



MINUTES

RETIREMENT BOARD MEETING MINUTES

REGULAR MEETING

May 4, 2016

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, Brian Hast, Jerry Holcombe, Louie Kroll, John Phillips, William Pigeon, Gabe Rodrigues, Todd Smithey, Jerry Telles and Russell Watts

Absent: None

Staff: Gail Strohl, Chief Executive Officer; Karen Levy, General Counsel; Wrally Dutkiewicz, Compliance Officer; Christina Dunn, Administrative/HR Manager; Tim Hoppe, Retirement Services Manager; and Alexis Cox, Member Services Manager

Outside Professional Support:
Harvey Leiderman
Susan Hastings

Representing:
Reed Smith LLP
Laughlin, Falbo, Levy & Moresi LLP

1. Pledge of Allegiance

Kroll led all in the *Pledge of Allegiance*.

2. Accept comments from the public

Karen Bennett, retiree, stated she received a letter from CCCERA stating that the COLA on her account had been overpaid and that she would have to pay it back with interest. She stated she doesn't feel she is responsible because she didn't do anything to cause the overpayment and shouldn't have to pay the interest. She distributed a letter she wrote to CCCERA outlining her questions noting her concerns with the legality of paying back the overpayment as well as the tax ramifications for the years she was overpaid.

William Gregory, retiree, reiterated what Bennett said. He had no idea he was being overpaid. He asked what interest rate would be applied and also questioned the tax ramifications.

The Board felt this item needs to be on a future agenda very soon. Strohl stated there are 14 retirees that are affected and all 14 will be properly noticed of the meeting.

3. Routine Items

It was M/S/C to approve the routine items of the May 4, 2016 meeting. (Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts)

CLOSED SESSION

The Board moved into closed session pursuant to Govt. Code Section 54957 and 54956.9(d)(2) to discuss Items 4 and 6. Item 5 will be discussed later in the meeting.

The Board moved into open session.

4. It was M/S/C to approve the Service Connected Disability for Rhonda Williams as recommended by the Hearing Officer. (Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts)
5. This item was tabled for a future meeting.
6. There was no reportable action related to Govt. Code Section 54956.9(d)(2).
7. **Consider and take possible action to adjust the retirement allowance of CCCERA retired Hazardous Materials Specialists IIs pursuant to Government Code Section 31539 to exclude compensation improperly increased by the members.**

- a. Dutkiewicz reviewed the background of the lookback project that reviewed the past incidents of unusual compensation increases at the end of employment. He reviewed the department practice of how Hazardous Materials Specialists IIs were scheduled to work on-call hours during the period of 2006-2014. He reviewed how the records were kept by the department commenting on how shifts were scheduled and how employees were able to sign up for additional shifts or trade shifts. He reviewed the average monthly on-call hours during the Final Average Salary (FAS) period noting a consistent pattern that all active members on the Incident Response Team (IRT) increased their on-call hours during the FAS period as compared to the twelve month period immediately preceding it and the pattern repeated itself over and over. It was determined that some of the on-call shifts worked by the IRT members were on a voluntary basis above and beyond what was originally scheduled by the department and therefore were not required work of all Specialists IIs during the same time period and should be excluded from pensionable compensation on this basis.

Dutkiewicz reviewed his recommendations to determine that the excess on-call hours were voluntary, that the excess on-call pay was an improper increase in the members' final compensation caused by the member, obtained by signing up or trading for additional on-call hours in order to boost up the members' final compensation.

There was a lengthy discussion on whether the shifts were voluntary, how they were assigned, the requirements of having six members on the work schedule, and how the work schedules were traded and additional sign-ups were allowed.

- b. In public comment, Eric Jonsson, retired Hazardous Materials Specialist II, distributed a letter to the Board. He commented on an article from the Contra Costa Times stating he felt it was very misleading. He described how the on-call schedule was made and how changes were made to the schedule noting nobody ever changed the schedule on their own. He didn't feel the on-call shifts were voluntary as it is a state mandated program which was taken seriously. He stated he worked on-call the entire 21 years he was employed and that they were told their entire careers that on-call pay would go towards their FAS and were advised by CCCERA to be available in their last year to get as much on-call pay as they could. He asked why didn't anyone come and talk to them before and that this is very stressful to them.

Pigeon was no longer present for subsequent discussion and voting.

Gabriel Adebisi, retired Hazardous Materials Specialist II, worked for the County from 1994-2007, noted that on Table 2 on page 5 of the memo shows retirees compared to active employees average monthly on-all hours from 2006-2014 yet he retired in 2007 and he doesn't feel it is fair in his case to use statistics from when he was already retired. Dutkiewicz stated Table 2 is just the average from 2006-2014 but Table 3 on page 6 are the individual on-call averages compared to the average of all the rostered Hazardous Materials Specialist IIs that were active during each month of their FAS period. Mr. Adebisi again stated the statistics are not relevant to him personally.

Scott Hanson, retired Hazardous Materials Specialist II, referenced Tab 6, the MOU from October 1, 2008-June 30, 2011, the last sentence of section 9 states "Where on-call arrangements exist, the Department Head shall designate which employees are on-call" noting it is the Department Head that schedules the on-call. He also stated he has tried to get out of being on-call when he had plans but was not able to. He stated he was told during a group counseling session to make himself available to work on-call in order to maximize his on-call pay. He felt CCCERA encouraged working on-call and did not object to it until the newspaper article came out. He also felt they can't get a fair hearing by the Board. He stated all of his estimates included on-call pay and that it was CCCERA's job to review his retirement application.

Isaac Stevens, representing retiree Charles Nicolson, asked if Federal holidays were included in the total hours on Table 1. He stated his legal arguments were in the statement he sent to the Board last week. He commented the staff report asked the Board to determine if the hours worked were voluntary and caused an improper increase by Mr. Nicolson noting it does not apply in Mr. Nicolson's case, the hours were not voluntary. On-call hours had to be covered. He stated any department that has a mandate can't be voluntary. He stated Chart A doesn't show on-call hours but he did work them and they may have been coded incorrectly. He felt the number of hours showing as average for each employee during their FAS period varied wildly.

Neal Price, retired Hazardous Materials Specialist II, stated he retired in February of 2013 and was not going to retire until August of 2017 but retired earlier because of PEPRA. He attended group counseling and was advised by CCCERA staff to increase his accruals including on-call and call back pay. He stated he changed his retirement date and wasn't responsible for establishing the schedule. At the end of 2012 two people from other teams retired and he was available to fill those slots. He stated the supervisor had a seniority list and on-call was assigned.

Jerry Yoshioka, retired Hazardous Materials Specialist II, distributed a handout of his presentation. He stated he wasn't ready to retire but did in March of 2014 because of the new pension laws and changes in his health. He felt the statement on page 8 of the memo "that excess on-call compensation paid was for voluntary non-required work that was beyond the average on-call hours performed by other Hazardous Materials Specialists IIs during the same pay period" was inaccurate. Agreeing to work when asked to doesn't make it voluntary. He was a professional and took his duties and responsibilities seriously. During his final year, all HMS IIs in his pay grade were performing on-call work. He didn't know how many on-call hours others were working. The County was aware of the hours because they made the assignments, reviewed the calendars and approved the time sheets and they did not tell him his hours were above the average. The memo also suggests the excess on-call pay was an improper increase caused by the members. He didn't cause the increase, the County was responsible for the shortage of staff which caused the increase in on-call hours. He stated trading on-call shifts has been a common practice of the County since before he worked there. He did not create the County's policy on on-call pay, he did not cause an increase in on-call, and it was not his intent to increase his final compensation. His pension was not evaluated individually but lumped together with others even though their situations are all different. Trustee Watts asked if there was any time that Hazardous Materials Specialist IIs did not serve on the IRT. He said yes but when staff dwindled down they were required to be on the team.

Mike Wedl, retired Hazardous Materials Specialist II, stated there were 9 Hazardous Materials Specialist IIs covering 19 spots when he retired and at times they were assigned to be on-call twice in one day. He had planned to work a couple of more years but was forced to because of legislation. He believes his numbers were higher because of the shortage of staff. At the time he felt he was doing a service to the County by stepping up and taking the on-call that was offered to him.

It was M/S to table this item for further discussion at a meeting to be determined and in the interim to fully digest what the board has heard so far, get some additional advice from legal counsel because of the several references to potential litigation against the Board, and schedule this item as soon as practicable thereafter for discussion in a public meeting.

- c. Levy asked if any employer present had any comments. Lisa Driscoll, County Finance Director stated that the County has no additional information to present.

The Board reconvened into closed session pursuant to Govt. Code Section 54956.9(d)(2) to discuss this item.

The Board moved into open session.

A substitute motion was M/S to take no action and do not reduce the pension benefits of the 10 members in question.

- d. In public comment, Jerry Yoshioka, stated he hoped the Board votes for the substitute motion.
e. The Board voted on the substitute motion:

It was M/S to table this item for further discussion at a meeting to be determined and in the interim to fully digest what we've heard so far and get some additional advice from counsel because we've heard several references to potential litigation and schedule this as soon as practicable thereafter for discussion in a public meeting. (Yes: Rodrigues, Smithey and Telles. No: Allen, Andersen, Gordon, Hast, Phillips and Watts). Motion Failed.

The Board voted on the original motion:

It was M/S/C to table this item for further discussion at a meeting to be determined and in the interim to fully digest what the board has heard so far, get some additional advice from legal counsel because of the several references to potential litigation against the Board, and schedule this item as soon as practicable thereafter for discussion in a public meeting. (Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts).

The Board directed staff to include Paul Andrews with this item when it returns.

Gordon and Watts were no longer present for subsequent discussion and voting.

8. Consider and take possible action to direct the CCCERA Board voting delegate to vote in support of the 2016 SACRS legislative proposal at the May 2016 SACRS Conference

Levy reported on the two SACRS legislative proposals noting the first proposal has been receiving opposition from the labor unions and that the bill is in the process of being amended by the author. The proposal may be on the SACRS business meeting agenda on Friday.

It was M/S/C to abstain from voting on Proposal 1 until further information is received. (Yes: Allen, Andersen, Hast, Holcombe, Phillips, Rodrigues, Smithey and Telles)

Levy reported Proposal 2 will allow CERL systems to maintain the requirement of receiving sworn statements from members when they enroll and also allow the board to accept electronic enrollment data from the employers. She noted that CCCERA is already doing this in some situations. Leiderman commented this is already a bill that is pending, Bill 2376, and SACRS is adding to it and since it is already a bill it doesn't need a sponsor. Levy explained that SACRS is seeking to sponsor only the portion of the bill pertaining to Section 31526, receiving electronic enrollment data from employers.

It was M/S to abstain from voting on proposal 2.

A substitute motion was M/S that if the proposal is limited to what is in the agenda, the CCCERA Board delegate is authorized to vote in favor of the proposal. If it expands to include any other items on AB 2376, the delegate will abstain.

Andersen was no longer present for subsequent discussion and voting.

The substitute motion was withdrawn.

It was M/S/C to abstain from voting on proposal 2. (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Smithey and Telles).

9. Miscellaneous

(a) Staff Report –

Strohl reported the external auditors are on site this week conducting the 2015 field audit; she is working on the CAFR; she is working with departments on strategic planning; and current recruitments are Accounting Manager, Deputy Chief Executive Officer, Member Services Technician, and Office Specialist.

Hoppe reported they have identified an error that affected the COLA's of 14 benefit recipients. This happened during the conversion of CPAS in 2006. 9 recipients were underpaid and 5 recipients were overpaid.

Dutkiewicz thanked staff for their help putting together his item on this agenda.

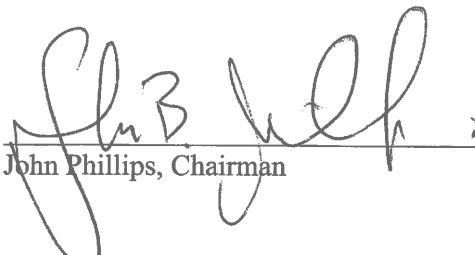
(b) Outside Professionals' Report -


None

(c) Trustees' comments –

Telles recognized and thanked Dutkiewicz for all his work.

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


John Phillips, Chairman


Scott Gordon, Secretary

