



## MINUTES

### RETIREMENT BOARD MEETING MINUTES

FIRST MONTHLY BOARD MEETING  
September 9, 2015  
9:00 a.m.

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

Present: Candace Andersen, Scott Gordon, Brian Hast, Jerry Holcombe, Louie Kroll, John Phillips, William Pigeon, Todd Smithey, Jerry Telles and Russell Watts

Absent: Debora Allen and Gabe Rodrigues

Staff: Gail Strohl, Retirement Chief Executive Officer; Kurt Schneider, Retirement Deputy Chief Executive Officer; Timothy Price, Retirement Chief Investment Officer; Karen Levy, Retirement General Counsel; Wrally Dutkiewicz, Retirement Compliance Officer; Tim Hoppe, Retirement Benefits Manager; Christina Dunn, Retirement Admin/HR Manager; and Chih-chi Chu, Investment Analyst

Outside Professional Support:

Harvey Leiderman  
May-tak Chin  
Susan Hastings  
Paul Angelo  
John Monroe

Representing:

Reed Smith LLP  
Reed Smith LLP  
Laughlin, Falbo, Levy & Moresi LLP  
Segal Company  
Segal Company

#### 1. Pledge of Allegiance

Phillips led all in the *Pledge of Allegiance*.

#### 2. Recognition of Christina Dunn for 5 years of service

Phillips recognized and congratulated Christina Dunn for her 5 years of service with CCCERA.

#### 3. Accept comments from the public

No member of the public offered comment.

Pigeon and Watts were present for subsequent discussion and voting.

#### 4. Approval of Minutes

It was M/S/C to approve the minutes of the June 25, 2015 meeting with corrections to Board Members Present by showing Andersen as Present and removing Mitchoff's name and by moving Telles to Board Members Absent. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

It was M/S/C to approve the minutes of the July 8, 2015 meeting. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

5. **Routine Items**

It was M/S/C to approve the routine items of the September 9, 2015 meeting. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

It was consensus of the Board to move to Item 10.

10. **Consider and take possible action to adjust the retirement allowance of CCCERA retired member Peter Nowicki pursuant to Government Code Section 31539 to exclude compensation improperly increased by the member**

- a. Presentation by fiduciary counsel Harvey Leiderman of his investigation, report and recommendations; Board questions
- b. Opportunity for the member, Peter Nowicki, to present to the Board his position and any information or records relevant to the issue; Board questions
- c. Opportunity for the member's former spouse to present to the Board her position and any information or records relevant to the issue; Board questions
- d. Opportunity for the member's former employer, the Moraga Orinda Fire Protection District, to present to the Board its position and any information or records relevant to the issue; Board questions
- e. Public comment
- f. Board deliberations and appropriate action

Leiderman distributed a copy of his power point presentation "Proposed Adjustments to Retirement Allowance: Peter J. Nowicki." He reviewed the Retirement Board's authority under the law noting that the trustees' fundamental fiduciary duty is to use funds for the exclusive purpose of paying benefits and administrative expenses. He reported the Board has the authority to make corrections under the CERL and through the CCCERA overpayment and underpayment policies.

He reviewed Mr. Nowicki's background and also reviewed Mr. Nowicki's employment contract and amendments noting there isn't any record from meetings that the amendments were made publicly. He reviewed the changes in compensation, leave accruals and the conversion of non-cashable leave time to cashable leave time in Amendment No. 2 dated December 10, 2008. He reported that three days after the second amendment was signed, Mr. Nowicki announced his retirement with an effective date of January 30, 2009. Leiderman reported that Mr. Nowicki's annual base salary was \$186,219 on January 16, 2008 and his initial pension upon retirement was \$240,923.

Leiderman reviewed the issues for the Board to consider which include determining if the increases in Mr. Nowicki's compensation were improper, caused by the member, and done at retirement. He recommended the Board determine that the increases were improper, take action to recover all past overpayments, with interest, in a manner consistent with the Board's overpayment policy, adjust future benefit payments accordingly effective October 1, 2015, and advise the member and his former spouse that they have exhausted their administrative remedies.

Peter Nowicki, retired Moraga-Orinda Fire District Chief, distributed a handout containing several affidavits, performance evaluations and job duties. He questioned why it has taken 6 years for the retirement system to contact him and noted he was not given enough time to prepare a response. He noted that he was lucky to be able to find an attorney in such a short time.

Nowicki reviewed his background from becoming a Battalion Chief and then to a Fire Chief. He read 3 affidavits, reviewed the process of his evaluations, and the process for preparing the agendas and closed session items for board meetings of the Moraga Orinda Fire District.

Brook Mansanelli, Moraga Orinda Fire Board Director, Dec. 10, 2008 through Feb. 28, 2012. Mansanelli stated agenda items relating to compensation were listed as closed session items and as open session items in the hopes of reaching an agreement. Compensation was discussed in closed session and if necessary, was reported out in open session. He also stated that the district's legal counsel would provide the verbiage when reporting out of closed session.

Kroll was no longer present for subsequent discussion and voting.

Nowicki stated that the district promised him the benefits he had received as Battalion Chief. He stated he wasn't able to use his vacation and administrative leave hours and was going to lose them so he sold them. He answered several questions from the Board.

Kroll was present for subsequent discussion and voting.

Nowicki stated he was informed by CCCERA at the time of his application that he could return to work on a temporary basis after he retired. He felt that his pension was calculated in accordance with the law. His employment contract was discussed.

It was the consensus of the Board to recess Item 10 in order to move into Closed Session to consider Items 6 - 8.

#### **CLOSED SESSION**

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

The Board moved into open session.

6. It was **M/S/C** to accept the Medical Advisor's recommendation and grant the following disability benefits:
  - a. Laurie Pereira – Non-Service Connected (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)
  - b. Michelle McPherson – Non-Service Connected (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)
  - c. James Harbison – Service Connected (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)
  - d. Charles Farley – Service Connected (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)
7. There was no reportable action related to Govt. Code Section 54957.6.
8. There was no reportable action related to Govt. Code Section 54956.9(d)(1).

The Board continued Item 10.

There was a discussion on when Nowicki decided to retire and the date he sold his vacation.

Nowicki summarized his career and how his benefits were approved stating he followed all of the rules. He stated it was not his intent to get paid as much as he could as he was going out the door.

Ms. Angela Nowicki, former spouse of Peter Nowicki, spoke on behalf of Mr. Nowicki noting his education and background benefited the whole fire district. She stated he is honest, trustworthy and

one of the hardest workers she knows. She also stated his character is truly one of the biggest souls she has ever met.

It was noted that Mr. Nowicki's former employer Moraga Orinda Fire District was not making a presentation.

Leiderman supplemented the record regarding the issue of when Mr. Nowicki contemplated retiring. He reviewed email exchanges with a CCCERA retirement counselor from October 30, 2008 in which Mr. Nowicki asked the counselor whether he could use his vacation sale if he retired in the first week in January of 2009. Leiderman also stated the notice for today's (September 9, 2015) meeting was sent to Mr. Nowicki on August 5, 2015 and no request was made to continue today's proceedings.

Leiderman briefed the Board on the Brown Act requirements regarding compensation noting it does not permit any public governing body to conduct closed session negotiations with the individual being discussed in attendance during the closed session. The law does allow a public governing body to meet in closed session with its designated negotiator regarding compensation.

It was **M/S** that the increases set forth in the Reed Smith document totaling \$80,200 are deemed improper pursuant the authority granted to the Board by Government Code Section 31539, authorize general counsel and fiduciary counsel to take all necessary actions to recover all past overpayments with interest, in a manner consistent with the Board's overpayments policy, adjust the future benefit payments of Mr. Nowicki, and consequently his former spouse accordingly, effective October 1, 2015, and finally, advise Mr. Nowicki and his former spouse that they have exhausted their administrative remedies.

A substitute motion was **M/S** that the increases set forth in the Reed Smith document totaling \$66,981 are deemed improper (compensation earnable \$80,200 minus the base salary increase \$13,219 = \$66,981), authorize general counsel, in the matter consistent with Board policy, to recover all past overpayments with interest, adjust the future benefit payments effective October 1, 2015, and advise Mr. Nowicki and Ms. Nowicki that they have exhausted their administrative remedies.

Leiderman spoke on the motions, specifically on the improper behavior of the district board in reaching agreements in closed session. He explained that his recommendation is to exclude the increases in base pay due to their retroactive nature and because they were reached in secret closed session without public scrutiny. To be improper under Government Code Section 31539 we do not have to show a violation of the law, but under the circumstance presented here, the strong public policy for transparency in government, and the requirement that public compensation decisions be made in public, the behavior in this particular matter constituted improper behavior.

Schneider reported about Mr. Nowicki's requests for retirement estimates. There were nine estimates in 2005 for March 31, 2008 retirements. He explained March 31 is a common retirement date due to the addition of cost of living adjustment. He noted there were three retirement estimate requests in October and November of 2008, but the retirement date was not March 31, instead, the requested retirement date was in January of 2009, likely because Mr. Nowicki had a vacation sale in February of 2008 so in order not to drop that cash out he was better off retiring in January of 2009 as opposed to March 31 2009.

After a lengthy discussion, Hast withdrew his second to the substitute motion. Telles seconded the substitute motion. The substitute motion was again **M/S**. The vote on the substitute motion was: (Yes: Smithey and Telles. No: Andersen, Gordon, Hast, Holcombe, Phillips and Watts. Abstain: Pigeon). Motion failed.

After discussion, the original motion was **M/S/C**. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Smithey and Watts. No: None. Abstain: Pigeon and Telles).

It was the consensus of the Board to move to Item 9.

**9. Consider and take possible action to adopt Resolution 2015-7 and 2015-8 electing to be subject to the Public Employees' Medical and Hospital Care Act for the purposes of providing medical benefits to CCCERA employees**

Dunn gave a brief overview of the Resolutions noting one is for unrepresented CCCERA employees and one is for CCCERA employees represented by AFSCME, Local 2700.

It was M/S/C to adopt Resolution 2015-7, electing to be subject to the Public Employees' Medical and Hospital Care Act (PEMHCA) for the purposes of providing medical benefits to Contra Costa County Employees Retirement Association (CCCERA) unrepresented employees. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

It was M/S/C to adopt Resolution 2015-8, electing to be subject to the Public Employees' Medical and Hospital Care Act (PEMHCA) for the purposes of providing medical benefits to Contra Costa County Employees' Retirement Association (CCCERA) employees represented by AFSCME, Local 2700. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

**11. Consider and take possible action to revise the amortization period for Rodeo-Hercules Fire Protection District**

This item was pulled from the agenda.

**12. Consider and take possible action to authorize a transfer from the employer advance reserve to the post retirement death benefit reserve**

This item was pulled from the agenda.

**13. Consider and take possible action to approve the GASB 68 report from Segal**

This item was pulled from the agenda.

Pigeon was no longer present for subsequent discussion and voting.

**14. Presentation from staff and Ares Energy Investors regarding the Ares Energy Investors Fund V – Herbert Magid, Keith Derman**

Price gave a brief overview of Ares Energy Investors Fund V (AEIF V) noting the commitment would be in the Real Asset category.

Chu summarized CCCERA's past investments with Energy Investors Fund (EIF), which Ares acquired. He stated Fund IV launched in 2010 investing in electrical power generation and transmission. Fund V is expected to invest broadly but with an emphasis on natural gas power plants.

Ares waived the confidentiality disclaimer on their presentation materials.

Magid thanked the Board for their support over the years. He gave an executive summary of the firm noting they have a 28 year track record with 40 employees dedicated to investments. He spoke on the uniqueness of the funds strategy noting Fund V is currently 20% committed. He stated the target for the Fund is \$2 billion. He highlighted the first investment in the Fund and the opportunities in the strategy.

Pigeon was present for subsequent discussion and voting.

Derman gave examples of power opportunity deal flows and environmental regulations noting it is a great time to invest in natural gas. He reviewed commodity cycles and one of the deals in the pipeline that is not dependent on oil prices.

Magid reviewed their track record and targeted performance. He reviewed the terms of the Fund noting the target is 15-17% net. He stated the team is also committing to Fund V.

**15. Consider and take possible action regarding potential commitment to the Ares Energy Investors Fund V**

It was M/S/C to commit \$50 million to Ares Energy Investors Fund V (AEIF V) subject to due diligence, a successful onsite visit, legal review, and authorize the Chief Executive Officer to sign the necessary contracts. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

**16. Conference Seminar Attendance**

- a. It was M/S/C to authorize the attendance of 2 Board members and 2 staff members at the Roundtable for Consultants and Institutional Investors, Institutional Investor, October 7-9, 2015, Chicago, IL. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

**17. Miscellaneous**

- a. Staff Report –

Strohl introduced Tim Hoppe, the new Benefits Manager; she reported the new Member Services Manager will be starting on Monday, September 14, 2015.

Price reported the onsite visit to Wastewater Capital in Portland was successful; Aether will be presenting their Real Asset Fund IV at the next meeting; Siguler Guff will be presenting their DREOF II Co-investment Fund at the next meeting; and he gave a preview of the 2-day workshop at the end of September.

- b. Outside Professionals' Report -

Leiderman thanked May-tak Chin for her hard work on the Nowicki case.

- c. Trustees' comments –

Telles reported he will be on vacation and will miss the next 2 meetings.

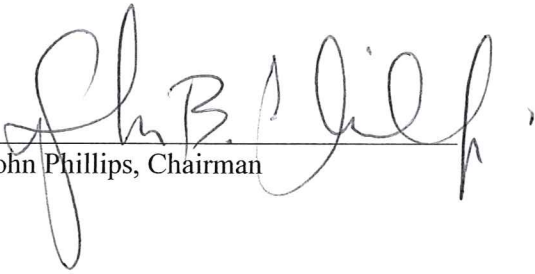
Gordon thanked Reed Smith LLP, Levy and Schneider for all of their work on the Nowicki case.

Andersen reported she attended CALAPRS at Pepperdine with Smithey and thought it was very interesting and helpful.

Pigeon stated Leiderman and staff did a wonderful job on the Nowicki case. He asked staff to schedule separate meetings if anything of this magnitude is on the agenda again.

Holcombe commented on the Deaths section of the Routine Items report noting Nancy Fahden died at the age of 92. She was the first female on the Contra Costa County Board of Supervisors and was a very active politician. He asked that the meeting be adjourned in her honor.

It was **M/S/C** to adjourn the meeting in honor of Nancy Fahden. (Yes: Andersen, Gordon, Hast, Holcombe, Phillips, Pigeon, Smithey, Telles and Watts)

  
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John Phillips, Chairman

  
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Scott Gordon, Secretary