

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
REGULAR BOARD OF ADMINISTRATION MEETING
SEPTEMBER 29, 2010**

ORDER OF BUSINESS, continued

- H. Action on a Report and Recommendation requesting Board Approval of September 2010 PFRS cash flow report & benefits payable October 1, 2010. (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)
- I. Action on a report and recommendation that the PFRS Board approve retention of EFI Actuaries to conduct a PFRS asset liabilities study. (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)
- J. Action on an evaluation report on PFRS' investment managers and recommendation from Pension Consulting Alliance (PCA) requesting board approval of a change to the "watch status" of Nuveen Investment (NWQ), a Small Cap Value Domestic Equity manager. (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)
- K. Action on an evaluation report on PFRS' investment manager and recommendation from PCA requesting board approval of a change to on the "watch status" of Reams Asset Management, a Core Plus Fixed Income manager. (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)
- L. Action on a report and recommendation from PCA requesting that the board review PCA's evaluation of the following candidates as a new International Equity Investment Manager:
- Fisher
 - Manning & Napier
 - Mondrian
- (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)
- M. Action on a report and recommendation from staff regarding current status of State Street Global Advisors (SSgA) non-securities lending account and SSgA report detailing Super C Liquidating Trust. (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)
- N. Action on a report and recommendation from staff requesting that the Board accept a status report on City of Oakland Pension Tax Override Fund Balance held in Treasury as of August 31, 2010. (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)
- O. Action on a report and recommendations from PCA regarding PCA's review of the Investment Market. (This item was discussed at the **Investment Committee** Meeting and the Committee will give a report and its recommendations, if any.)

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
REGULAR BOARD OF ADMINISTRATION MEETING
SEPTEMBER 29, 2010**

ORDER OF BUSINESS, continued

- P. Public Hearing pursuant to City Charter §2603: Fire Fighters, Local 55 disputes the reduction in pension benefits of PFRS fire retirees implemented as a result of the 2008-2012 Memorandum of Understanding between the City and Local 55.
- Q. Open Forum.
- R. Future scheduling.
 - 1. Request from Local that PFRS Board consider a Report, Draft Resolution And Recommendation From Local 55 That PFRS Board take all necessary steps to provide retirement benefits to PFRS fire retirees as if there had been no temporary changes to the 52-hour work week or FLSA in lieu pay provisions in the 2008-2012 MOU. [Note: if PFRS decides to consider the report and recommendations, this item will be scheduled for a subsequent meeting and legal counsel and staff will review the report and recommendations and resolution and provide an analysis/report regarding the matter.]

A **BOARD MEETING** of the Oakland Police and Fire Department Retirement System was held Wednesday, August 25, 2010 in Hearing Room 3, One Frank Ogawa Plaza, Oakland, California.

Board Members Present:

- Robert Crawford, President
- Jaime T. Godfrey, Vice President
- James Cooper, Member
- Walter Johnson, Member
- Joseph T. Yew, Jr., Member
- Ken Bullock, Member

Board Members Absent:

- John C. Speakman, Member

Additional Attendees:

- Tracy Chriss, Deputy City Attorney
- Yvonne Hudson, David Low & Teir Jenkins, Staff Members
- David Sancewich, Pension Consulting Alliance
- Chris Waddell, Outside Counsel
- Andrea Gourdine, Director of Human Resources, City of Oakland

The board meeting was called to order at 2:05 PM.

A. **Approval of Minutes** – The Minutes of the July 28, 2010 Board meeting, having been furnished to each member of the Board, were approved on a motion by member Godfrey, second by member Cooper. Motion passed.

[GODFREY – Y / YEW – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

B. **Audit Committee reports & recommendations to the Board:** No audit committee meeting was held due to non-compliance with Oakland Sunshine Ordinance regarding public posting requirements.

C. **Investment Committee reports & recommendations to the Board:**

- **Cash Flow needs for August 2010 Benefits (Payable September 1, 2010)** – Member Godfrey made a motion to approve a drawdown for benefits payments for August 2010 benefits payable September 1, consisting of \$5 million from Northern Trust, \$0.5 million from the iShares ACWI account and \$0.5 million from Lord Abbett, totaling \$6 million, second by member Johnson. Motion passed.

[GODFREY – Y / YEW – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **Review Presentation by Nuveen Investments** – Member Godfrey reported that Tony Maramuco from Nuveen Investments presented a review of the PFRS investment portfolio with their firm.
- **Presentations by 3 finalists for the Fixed Core Income Investment Managers Search** – Member Godfrey reported that the three finalists for the Fixed Core Income manager search presented to the Investment Committee. The managers were:
 - *Bradford and Marzac*, (Mary Yablonsky, N. Graham Allen, Jeffery Brothers)

- *C.S. McKee* (Bryan Johanson, Eugene Natali)
- *T. Rowe Price* (L. Kenneth Brooks, Terry Moore, Steve Huber)

- **Selection of Fixed Core Income Investment Manager** – Member Godfrey said the Investment Committee and Mr. Sancewich discussed the presentations from the investment managers and review of the presentations by the fixed core income investment managers. It was noted that T. Rowe Price was a larger firm and in this current economic climate that would be beneficial. Member Godfrey also noted their lack of debt was an attractive quality. The discussion lead to the decision to recommend to the PFRS board hiring T. Rowe Price. Member Godfrey made a motion to hire T. Rowe Price to be the PFRS fixed core income investment manager, second by member Cooper. Motion passed.

[GODFREY – Y / YEWE – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **Pension Consulting Alliance (PCA) 2nd Quarter 2010 Performance Report** – David Sancewich reported the highlights of the PFRS 2nd Quarter 2010 investment portfolio performance report. The PFRS portfolio declined by 6.8% for the past calendar quarter and increased 15% for the past 12 months. The PFRS fund outperformed the median for the 2nd quarter 2010. Mr. Sancewich continued to provide more details of the 2nd quarter 2010 portfolio performance. Member Godfrey made a motion to accept the report, second by member Cooper. Motion passed.

[GODFREY – Y / YEWE – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **State Street Global Advisors (SSgA) Liquidating Trust Account Summary** – Mr. Jenkins reported to the Investment Committee that SSgA released \$445,820.20. This leaves less than \$28,000 in the securities lending account at SSgA. Member Godfrey made a motion to accept the report, second by member Cooper. Motion passed.

[GODFREY – Y / YEWE – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **Bank of New York Mellon (BNY Mellon) custodian bank fees schedule** – Member Godfrey reported that Mr. Jenkins presented the new custodian bank fees schedule by BNY Mellon to PFRS. Member Godfrey said the new rates apply for the next three years, ending in June 30, 2013 and represent a reduction in cost compared to the previous contract. Member Godfrey made a motion to accept BNY Mellon's new custodian bank fees schedule through June 30, 2013, second by member Cooper. Motion passed.

[GODFREY – Y / YEWE – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **City of Oakland Pension Tax Override (PTO) balance report** – Mr. Jenkins reported that the balance of the Pension Tax Override account through July 31, 2010 was \$101,880,508. Robert Muszar of the Retired Oakland Police Officers Association (ROPOA) said the ROPOA has questions about the PTO and will be addressing them at a time where the discussion from the Audit committee continues. Member Godfrey made a motion to accept the report, second by member Cooper. Motion passed.

[GODFREY – Y / YEWE – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **Securities Monitoring Services review** – Mr. Jenkins reported that the current securities monitoring companies employed by PFRS as well as BNY Mellon have reported their ability to provide review of securities monitoring capabilities from a personal computer, matching the services offered by Hagens Berman. Member Godfrey said the presence of this service by providers who are already employed by PFRS makes the addition of another securities monitoring service unnecessary and recommended no continued research toward hiring Hagens Berman. Quarterly service reporting by the securities monitoring was suggested and a polling of which members who wish for online access to account viewing was to be planned. Member Godfrey made a motion to accept the report, second by member Cooper. Motion passed.

[GODFREY – Y / YEW – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **Staff report on disposition of former PFRS New York Life Annuity funds** – Mr. Jenkins reported the City of Oakland 2009-11 adopted policy budget to the Board to show the City of Oakland's current use of the New York Life Annuity funds formerly issued to PFRS. Mr. Jenkins directed the board members to note page d-38 showing the use of the pension annuity fund toward the "transfer to general purpose fund to support accrued pension liability payments". Member Godfrey made a motion to accept the report, second by member Cooper. Motion passed.

[GODFREY – Y / YEW – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- **PCA Risk Metrics / Market Overview report for August 2010** – Mr. Sancewich provided an overview of the investment market to the PFRS board.

D. **Adoption of Resolutions #6668** – A vote on Resolution #6668 was postponed.

E. **New Business** – No Report.

F. **Open Forum** – No Report.

G. **Future Scheduling** – The next board meeting is scheduled for Wednesday, September 29, 2010 at 1:00 PM in Hearing Room 3. A Special meeting of the Board will be on Monday, September 30, 2010 at 1:00 PM.

The board meeting adjourned at 2:44 PM.

ROBERT P. CRAWFORD, PRESIDENT

DATE

A SPECIAL MEETING OF THE BOARD of the Oakland Police and Fire Department Retirement System was held Wednesday, August 30, 2010 in Hearing Room 1, One Frank Ogawa Plaza, Oakland, California.

Board Members Present:

- Robert Crawford, President
- Jaime T. Godfrey, Vice President
- James Cooper, Member
- Walter Johnson, Member
- Joseph T. Yew, Jr., Member
- Ken Bullock, Member

Board Members Absent:

- John C. Speakman, Member

Additional Attendees:

- Tracy Chriss, Deputy City Attorney
- Yvonne Hudson, David Low & Teir Jenkins, Staff Members
- David Sancewich, Pension Consulting Alliance
- Chris Waddell, Outside Counsel
- Marilyn Oliver, Bartel and Associates
- Kathleen Salem-Boyd, Mark Morodomi, City Attorney's Office
- Katano Kasaine, City of Oakland Payroll Manager

The board meeting was called to order at 1:09 PM.

A. Presentation and approval of 2010 Actuary Valuation – Marilyn Oliver of Bartel Associates reviewed the draft 2010 actuary valuation report of the PFRS system for the year ending June 30, 2010. Due to the actuary valuation method utilized for the 2009 valuation, losses amounting to \$31 million that were not included in the 2009 valuation were recognized in the 2010 valuation along with any offsetting gains in the portfolio. Ms. Oliver reported that the actuary assumption changes for the July 1, 2010 valuation include a decrease to the investment return rate to 7.0% and the updating of to the mortality tables. Teir Jenkins added that the accurate reporting of member deaths can lag due to how staff receives death information. However, Mr. Jenkins said much time was spent with Bartel Associates in providing accurate membership numbers for their 2010 valuation. Member Johnson said membership reconciliation should occur at the time of the plan audit with the auditors and not between staff and the actuary. Mr. Jenkins said that, while the monthly reporting of membership has a chance for variance due to one reason or another, the reporting of membership represented to the actuary and/or auditor at the time of their reporting is 100% accurate.

Ms. Oliver continued with her reporting of the actuarial valuation by reporting the funded ratio for the plan declined from 44.4% to 37.6% over the past fiscal year. Ms. Oliver said the deferred losses to the system will continue to impact the actuary reporting in the near term (offset by any future investment gains). Ms. Oliver reported that the estimated employer contribution for FY 2011/12 to be \$45,729,000, or 32% of payroll. Ms. Oliver noted the total payroll used for these calculations were based on total payroll for Police, Fire and Port of Oakland Safety Employees. Ms. Oliver said the Port of Oakland Safety employees are included in this calculation because Bartel Associates based these estimate off of the CalPERS payroll report, which includes the Port of Oakland Safety employees. This group can be removed from this computation but their payroll numbers need to be obtained first. Member Johnson said the computation of PFRS should only include City of Oakland safety employees and should not be complicated by the inclusion of Port of Oakland Safety payroll. Ms. Oliver explained the number of safety employees in the Port of Oakland payroll is very small and the impact on the employer contribution percentage would be impacted by 1% at most by her

estimate. However, the removal of these employees from the computation can be done if necessary. The board agreed this action was necessary. Ms. Oliver informed the board that in 2011 the membership count of 1155, who receive benefits of \$67.4 million will drop to an estimated 459 members by 2030. However, the benefits payments in 2030 will be \$52.8 million, emphasizing the minimal drop to benefits payments in the next 29 years, impacted by the projected cost-of-living increases. President Crawford asked why the Actuarial Accrued Liability between 2009 and 2010 increased from \$782 million to \$793 million. Ms. Oliver said the increase was due to changes to the actuary assumptions, including the investment return rate changes.

Robert Muszar of the Retired Oakland Police Officers Association (ROPOA) asked several questions inquiring about employer contribution during the past contribution holiday and offered his view of limited effect to computation of employer contribution by removing Port of Oakland Safety Employee salaries from the contribution computations in the actuary report.

Member Godfrey made a motion to not approve the 2010 Actuary Valuation report as presented by Bartel Associates and ask that Bartel Associates revise their 2010 actuary valuation and re-present at a future meeting, second by member Johnson. Motion passed.

[GODFREY – Y / YEWE – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

B. Review of the Third Supplemental Annuity Deposit Agreement (3rd SADA) – Chris Waddell reported on his work with the City Attorney’s office and the Finance and Management Agency regarding the use of annuity proceeds from the 3rd supplemental annuity deposit agreement and the deferred pension credit fund. Mr. Waddell said the information packets supplied to the board deals with Deferred Pension Credit Fund of 1988 and the future use for the annuity proceeds. Mr. Waddell said he has worked with the City Attorney’s office and has created a final agreement that both the City of Oakland and PFRS counsel agree to be a final document. Mr. Waddell also addressed a concern expressed to him by Robert Muszar of the ROPOA regarding the third supplemental agreement text (section 6, pp4.) that states, “..., the city shall continue to have full use of the annuity proceeds as a credit toward any System related debt service payments or any other System related pension obligation.” Mr. Waddell said Mr. Muszar wanted clarification if this statement permits the City use of excess annuity proceeds above and beyond what is necessary to pay the debt service on the annuity (e.g., excess annuity proceeds) for non-PFRS related purposes. Mr. Waddell said he does not read, nor is it the intent of the language, to permit non-PFRS related use of these funds.

Member Cooper asked Mr. Waddell if he knew if any monies generated by the annuity or the (pension) tax override was being used for anything other than the PFRS-related pension obligation bond. Mr. Waddell said no, based on what he has seen. However, the Deferred Credit Fund (\$30.8 million created in 1988) funded by annuity proceeds to provide protection to PFRS in the event the City defaulted on the 1988 bonds, was refunded in 1998 and ceased to exist. Mr. Waddell explained that, by agreement, when this Deferred Credit Fund ceased to exist, the City would get the money. However, a second supplemental annuity deposit agreement was made and about \$10 million of the \$30.8 million was used by the City to pay for PERS obligation. Mr. Waddell noted that the information provided was by best information available. Member Johnson said he recalls board meeting discussion and minute-taking on this subject at its origin in 1985.

Mr. Muszar said he doesn’t believe that the annuities were handled in the way they were intended to be handled as stated in the in the 1985 annuity deposit agreement. He said the agreement

provided that the annuities and the revenue from these annuities would be irrevocably deposited with the (PFRS) system. Mr. Muszar said it doesn't appear to have been deposited in this manner. Mr. Muszar proceeded to explain his understanding of the purposes of the contracts and agreements that have been created since the original agreement was enacted. Mr. Muszar said that the ongoing revenues from the annuities should not be forgotten. This amounts to around \$12 million per year. Mr. Muszar said this revenue is first to be used on debt service on 1985 bonds and no changes to that language have ever been made. Mr. Muszar went on to cite reference in communications from the City regarding the debt service payment responsibility of PFRS in an amount of \$58 million which Mr. Muszar says is not supported by the accounting of the debt service as stated by the relevant supplemental annuity deposit agreement. Mr. Muszar asked if tax override revenue been used to pay debt service on bonds that were supposed be serviced by the annuities and does the City plan to use Tax Override money going forward to service the 2008 bonds. If yes, Mr. Muszar asked what the plan is for the \$12 million in revenue from those bonds. Mr. Muszar does not think the present resolution nor the current draft of the 3rd SADA addresses these concerns adequately. Additionally, Mr. Muszar believes section 6 of the 3rd SADA doesn't exclude the possible use of annuity proceeds to be used for other purposes. Mr. Muszar would hope the language of this section could clearly state the city would not receive a credit against PFRS obligation for money that was spent on something else.

President Crawford asked member Yew if clear evidence regarding the concerns brought by Mr. Muszar, such as copies of the annuity paperwork, can be brought before the PFRS Board. Katano Kasaine, Treasury Manager, wanted to make clear that the Pension Tax Override and the Annuity are separate. Ms. Kasaine spoke of the history of her work with PFRS toward funding the city contribution to the system and improving the system's funded ratio. Member Johnson said the original discussion with the City was to create a lump sum of money by way of a new pension obligation bond as a mechanism to generate these funds. Member Johnson said much of the conversation currently brought to the board should not involve them. Member Johnson said the PFRS actuary should be providing an accounting of any monies owed to the system during their valuation process. Ms. Oliver said her information comes from assets and the financial statements and reports provided by PFRS and would not be in a position to judge whether the PFRS is entitled to any specific monies. Ms. Oliver said hypothetical costing can be an added service but the production of the actuary valuation is the primary service the actuary provides. Member Johnson said the responsibility of the actuary is to determine all assets of the plan in the course of their valuation reporting. Ms. Oliver replied that she relies on the plan auditors. Member Johnson disagreed and said the auditor should be relying on whatever the actuarial assumption process dictates.

Mr. Waddell said the actuary should be providing the reporting of the city contribution to the PFRS plan. He explained that the actuary report along with the collective work of City and PFRS staff has brought us all to this point where he can say the PFRS board can choose or not approve the 3rd SADA today and no conversations today have made him think the Board has to defer action if the Board is ready to take action. Mr. Waddell said when the City sits down with the board to discuss HOW it intends to fulfill its obligation to PFRS, a lot of information will be prepared for expanded discussion at that time. Mr. Muszar reviewed the ROPOA questions he posed previously: "How does the City intend to use the revenue from the annuities going forward?" Mr. Muszar again said that city documentation shows that \$16.9 million per year of tax override money is going to service the 2008 bonds. Mr. Muszar, believing that the 2008 bonds are being serviced by the annuities, believes this could represent a diversion of money that is supposed to be used only for PFRS for some other purpose. Mr. Muszar said he has not received an answer as to whether this dynamic

represents a use of tax override money for a purpose that is not PFRS related. Member Johnson believed Mr. Muszar's question is valid and that he will get his question answered as the process evolves. Mr. Muszar said his concern presently on this matter is that the PFRS board is preparing to approve a resolution whose language will finalize a process before his question is answered and then cannot be changed. Mr. Johnson reminded Mr. Muszar that the decisions of the PFRS board today are not the final decision in the process and things can change before a final decision is made on this matter. Mr. Waddell said section six of the 3rd SADA clearly states the use of the annuity proceeds and did face any challenges from the City Attorney's office as to its final form. To Mr. Waddell, it is clear that "System" in section 6 of the 3rd SADA means PFRS.

President Crawford asked Mr. Waddell if he recommends approval of the 3rd SADA and resolution 6668. Mr. Waddell said the documents he and the City Attorney have worked on to date represent the best documents to move forward in the process at this time. Mr. Waddell said it would be fine if the Board waited to act and consolidate an agreement to include actions that will follow the creation of new funding. Mr. Crawford said he interprets Mr. Waddell's answer as a "no". Tracy Chriss asked if the use of the word 'System' can be reworded to state 'PFRS' to remove any ambiguity. Kathleen Salem-Boyd from the City Attorney's office noted that the first paragraph of the 3rd SADA concludes with the definition that 'System' refers to the Police and Fire Retirement System and there is no ambiguity. Mr. Muszar clarified his point further by saying section 6 of the 3rd SADA appear to give, "...full use of the annuity proceeds as a credit toward any system related debt service payment or any other system related debt service obligation." It doesn't say that, in order for them to receive that credit, they have to first use the money for a PFRS obligation. It is the ROPOA's concern that the City could use this money for some other purpose and still receive the credit. Ms. Salem-Boyd said the 1st SADA executed in 1985 had almost identical language presented in the 3rd SADA. The 2nd SADA executed in 1988 also had almost identical language. Ms. Salem-Boyd said approval of the 3rd SADA would continue the same verbiage. Mr. Muszar again pointed out that the 3rd SADA is missing language that clarifies the use of the credit as it did in these previous document. Mr. Waddell explained that PFRS received everything it was supposed to receive (i.e., its full actuarially-required contributions). Mr. Waddell noted that if the annuity was deposited into the system and treated as a System asset, the annuity value would have been included as an actuarial asset of the System and that would have dropped the actuarial contribution required by the City. Mr. Waddell clarified his recommendation that the Board wait to approve these documents until a final, comprehensive package is developed. However, legal and factual due diligence that he has performed in producing the documents presented today are legally appropriate if the Board wishes to pass these documents today.

Katano Kasaine, City Treasury Manager, said a delay by the Board in approving the 3rd SADA and the resolution would push back her work in developing funding for PFRS. Ms. Kasaine said she had reported to the City Council many months ago that the PFRS board was working on the approval to allow her work on developing funding and the time to address this with the City Council is growing short. Ms. Kasaine expressed the greater importance of these documents as protecting PFRS moving to the future than the importance of the accounting to the system looking backwards.

Member Cooper asked if the documents presented today limits the City's use of the annuity funds for to PFRS alone. Ms. Salem-Boyd said, "absolutely." Mr. Muszar expressed his concern that the discussion today points to a need to pass the documents presented to the board today. Mr. Muszar doesn't not believe a decision today is necessary and following Mr. Waddell's recommendation that a comprehensive document and resolution would be more appropriate, suggests that that the board not pass these document at this time. Member Yew said it is important to bring up the funding levels as soon as possible. Member Cooper asked if the passage of the Resolution necessary prior to

moving on to work on the Pension Obligation Bonds (POB). Member Yew said non passage of the Resolution could be an impediment to the creation of the POB. Member Johnson made a motion that the PFRS board approve the Third Supplemental Annuity Deposit Agreement, Second by Member Cooper. Motion passed.

[GODFREY – Y / YEW – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- C. **Adoption of Resolutions #6668** – Member Johnson made a motion to approve resolution #6668, second by member Cooper. Motion passed.

[GODFREY – Y / YEW – Y / COOPER – Y / SPEAKMAN – Absent / JOHNSON – Y / CRAWFORD – Y / BULLOCK – Y (6-0)]
(AYES: 6 / NOES: 0 / ABSENT: 1 / ABSTAIN: 0)

- D. **Status of issuance of new Pension Obligation Bond** – Chris Waddell reported that his discussion points were addressed in detail during earlier discussion regarding the 3rd SADA.

- E. **New Business** – No Report.

- F. **Open Forum** – Member Cooper expressed his concern of the circumstances where the Audit Committee meeting was cancelled and hopes greater are will be taken to mitigate any problems with meetings in the future.

President Crawford thanked Member Cooper for his service to the PFRS board and hopes he considered PFRS board service in the future.

- G. **Future Scheduling** – The next board meeting is scheduled for Wednesday, September 29, 2010 at 1:00 PM in Hearing Room 3.

The board meeting adjourned at 3:26 PM.

ROBERT P. CRAWFORD, PRESIDENT

DATE

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

RECEIVED
OFFICE OF PERSONNEL
RESOURCE MANAGEMENT

10 SEP 21 AM 9:16

San Francisco

595 Market Street, Suite 1400
San Francisco, California 94105
415.597.7200
Fax 415.597.7201

MEMORANDUM

TO: Members of the Retirement Board, Oakland Police & Fire Retirement System

FROM: W. David Holsberry, Davis, Cowell & Bowe, LLP

SUBJECT: Pension Benefits of Local 55 Retirees

DATE: September 21, 2010

- Barry S. Jellison (CA)
- Steven L. Stemerman (CA, NV)
- Richard G. McCracken (CA, NV)
- W. David Holsberry (CA, NV)
- Elizabeth Ann Lawrence (CA, NV, AZ)
- Andrew J. Kahn (CA, NV, AZ)
- John J. Davis, Jr. (CA)
- Florence E. Culp (CA, NV)
- Kristin L. Martin (CA, NV, HI)
- Eric B. Myers (CA, NV)
- Paul L. More (CA, NV)
- Winifred Kao (CA, DC)
- Sarah Varela (CA, AZ)
- Sarah Grossman-Swenson (CA)
- Adam J. Zapala (CA)
- Sophia Lai (CA)
- Robert P. Cowell (1931-1980)

I. Issue Presented

Certain retirees of International Association of Fire Fighters Local 55 ("Local 55"), are participants and beneficiaries of the Oakland Police & Fire Retirement System ("PFRS"). In August 2009, these retirees were informed that their monthly pensions had been reduced due to the 2008-2012 Memorandum of Understanding ("MOU") between the City of Oakland and Local 55.¹ The City estimated the average total impact to be about \$54.00 per month per retiree.

This reduction was apparently implemented by PFRS staff without official action by the PFRS Retirement Board ("Board"). The retirees were not provided with any opportunity for a hearing on the issue. The reduction failed to adequately consider the language of the MOU, the context of the negotiations, and the intent of the parties. The Retirement Board should rescind the reduction and restore full benefits to the retirees.

The Board has plenary power to determine the proper level of benefits for retirees and to determine compensation attached to the rank. Under the 2008-2012 MOU, active employees agreed to certain temporary changes to the workweek and to "FLSA In Lieu Pay." However, there was no intent to change the compensation as it applied to PFRS retirees. The Board should rescind the reductions to the retirees' pensions and make them whole.

¹ Memorandum of Understanding between City of Oakland and Int'l Ass'n of Firefighters Local 55 ("MOU"), July 1, 2008-June 30, 2012, available at <http://www2.oaklandnet.com/n/DOWD005629>.

McCracken, Stemerman & Holsberry

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Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848



II. Retirement Board Responsibilities

A. Plenary Power of Board to Determine Benefits for Retirees

A reduction in pension benefits can only be accomplished through official Board action. The Board never took action to reduce the retirees' benefits. The Board has the exclusive authority and responsibility to decide such issues. Article 16, Section 17 of the California State Constitution provides as follows:

“...Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system...”²

Consistent with the California Constitution, the Oakland City Charter establishes the specific policies governing PFRS.³ Section 2601 of the Charter provides: “This System and fund shall be managed and administered by ... the Police and Fire Retirement Board...” The Charter provides that the Board has the power to make all necessary rules and regulations.⁴

Section 2601(b) of the Charter provides: “The powers conferred by this Article upon the Board shall be exercised by order or resolution adopted by the affirmative votes of at least four (4) members of the Board.” The Charter further provides that the Board has “exclusive control of the administration” of the fund, subject only to the limitations set forth in the Charter itself. Section 2603 of the Charter requires the Board to hold hearings on disputed matters related to retirement allowances and pensions.

Consistent with the Constitution and the Charter, Section 2.2 of the Retirement System Rules and Regulations governing the Board likewise provides that “in disputed matters” the Board “shall hold public hearings in all proceedings pertaining to retirement and to the granting of retirement allowances, pensions, and death benefits.”⁵ The members and dependents that are affected by such actions are “entitled to appear personally at ... [the] hearing and to have counsel.”⁶

Moreover, any actions taken by the Board must be consistent with its obligation to participants and beneficiaries. The California Constitution provides:

[t]he members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their

² Cal. Const., art. 16 § 17.

³ Oakland City Charter (“Charter”), Article XXVI, available at www.municode.com.

⁴ Charter § 2601(e).

⁵ Oakland Police & Fire Retirement System, Rules and Regulations, § 2.2 (effective 8/1/2010).

⁶ *Ibid.*

beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty...⁷

B. Failure of Board to Take Official Action on the Reduction in Benefits

During the June 30, 2010 meeting of the Audit and Budget Committee, Yvonne Hudson reported that the PFRS staff had given the Board a draft of the August 2009 letter informing retirees about changes to their benefits.⁸ However, no official Board action on this letter is indicated in the minutes of the meetings from 2009. In June 2010, Chairman Speakman indicated that he remembered it being on the agenda, but did not believe Board action was taken on the letter.

It was the responsibility of the Board to make the determination about whether pension benefits should be reduced, if at all, as a result of the 2008 -2012 MOU. Because this matter is disputed by the fire retirees, the retirees are entitled to have a hearing and to obtain a determination from the Board on this issue.

III. Calculation of Benefits Due to Retirees

A. Pension Benefits Liberally Construed in Favor of Retirees

It is a well-established legal principle that pension benefits are to be liberally construed in favor of the retiree.⁹ Under the Charter, pension benefits are based upon the "compensation attached to the average rank held."¹⁰ PFRS is a "fluctuating" system.¹¹

A retirees' pension is a fixed percentage of the compensation attached to the average rank held at the time of retirement.¹² The Charter defines compensation as "the monthly remuneration payable in cash, by the City, without deduction, for time during which the

⁷ Cal. Const., art. 16 § 17.

⁸ It appears the August 2009 draft letter focused on the "hourly rate" of pay, not the monthly rate of pay by the Charter. See also November 17, 2009 letter by Wendell Pryor to John Speakman (referring to hourly rate of pay, not monthly rate of pay).

⁹ See *Gibson v. City of San Diego* (1945) 25 Cal.2d 930, 935; *Terry v. City of Berkeley* (1953) 41 Cal.2d 698, 702; *Dunham v. City of Berkeley* (1970) 7 Cal.App.3d 508, 513-14; *Creighton v. Regents of Univ. of Cal.* (1997) 58 Cal.App.4th 237, 244.

¹⁰ Charter § 2607.

¹¹ *Casserly v. City of Oakland* (1936) 6 Cal.2d 64, 69.

¹² Charter, § 2608.

2. *FLSA In Lieu Pay*

Second, in Section 2.9.2, the MOU provides that Fire Department personnel shall be paid time and one-half for all hours worked in excess of their standard workweek.¹⁹ Under section 2.6.1 of the MOU, the parties agreed that members' duties necessitate non-traditional hours of work and that it is appropriate for bargaining unit members to receive a fixed amount of Fair Labor Standards Act (FLSA) overtime compensation under 29 U.S.C. §207(f).²⁰ In lieu of doing individual calculations and paying bargaining unit members individually for this overtime that is inherent in their regular schedule, the City pays all members a flat rate.²¹ In some respects, this provision was meant to ease the administrative difficulties inherent in complying with the FLSA.

Under MOU section 2.6.2, the parties agreed that the FLSA In Lieu Pay would be suspended from July 11, 2009, to June 29, 2012, and that firefighters would revert to receiving regular overtime pay during this time period.²² While the bargaining unit members are temporarily working a 56-hour week, they will receive the FLSA overtime rate of pay for all hours worked in excess of 204 hours in a 27-day work period.²³ In other words, the City will again be required to make individual calculations based on each employees actual work schedule.

Like the 56-hour work week provision, this temporary agreement about FLSA pay ends prior to the termination of the MOU.²⁴ The fundamental agreement of the parties in Section 2.6 of the MOU is still that employees will receive FLSA In Lieu Pay on an ongoing basis.²⁵

3. *No changes to compensation*

There were no other changes related to compensation made in the MOU. The parties did not reduce the monthly salary of bargaining unit members.²⁶ They agreed to a wage freeze, with a wages-only reopener in July 2011, as reflected in MOU Appendix I.

¹⁹ *Id.* § 2.9.2, p. 9.

²⁰ MOU § 2.6.1, p.8.

²¹ *Ibid.*

²² *Id.* § 2.6.2, p. 8.

²³ *Id.* § 2.9.2.4, p. 10.

²⁴ *Id.* § 14, p. 95.

²⁵ *Id.* § 2.6.1.

²⁶ *See id.*, Appendix I.

C. The Board Must Read the MOU as a Whole and Must Consider the Intent of the Parties.

The Board must read the MOU as a whole, and must consider the intent of the parties in determining the impact, if any, of changes to the MOU.

The MOU read as a whole shows that the parties did not intend to alter the compensation provided to retirees. It is a basic principle of contract construction that one must give meaning to all provisions of the contract.²⁷ One must “ascertain the intent of the parties by considering an agreement as a whole, not by interpreting a provision in isolation.”²⁸ The MOU provisions providing a 52-hour work week and the FLSA In Lieu Pay remained in the MOU. The parties would not have left these provisions in the MOU if they had intended to permanently affect the calculation of compensation for employees.

Instead, the wage freeze and other changes were meant to provide tangible evidence of active employees’ commitment to help the City of Oakland address its financial issues.²⁹ In exchange, the City gave the Union a commitment to protect current active employees from layoffs during the term of the MOU.³⁰ It was not Local 55’s intention that retirees would be affected in any way by the changes made. The City expressed no contrary intent. See Garcia Declaration ¶ 7.

As the Board acknowledged in the minutes of the PFRS Audit & Budget Committee from September 30, 2009, during the negotiations with the City, the fire retirees did not have representation. Because retirees are no longer members of the bargaining unit, the union has no duty to represent them in negotiations with the employer.³¹ Current active employees represented by Local 55 are members of CalPERS, not members of the Oakland Police & Fire Retirement System. Only those employees hired prior to July 1, 1976 participate in the Oakland System. Chuck Garcia, President of Local 55, is unaware of any active employees who are members of the Oakland System.³²

As the principal spokesperson for Local 55 during negotiations, Garcia did not recall any discussions of the impact of changes on retirees.³³ Further, City Administrator Dan

²⁷ See Civ. Code § 1641 (“The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.”)

²⁸ *Badie v. Bank of America* (1998) 79 Cal.Rptr. 273, 287; Civ. Code § 1641.

²⁹ Id. ¶ 4; MOU Side Letter, p. 97.

³⁰ Garcia Declaration, ¶ 6.

³¹ See, e.g., *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n. 20, 92 S.Ct. 383, 398 n. 20, 30 L.Ed.2d 341 (1971).

³² Garcia Declaration, ¶ 3.

³³ Id. ¶ 2, 7.

Lindheim, who participated in negotiations on behalf of the City, agreed that the parties never considered the impact that the temporary restructuring would have on retirees.

One of the fundamental tenants of contract interpretation is to implement the intent of the parties who negotiated the agreement. Section 1636 of the California Civil Code explains that a "contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of the contracting." The California Supreme Court has explained that the interpretation of a contract must give effect to the "mutual intention" of the parties.³⁴

It was never the intent of the parties to have any temporary hours or pay restructuring affect the benefits provided to retirees. The primary intent of the parties was that active firefighters would work a longer workweek for the same monthly salary. Any possible application of the revised language to retirees was totally unforeseen and unintended, and never discussed at the bargaining table.³⁵ There was no meeting of the minds about the impact of restructuring pay provisions on retirees. Rather, the restructuring was intended to be a substitute for laying off active firefighters. It would defeat the mutual intent of the parties to interpret the provisions as requiring a reduction in compensation for retirees when the actives suffered no such reduction in compensation.

Moreover, the changes to the MOU were temporary, even within the life of the MOU itself. Both the 52-hour week and the FLSA In Lieu Pay provisions remain in the contract. They are simply temporarily suspended for a short period of time during a portion of the life of the MOU. The changes will be automatically rescinded prior to the termination of the MOU. Additionally, the wage provisions will be re-opened in 2011. If at that time, the actives agree to a reduction in monthly compensation, the retirees would obviously be affected by such an action. But until such an agreement takes place, the MOU should be construed liberally in favor of the retirees and according to the intent of the bargaining parties. The retirees' pension benefits should be restored to their previous levels.

IV. Requested Action

This Board has the authority and the duty to interpret the provision of benefits liberally in favor of retirees. On behalf of the retirees, we respectfully request that you resolve the matter before you in favor of the retirees by interpreting the MOU as it was intended: to continue the retirees' benefits at the same level they were receiving under the previous Memorandum of Understanding.

³⁴ *Waller v. Truck Ins. Exchange Inc.* (1995) 11 Cal.4th 1, 18.

³⁵ Garcia Declaration, ¶ 7.

DECLARATION OF CHARLES A. GARCIA

I, Charles A. Garcia, do hereby declare:

1. I am the president of International Association of Fire Fighters, Local 55 and have held that position since 2004. I maintain my office at 369-15th Street, Oakland, CA 94612. If called as a witness, I am competent to testify about the matters contained in this declaration.

2. In my capacity as president, I served as principal spokesperson for Local 55 during the negotiations for the July 1, 2008-June 30, 2012 memorandum of understanding ("MOU") with the City of Oakland, setting forth the wages, hours and working conditions for active employees of the Oakland Fire Department. I was assisted by a negotiation team of active employees and Chris Platten, Esq., who served as counsel to the negotiation team.

3. The vast majority of current active employees of the Oakland Fire Department are members of CalPERS. In fact, it is my understanding that there are no active employees represented by Local 55 who are members of the Oakland Police and Fire Retirement System. ("PFRS"). Only those employees hired prior to July 1, 1975 participate in the OPFRS. The bargaining team does not have a retiree representative.

4. The parties in the negotiations for the current MOU jointly recognized the economic realities facing them. We included language in the MOU stating:

"The parties acknowledge negotiating this Agreement during an extraordinarily difficult economic environment. To reach this agreement, the parties made a commitment to work together to solve the financial challenges and meet the needs of the public." (MOU, p. 97).

5. Consistent with this acknowledgement, active employees made sacrifices during the negotiations. Active employees agreed to no wage increase for the first three years of the MOU, although there is a "wages only" reopener in July, 2011. Local 55 also agreed to increase the traditional workweek with no increase in pay as follows:

2.8 Workweek

Bargaining unit members assigned to the fire suppression line shall work a 52-hour work week.

2.8.1 The parties agree that Section 2.8 will be suspended from July 29, 2009 to June 28, 2012, during which time unit members assigned to the fire suppression line will work a 56-hour workweek. Bargaining unit members assigned to the fire

suppression line shall return to a 52-hour workweek effective June 13, 2012. For payroll administrative purposes, unit members assigned to the fire suppression line will be paid at the 56-hour workweek effective August 8, 2009. (MOU, p. 9).

Active employees also agreed to suspend the receipt of "FLSA In Lieu Pay" provided in Sec. 2.6 for the duration of the contract as follows:

2.6 FLSA In Lieu Pay

2.6.1 The parties agree that unit members' duties necessitate non-traditional hours of work and that it is appropriate for unit members to receive a fixed amount of Fair Labor Standards Act ("FLSA") overtime compensation pursuant to 29 U.S.C. Section 207(f) to compensate unit members for FLSA overtime caused by the unit member working his or her regularly-scheduled tour of duty, the City shall pay each unit member a flat rate overtime payment whether the unit member actually works overtime or not. In lieu overtime compensation shall be paid to 24 hour shift unit members at the rate of .75 hours per pay period.

2.6.2 The parties agree that Section 2.6.1 will be suspended from July 11, 2009 through June 29, 2012. (MOU, p. 8).

6. The wage freeze and these temporary changes were meant to be tangible evidence from active employees of their commitment to help Oakland address its financial issues. Neither change affected the monthly salary schedules, which are contained in Appendix 1 of the MOU, and which reflect the salary freeze from July, 2008 until at least July, 2011.

7. It was not Local 55's intention that PFRS retirees would be affected in any way by the concessions made by active employees nor, to my recollection, was that issued raised by any person during the negotiations. I do not recall any discussions in which a representative of the City or Fire Department expressed the opinion that the concessions made by actives would somehow affect PFRS retirees.

OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

RESOLUTION No. **DRAFT FOR REVIEW**

ON MOTION OF MEMBER _____ SECONDED BY MEMBER _____

RESOLUTION TO TAKE ALL NECESSARY STEPS TO PROVIDE RETIREMENT BENEFITS TO PFRS FIRE RETIREES AS IF THERE HAD BEEN NO TEMPORARY CHANGES TO THE 52-HOUR WORK WEEK OR FLSA IN LIEU PAY PROVISIONS IN THE 2008-2012 MOU

WHEREAS, pursuant to the California Constitution and notwithstanding any other provisions of law to the contrary, the Police and Fire Retirement Board (“Board”) shall have plenary authority and fiduciary responsibility for administration of the Police and Fire Retirement System (“System”); and

WHEREAS, pursuant to the California Constitution, the members of the Board shall discharge their duties with respect to the System solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the System; and

WHEREAS, pursuant to the California Constitution, the Board’s duty to participants and their beneficiaries shall take precedence over any other duty; and

WHEREAS, the City of Oakland and the International Association of Firefighters Local 55 entered into a Memorandum of Understanding (“MOU”) effective July 1, 2008, and remaining in effect through June 30, 2012; and

WHEREAS, it was not the mutual intent of the parties to alter compensation attached to the rank in that MOU to affect OPFRS retirees, be it

RESOLVED: That the MOU does not alter the compensation attached to the rank by temporarily suspending the 52-hour work week and FLSA In Lieu Pay; and be it

FURTHER RESOLVED: That PFRS staff shall take all necessary steps to provide retirement benefits to PFRS retirees at the same levels as if there had been no temporary changes to the 52-hour workweek or FLSA In Lieu Pay provisions in the 2008-2012 MOU;

FURTHER RESOLVED: That PFRS staff be instructed to make retirees whole for the reduction in pension benefits implemented in August 2009.

IN BOARD MEETING, CITY HALL, OAKLAND, CA _____

PASSED BY THE FOLLOWING VOTE:

AYES: CRAWFORD, GODFREY, SPEAKMAN, BERNARD, JOHNSON, YEW, BULLOCK

NOES:

ABSENT:

ATTEST: _____
PRESIDENT

ATTEST: _____
SECRETARY