



MINUTES

RETIREMENT BOARD MEETING MINUTES

FIRST MONTHLY BOARD MEETING

9:00 a.m.

December 10, 2014

Retirement Board Conference Room

The Willows Office Park

1355 Willow Way, Suite 221

Concord, California

Present: Debora Allen, Scott Gordon, Brian Hast, Jerry Holcombe, Louie Kroll, Karen Mitchoff, John Phillips, Gabe Rodrigues, Todd Smithey, Jerry Telles and Russell Watts

Absent: William Pigeon

Staff: Gail Strohl, Retirement Chief Executive Officer, Kurt Schneider, Deputy Retirement Chief Executive Officer; Timothy Price, Retirement Chief Investment Officer; Karen Levy, Retirement General Counsel; Karen Davis, Retirement Benefits Manager; Vickie Kaplan, Retirement Accounting Manager; Christina Dunn, Retirement Administration Manager; and Wrally Dutkiewicz, Retirement Compliance Officer

Outside Professional Support: Harvey Leiderman      Representing: Reed Smith LLP

**1. Pledge of Allegiance**

Hast led all in the *Pledge of Allegiance*.

**2. Accept comments from the public**

No members of the public offered comment.

**3. Approval of Minutes**

It was M/S/C to approve the minutes of the October 22, 2014 meeting. (Yes: Gordon, Hast, Holcombe, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)

Allen was present for subsequent discussion and voting.

It was M/S/C to approve the minutes of the November 5, 2014 meeting with the following two corrections to Item 7. 1) Adding the word "program" to the end of the first sentence, and 2) Changing the Government Code Section on Line 5 to 31468(1)(3). (Yes: Allen, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts. Abs.: Gordon)

**4. Routine Items**

It was M/S/C to approve the routine items of the December 10, 2014 Board meeting. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)

It was the consensus of the Board to move to Item 7.

7. **Consider and take possible action regarding the Retiree Lookback Project: Review of past incidents of unusual compensation increases at the end of employment**

Strohl introduced Wrally Dutkiewicz, CCCERA Compliance Officer,

Dutkiewicz presented the CCCERA Retiree Lookback Project-Compensation Enhancement Study which is a summary of findings of Final Average Salary (FAS) versus pre-Final Average Salary Ten Year Comparative Analysis from 2004-2014.

He reported service retirements from June 2004 to June 2014 were reviewed and an analysis was performed looking at FAS and specific components that led to changes and then conducted a trending and tracking analysis to identify any ineligible compensation that may have been included in FAS calculations. Unique earning codes that were not reoccurring, earn codes that were variable in nature, and any unique codes or adjustments that didn't have sufficient documentation to support their inclusion in FAS.

Dutkiewicz reported there were 3,881 retirees during the 2004-2014 study period. Of those, there were 3,448 retirees that had an increase in their FAS of 13.59% over pre-FAS compensation. Further analysis identified 188 retirees that as a group had an average increase of 36.22% in their FAS. He reviewed the observable factors that generally contributed to the increase in FAS during the FAS year.

He reported there were seven retirees with a FAS versus pre-FAS changes in excess of 50%. Four experienced significant increases in their base earnings due to entering into higher pay classes and three were related to differentials (on-call and call back pay) which made a significant increase in the FAS.

He reviewed unique non-recurring items of FAS compensation noting that the pay codes must be manually reviewed on a case by case basis by the retirement counselor.

Schneider reviewed the percentage of change in the on-call pay differential earn codes for Hazardous Materials job classifications under the County Health Services Department. He explained the manner in which on-call duty is scheduled within the department, and noted that members of the Hazardous Materials Incident Response Team are allowed to trade, volunteer for, and give up on-call shifts.

Levy reported that on July 23, 2014, the Board adopted a statement of intent to scrutinize apparently intentional acts of pension spiking and any proposed reductions in retirement benefits would occur only after the Board has conducted a thorough examination of all applicable facts and applicable law. She noted that the Board will provide effected members with notice and an opportunity to appear before, and present their positions to, the Board before any action is taken.

Levy referred to items (a) though (c) in the memorandum from Schneider, which lists the actions and directions for the Board to consider today. The Board is being asked whether and which of the scenarios and pay items reviewed in the lookback study the Board would like to analyze further as potential improper increases in compensation caused by the member.

In public comment, Paul Andrews, retired Hazardous Materials Specialist, distributed a handout on the Hazardous Materials Program noting he worked for HazMat for 24 years prior to his retirement. He reported on the typical incidents HazMat responds to, the hours of operation, how on-call pay works, and how HazMat is funded. He noted he was on call from his first month of employment until the day he retired.

Randy Sawyer, Chief Environmental Health Officer, reported on the number of people available to be on-call. There are currently 3 teams of 6 and it takes 2 years of training to be ready to be on-call. He noted that because of employees using comp time it didn't appear people were on-call when they actually were. He feels an amount can be added to base pay then anything over that amount would be overtime and not pensionable.

Jerry Yoshioka, retired HazMat Specialist, reported there were reductions in pay and staffing that caused an increase in the team having to work on-call. He noted he was told overtime comp time was available. He also stated he would still be working but there is a shelf life for a team and wouldn't be safe for him to still be working.

It was **M/S/C** to direct staff to move forward with Items a, b & c as outlined on page 4 of Schneider's December 10, 2014 memo. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)

**8. Consider and take possible action to adopt:**

- a. Policy Governing the Overpayment or Underpayment of Member Contributions
- b. Policy Governing the Overpayment or Underpayment of Member Benefits

Levy gave an overview on the background of the draft policies.

Leiderman noted there is no legal limitation period on how far back the Board can go to recapture overpayments.

After discussion, it was **M/S/C** to adopt the a) Policy Governing the Overpayment or Underpayment of Member Contributions and, b) Policy Governing the Overpayment or Underpayment of Member Benefits. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)

**9. Consider and take possible action to recover erroneous spousal continuance payments to ineligible spouse**

Schneider reported this is a very unusual situation. He reported it was erroneously determined at the time of death that the surviving spouse was eligible for continuance payments under Govt. Code Section 31760.2. It was later discovered that the proper documents, including the marriage license and birth certificate, were submitted but an incorrect determination was made anyway. On the date of the member's death, the spouse had not yet attained the age of 55 years and therefore not an eligible survivor under Govt. Code Section 31760.2.

After discussion, it was **M/S/C** to seek recovery of the overpayment and appropriate interest. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey and Watts. No: Telles)

**10. Consider and take possible action to correct call back pay erroneously reported as pensionable which resulted in overpayments of benefits to retirees and overpayment of retirement contributions**

Schneider gave an overview on call-back pay noting CCCERA has notified the County to stop reporting call back pay as pensionable. He reported there are 43 retirees who are receiving overpayments from CCCERA with an average monthly overpayment of \$347. The Board is requested to consider whether to authorize making the corrections, reduce benefit amounts, and remit to retiree's their overpayment of contributions. Schneider anticipates the process can be completed in approximately four to six months, not including the time it takes to make corrections by adjusting future benefit payments for retirees and contributions for actives.

It was noted the portion of overpaid employer contributions would be a gain to the employer in the next UAAL. Strohl noted the IRS has restrictions on giving money back to employers.

In public comment, Arthur Liou, attorney with Leonard Carter on behalf of PDOCC, stated he is not clear if the call-back pay being considered is physician call-back pay. He noted physician call-back pay was a category that CCCERA and the County said was pensionable if it was scheduled based on the Ventura decision. The physician's through no fault of their own reported their time in the manner they were told whether it was scheduled time or not using the pay code they were told to use and neither CCCERA nor the County had a problem with collecting contributions and paying out the benefits. He stated PDOCC only deals with active employees and agrees they should get their money back along with interest as the policy states. He feels retirees have no idea this is going on and out of fairness they should be notified so they can understand and plan for how this will impact them. He feels instead of penalizing the retiree's, CCCERA can take action under Govt. Code Section 31542.5 which requires the County to properly report compensation earnable to CCCERA and allows CCCERA to assess the County for the costs of adjusting or correcting mistakes that are made when County knew or should have known that the mistakes or errors were being made. He feels the County should have known and should bear the cost of correcting the mistake and not the retiree's. He also feels the limitation period should be 3 years and the retiree's should be presented with options of how they can repay instead of them paying a lump sum amount.

Haj Nahal, Contra Costa County Auditor Controller's Office, stated the County was reporting all call back pay as retirement compensable until they were notified last year by CCCERA that CCCERA had determined that call back pay was not retirement compensable so they stopped reporting it that time.

It was **M/** to continue with the discovery of who is involved and mail letters for an educational presentation. This motion failed due to lack of a second.

Levy reported that tax counsel, Ice Miller, has counseled CCCERA on the matter of this correction process. Ice Miller has advised that the IRS would like to see the pension system made whole, and that can be done with a correction payment from the employer or the affected members. Levy noted the 43 retiree's that have been identified have not yet been given notice that this issue exists. If the Board decides to pursue this correction, the next step would be to provide written notice to the affected members and an opportunity to come before the Board. She also noted this is a systemic error affecting multiple members and is unusual in nature.

After a lengthy discussion, it was **M/S/C** to proceed as follows:

First, CCCERA will send a letter to all retirees who are affected by this matter and provide them with a 60 day notice period prior to the implementation of the correction as well as a date for when the Board will have this matter on the agenda and provide an opportunity for the retirees to comment;

Second, the Board authorized proceeding with items 1, 4, 5, and 6 outlined in the memorandum from Schneider, as follows:

Item 1 - Reduce retiree benefit amount to the correct amount excluding the non-pensionable call-back pay;

Item 4 - Remit to active members (through payroll adjustments) overpayment of employee contributions collected on non-pensionable call-back pay;

Item 5 - The corrections listed above can be made as an offset to benefit payments

Item 6 - All corrections are to be made with appropriate interest.

(Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)

The Board directed staff to bring the remaining items (numbers 2, 3 in Schneider's memorandum): Recover past overpayment to retirees whose benefit was erroneously calculated including non-pensionable call-back pay and remit to retirees overpayment of employee contributions collected on non-pensionable call-back pay to a future meeting for discussion.

**11. Consider and take possible action to adopt BOR Resolution 2014-4 providing a 2.75% prospective adjustment in base pay for all CCCERA employees, except for the Retirement CEO position**

Bob Campbell, Auditor-Controller, reported there is still significant work that needs to be done with regards to changing CCCERA to a separate entity and the County cannot guarantee employees will see the increase on the February 10<sup>th</sup> paycheck as it will take some time to facilitate.

It was **M/S/C** to adopt BOR Resolution 2014-4 providing a 2.75% prospective adjustment in base pay for all CCCERA employees, except for the Retirement CEO position, effective January 1, 2015. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts.)

It was the consensus of the Board to move to Item 5.

**CLOSED SESSION**

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

The Board moved into open session.

5. It was **M/S/C** to accept the Medical Advisor's recommendation and grant the following disability benefits:
  - a. James Argo – Service Connected – This item was continued to a future meeting.
  - b. Eugene Dick – Service Connected (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)
  - c. Matthew Hopkins – Service Connected (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)
  - d. Phillip Wisotsky – Service Connected (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)
6. There was no reportable action related to Govt. Code Section 54956.9(d)(2).

It was the consensus of the Board to move to Item 12.

**12. Conference Seminar Attendance**

- a. It was **M/S/C** to authorize the attendance of 3 Board members and 3 staff members at the 4<sup>th</sup> Annual Risk and Liquidity Forum, Institutional Investor, January 27-28, 2015, San Francisco, CA. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)
- b. It was **M/S/C** to authorize the attendance of 4 Board members and 2 staff members at the Forum 2015, Commonfund, March 14-17, 2015, Orlando, FL. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)
- c. It was **M/S/C** to authorize the attendance of 1 staff member at The Chief Investment Officer Summit, Asset International, April 15-17, 2015, New York, NY. (Yes: Allen, Gordon, Hast, Mitchoff, Phillips, Rodrigues, Smithey, Telles and Watts)

13. Miscellaneous

(a) Staff Report –

Strohl reported Karen Davis was promoted to the permanent Benefits Manager position; CCCERA received 2 awards from GFOA, one for the CAFR and one for the PAFR, and congratulated staff on their work; Transwestern should be receiving proposals from the bidders for the exterior of the building next week and should start the project in the beginning of spring; Chevron on Diamond Blvd. across the street is moving in 2016; Anne Sommers has been hired as an Admin/HR Coordinator and will be starting on Dec. 29, 2014.

Levy reported she will be presenting a legislative update at the next meeting noting one of bills modifies the definition of final compensation for PEPRA members; CCCERA will be reviewing the impact of the court's furlough in light of the legislation.

Dunn reported the final phase of the internal remodel is starting; Staff is working with Joe Wiley on the labor relations documents.

(b) Outside Professionals' Report -

None

(c) Trustees' comments –

Rodrigues reported he will be late for the January 21 board meeting.

Gordon reported he attended INVESCO Client Conference with Telles, Price and Chu and felt it was a very good conference.

Phillips requested a quick update on the investment consultant selection process. Price reported we are two-thirds of the way done with the staff level on-sites. He anticipates getting his notes to the sub-committee by year end and hopes the committee can convene in January. He noted there are still 3 firms left to interview.

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



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Brian Hast, Chairman



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Jerry Telles, Secretary