Sanitary District for actuarial information in regards to the depooling project. Leedom noted that because this is not a benefit related issue, the information would be shared, with personal information redacted.

Leedom noted that each Board member will receive a Form 700 this month for completion. She also noted that an update on the Willows Office Building would be provided at the February 24, 2010 meeting.

*CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION*

Page 8

February 10, 2010

Leedom updated the Board on the recent Public Information Requests from Doug Pipes, San Ramon Valley Fire Protection District and Kris Hunt, Taxpayers Association. Levy noted an additional Public Information Request from Daniel Bornstein, Contra Costa Times.

(b) Outside Professionals' Report

Nothing further to report

(c) Trustees' Comments - Buck questioned a situation where a retiree had belatedly applied for a service connected disability on a cancer presumption and was denied because of timing.

Remick noted that he felt using titles at Retirement Board meetings was inappropriate and felt that all Board members should use trustee titles only at such meetings.

Telles noted he had lunch with Jeff Coburn of Wentworth about three weeks ago.

It was **M/S/C** to adjourn. (Yes: Buck, Cabral, Gaynor, Holcombe, Pollacek, Remick, and Telles).

---

William J. Pollacek, Chairman

---

David Gaynor, Secretary