



MINUTES

RETIREMENT BOARD MEETING MINUTES

REGULAR MEETING
February 8, 2017
9:00 a.m.

Retirement Board Conference Room
The Willows Office Park
1355 Willow Way, Suite 221
Concord, California

Present: Debora Allen, Candace Andersen, Scott Gordon, Jerry Holcombe, Louie Kroll, John Phillips, William Pigeon, Gabe Rodrigues, Todd Smithey, Jerry Telles and Rusty Watts

Absent: David MacDonald

Staff: Gail Strohl, Chief Executive Officer; Timothy Price, Chief Investment Officer; Karen Levy, General Counsel; Wrally Dutkiewicz, Compliance Officer; and Christina Dunn, Administrative/HR Manager

Outside Professional Support: Harvey Leiderman
Joe Wiley

Representing: Reed Smith LLP
Wiley Price & Radulovich LLP

1. Pledge of Allegiance

Allen led all in the *Pledge of Allegiance*.

2. Accept comments from the public

No member of the public offered comment.

3. Approval of Minutes

It was M/S/C to approve the minutes of the January 11, 2017 meeting with a correction to page 2, Item 10, fifth line, changing the word who to whom. (Yes: Allen, Andersen, Gordon, Phillips, Rodrigues, Smithey, Telles and Watts).

4. Routine Items

It was M/S/C to approve the routine items of the February 8, 2017 meeting. (Yes: Allen, Andersen, Gordon, Phillips, Rodrigues, Smithey, Telles and Watts)

Pigeon was present for subsequent discussion and voting.

CLOSED SESSION

The Board moved into closed session pursuant to Govt. Code Section 54957.6, 54957, 54956.9(d)(2) and 54956.9(d)(1).

The Board moved into open session.

5. There was no reportable action related to Govt. Code Section 54957.6.
6. It was M/S/C to accept the Medical Advisor's recommendation and grant the following disability benefits:
 - a. Toni Harris – Service Connected (Yes: Allen, Andersen, Gordon, Phillips, Pigeon, Rodrigues, Smithey, Telles and Watts)
 - b. Dean Soltis – Service Connected (Yes: Allen, Andersen, Gordon, Phillips, Pigeon, Rodrigues, Smithey, Telles and Watts)
7. This item was not discussed.
8. There was no reportable action related to Govt. Code Section 54956.9(d)(1)
9. **Consider and take possible action to adjust the retirement allowance of retired Hazardous Materials Specialist IIs pursuant to Government Code Section 31539 to exclude compensation improperly increased by the members:**
 - a. Presentation of report and recommendations; Board questions

Dutkiewicz gave a brief recap of his supplemental report memo noting this item is a continuance of the May 4, 2016 meeting. He stated there were unusual increases in on-call compensation during the final average salary (FAS) period for eleven members. He described the methodology used in reviewing the retirees final average salaries, compensation received prior to the final average salary periods, and reviewed the causes and effects of the unusual increases in on-call pay. He noted that prior to the FAS period, on-call work was converted to overtime "compensatory time", which is not eligible as pensionable compensation. In the FAS period, however, the on-call work was reported by the County as pensionable "on-call" and included in the pension calculations. He noted that other causes for the increase "on-call" pay in the FAS period were the voluntary nature of on-call work and the ability to trade on-call hours as well as the department's management and supervisors facilitating the increases as evidenced by their approval on timesheets. He also reviewed graphs showing on-call hours for the five years preceding retirement for each retiree as well as the increase in "on-call" pay in the FAS period.

Strohl commented CCCERA staff reviewed the on-call data at the request of the Retirement Board and staff does not have an opinion on the outcome of this item.

There was a discussion on the increases not being the fault of the retirees; that there were employers and possibly some CCCERA staff at the time allowing on-call to count in pensionable compensation and also encouraging members to increase pensionable pay in their FAS to maximize their retirement benefit.

Dutkiewicz reviewed the affected retirees' current and adjusted prospective monthly pensions and the cumulative pension overpayment amount (with interest) totaling \$822,105.40. According to CCCERA's actuary, the increased on-call pay in these 11 retirees' FAS period caused an increase of approximately \$1.8 million in CCCERA's unfunded actuarial accrued liability.

Andersen was no longer present for subsequent discussion and voting.

He reviewed the options available to the Board if the Board found that the increases were attributable to the members' own direct influence on enhancing their on-call compensation or if the members self-elected to acquire and work additional on-call hours.

- b. Opportunity for the retired members to present to the Board their positions and any information or records relevant to the issue; Board questions

Jerry Yoshioka, retired Hazardous Materials Specialist II, distributed a handout responding to the issues provided in the Board packet by staff stating he felt the information provided had been cherry-picked and that pertinent information had been left out. He stated his presentation materials from the May 2016 Board meeting were not included as part of the public record so he has provided additional copies for inclusion. He also stated if the issue was just about money he would not be challenging the proceedings. He stated he did not cause his final compensation to be improperly increased and that he was following County policy. He also stated the increases in his final year had been reviewed and approved by CCCERA staff. He asked the Board to drop the issue.

Lola Ellwein, Jerry Yoshioka's wife and an attorney, stated she submitted a letter to the Board and has done additional research. She stated Elaine Glimme received a letter from CCCERA staff in 2016 stating there would not be an issue with her pension but then received a letter stating she now owed \$107k. She stated she felt no member caused an improper increase and feels the Board should drop these proceedings. She noted if the proceedings are not stopped there could be possible litigation from the affected retirees.

Elaine Glimme, retired Hazardous Materials Specialist, distributed a handout. She stated she did not self-elect to work on-call hours in her final year nor did she falsify any record or do anything improper. She stated she is below average on on-call hours. She also stated CCCERA calculated her retirement yet the Board is requesting an overpayment and is also charging interest for CCCERA's error. She stated she was not part of the Incident Response team during the time when there was no on-call time. She joined the team in September 2007 and was on it until July 2008. It was her choice not to work on-call the year before her FAS period. It was her choice to work on-call during her FAS year, but she was asked to do that.

Barbara Ginsberg, attorney representing Gabriel Adebisi, stated she reviewed all of the materials and doesn't understand why Mr. Adebisi is included in these proceedings. His increase in benefits is the smallest, the percentage increase is next to the smallest and there is no evidence he did anything improper. She stated there is nothing in the record showing he worked comp time. She also stated he admits he traded hours and also had a couple of months in the summer where he worked more on-call hours than other months.

Eric Jonsson, retired Hazardous Materials Specialist, distributed a handout responding to Dan Borenstein's July 25, 2013 article as well as CCCERA staff's memo dated February 8, 2017 which he felt attacked his character. He stated this issue has been going on for over 3 years but nobody ever came and talked to him, instead they went to Dan Borenstein. He stated they didn't code their timesheets or review them. He felt the retirees should have been evaluated individually. He stated he was promised a pension on his on-call and call-back pay by the County and CCCERA.

Scott Hanson, retired Hazardous Materials Specialist, stated there was nothing in the packet pertaining to the concerns he presented to the Board the last time he spoke. He stated CCCERA counselors told him to increase his final average salary and then his pension would be increased. He asked why CCCERA staff did not interview the Retirement Counselors to see what information they provide to members. He explained when and why he took the comp time off and when he worked noting that he didn't know he was going to retire. He stated he

researched Dutkiewicz on the internet and found a Powerpoint presentation of Dutkiewicz's from a conference he spoke at regarding pensionable compensation that noted there should have been individual assessments. Dutkiewicz stated it was a SACRS presentation.

Isaac Stevens, attorney speaking on behalf of Charles Nicholson, stated he spoke in May and his comments are still applicable: employees were allowed to accumulate comp time and once they reached the cap it would flow over to pay; there is no rule that correcting a payroll issue before retiring would be counted against them; and, contributions were made towards retirement prior to 2011. He discussed the omission of language in the MOU and salary regulations and asked the Board to continue to include on-call pay in Mr. Nicholson's benefits and to not seek retroactive repayment of his or the other retirees benefits.

Jack Funk, retired from the public defender's office and member of the Retiree Support Group, stated he was not speaking on anyone's behalf. He commented on the term witch-hunt. He stated this is a very difficult situation for these retirees. He stated he was at the meeting in May and thought something would happen sooner than 9 months. He stated nobody ever spoke to the retirees and could have shown a courtesy. He felt the Board's fiduciary responsibility is to the retirees, not to the County or the East Bay Times, but to the retirees. He stated the retirees worked under a set of rules and retirement staff gave seminars on how to maximize their benefits and also gave individual advice. He stated no rules were violated and there wasn't any fraud. He also stated there was nothing improper done by the retirees and now the Board wants to seek a repayment with interest.

Charles Nicholson, retired Hazardous Materials Specialist, felt the work wasn't voluntary work. He stated 2 different directors stated that if they couldn't fill the vacant slots they would have to transfer the entire Incident Response team to another department and the staff didn't want to see that happen and they did what they could. He noted they are a unique department.

- c. Opportunity for the retired members' former employer, Contra Costa County, to present to the Board its position and any information or records relevant to the issue; Board questions

No employers offered comment.

- d. Public comment

Dan Borenstein, East Bay Times, asked if the Unfunded Actuarial Accrued Liability (UAAL) is wrapped into the entire cost group between the Deputy Sheriffs and the Hazardous Materials group and would the higher UAAL fall disproportionately on the Deputy Sheriffs. He also asked how many people have retired overall from the Hazardous Materials group during the same time period.

- e. Board deliberations and appropriate action

It was **M/S** to not adjust the pensions of the eleven retired hazard materials specialists II. The Board discussed the definition of improper, the Board's fiduciary duty to see if everything has been done properly and correct what has been done erroneously, County practices and responsibilities, member causation, penalties, and the unfunded liability created by this.

A substitute motion was made **M/S** to adjust the amounts in a more fair way and go through each case individually and the retirees the Board believes that an adjustment is warranted make the adjustments only to the pension payments prospectively and not retroactively. The motion was restated to **M/S** to look at each case individually, rule on the facts and then decide and make adjustments prospectively and not retroactively on the payments. There was a discussion on setting a precedent of looking back and adjusting others benefits and the

responsibility of the UAAL. The vote on the substitute motion – Yes: Allen, Gordon and Watts. No: Holcombe, Phillips, Pigeon, Rodrigues, Smithey and Telles. The substitute motion failed.

The original motion was M/S/C to not adjust the pensions of the eleven retired hazardous materials specialists II. (Yes: Gordon, Phillips, Pigeon, Rodrigues, Smithey, Telles and Watts. No: Allen and Holcombe).

10. Consider and take possible action to provide additional clarification and direction pertaining to further review of Mr. Andrews' pension

A motion was M/S that the Board take no additional action on Mr. Andrews' pension based on the outcome of the previous item.

Levy reported the reason this item is on the agenda is that the Board passed a motion at the May 4, 2016 meeting directing that Mr. Andrews' excess on-call pay be brought back to the Board for further direction and clarification. She stated Mr. Andrews' excess on-call pay was not included in his original retirement benefit calculation. On May 6, 2015, the Board considered Mr. Andrews' excessive on-call pay and determined that it was not pensionable overtime pay and that it was also not pensionable because Mr. Andrews caused the increase improperly by volunteering to sign up for additional on-call work in his last year. On May 4, 2016, the Board directed that Mr. Andrews' excess on-call pay be brought back but it was not clear from the motion made what, if any, further analysis is to be made.

There was discussion on staff coming back to the Board with figures including Mr. Andrews' final average salary including the on-call pay and what his current pension amount is. Levy stated those figures were provided to the Board at the time they made the decision in 2015 to exclude the on-call pay in his final average salary. Dutkiewicz reviewed the methodology used in calculating Mr. Andrews' final average salary noting the excess on-call pay amount was excluded and the clarification staff is seeking is whether to remain status quo as calculated in 2015, use a different methodology, or restore the excess amount without changing the calculation methodology. Levy noted if the Board wishes to re-examine the pensionability of the excess on-call pay without changing the calculation methodology, staff does not anticipate needing any additional information.

In public comment, Paul Andrews, retired Hazardous Materials Specialist, stated his salary was reduced and other Hazardous Materials Specialists that retired on the same day have not had a reduction in their pension. He felt he should be included in the group and be made whole.

The original motion was restated to take no additional action on Andrew's and make no change to the prior action taken and there would be no attempt to change what occurred.

A substitute motion was M/S to have staff bring back similar information to Item 9 pertaining to Mr. Andrews.

After a discussion, the second to the substitute motion was withdrawn. A substitute motion was M/S/C to make Paul Andrews whole and include his excess on-call pay above the average that was previously determined in calculating his final average salary. (Yes: Holcombe, Pigeon, Rodrigues, Smithey, Telles and Watts. No: Allen, Gordon and Phillips)

11. Consider and take possible action to adopt a cost-of-living increase for retirees as of April 1, 2017

It was M/S/C to adopt a cost-of-living increase depending on their Tier for retirees as presented in the memo by Segal Consulting effective April 1, 2017. (Yes: Allen, Holcombe, Gordon, Phillips, Pigeon, Rodrigues, Smithey, Telles and Watts)

12. Consider authorizing the attendance of Board and/or staff:

- a. It was M/S/C to authorize the attendance of 4 Board members and 4 staff members at the Public Funds Roundtable, Institutional Investor, April 26-28, 2017, Los Angeles, CA. (Yes: Allen, Gordon, Holcombe, Phillips, Pigeon, Rodrigues, Smithey, Telles and Watts)
- b. It was M/S/C to authorize the attendance of 2 Board members at the Portfolio Concepts and Management, International Foundation of Employee Benefit Plans, May 1-4, 2017, Philadelphia, PA. (Yes: Allen, Gordon, Holcombe, Phillips, Pigeon, Rodrigues, Smithey, Telles and Watts)

13. Miscellaneous

- (a) Staff Report –

Strohl thanked all of the staff involved in compiling and analyzing the information for Item 9.

Dutkiewicz recognized Kristina Dohrn for her work on the lookback project.

- (b) Outside Professionals' Report - None

- (c) Trustees' comments –

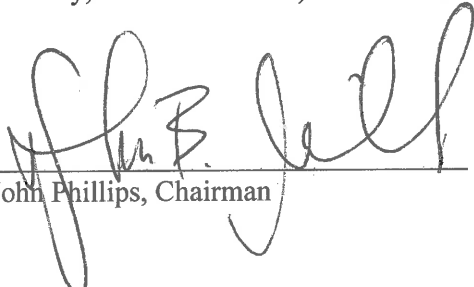
Kroll reported the CALAPRS Trustees Roundtable was well attended and very good.

Allen reported she and Rodrigues attended the NCPERS conference and it was a very interesting conference. She noted her and Rodrigues were able to meet with Congressman DeSaulnier during the trip.


Rodrigues reported during the NCPERS conference they had the opportunity to attend a senate finance committee meeting and felt it was a very good learning experience.

Pigeon noticed that CalPERS is providing a flat dollar amount of the UAAL for all of its employers.

It was M/S/C to adjourn the meeting. (Yes: Allen, Gordon, Holcombe, Phillips, Pigeon, Rodrigues, Smithey, Telles and Watts)



John Phillips, Chairman



Scott Gordon, Secretary