

April, 2013

POLICE AND FIREFIGHTERS' PENSION BOARD
REGULAR BOARD MEETING
WEDNESDAY, APRIL 10, 2013, 12:30 P.M.

Present

Michael Dew, Chair
Ken Rudominer, Vice Chair
Richard Fortunato, Secretary
J. Scott Bayne, Trustee
Jeff Cameron, Trustee
Dennis Hole, Trustee
Jim Naugle, Trustee
Steve Cypen, Cypen & Cypen, Board Attorney
Lynn Wenguer, Administrator

Also Present

Amanda Cintron, Assistant Administrator
Laurie DeZayas, Pension Secretary
Kevin Schmid, CapTrust
Robert Klausner, Attorney
Randall Stanley, Actuary
Lisa Edmondson, Recording Secretary, Prototype, Inc.

Walt Courtney, President, Retirees' Association
Ann Lindie-MacNeil, Secretary/Treasurer, Retirees' Association
Janie Carreras, Retirees' Association
Fred Nesbitt, Director of Media Relations, Retirees' Association
Rick Schulze, Retirees' Association
George Farrell, Retirees' Association
Bill Paton, Retirees' Association
Jack Cann, Retirees' Association
Mike Clarke, Retirees' Association
Frank Colleran, Retirees' Association
Ed Remer, Retirees' Association
Albert Zoellner, Retirees' Association
Pete Loftus, Retirees' Association
Bob Kurabieski, Retirees' Association
Alan Eichenbaum, Attorney

Communication to the City Commission

None

Pursuant to authority of Ordinance C-00-34, Article II, this regular meeting of the Police & Firefighters' Pension Board convened at 12:30 P.M., Wednesday, April 10, 2013, in the Pension Board Conference Room, 888 S. Andrews Avenue, Suite 202, Ft. Lauderdale, Florida 33316.

Pledge of Allegiance / Moment of Silence

Chair Dew called the meeting to order at 12:28 p.m. and roll was called. All present recited the Pledge of Allegiance and observed a moment of silence.

MINUTES: Regular Meeting: March 13, 2013

Motion made by Vice Chair Rudominer, seconded by Mr. Fortunato, for the waiving of the reading of the minutes as stated.

Mr. Hole noted a correction on p.5, paragraph 2: the word "telephone" should be omitted.

In a voice vote, the motion passed unanimously.

BENEFITS:

Police Department:

New Beneficiary: Carmella Capko
Mary F. Casey
Joyce Francis
Joan Justynski
Lump Sum Refund: Vincent Falzone

Fire Department:

New Beneficiary: Jarmilla Eshelman

Motion made by Vice Chair Rudominer, seconded by Mr. Fortunato, for the approval of the benefits. In a voice vote, the motion passed unanimously.

BILLS:

Systematic:	\$30,314.23
CapTrust:	\$21,500.00
RhumbLine:	\$11,829.00
Milliman:	\$7,500.00
Nyhart:	\$2,302.00

Motion made by Mr. Bayne, seconded by Vice Chair Rudominer, for the payment of bills as documented. In a voice vote, the motion passed unanimously.

The following Item was taken out of order on the Agenda.

FRANK COLLERAN FORMAL HEARING:

Chair Dew requested that any individual who planned to speak at the hearing be recognized before doing so, and asked that all in attendance remain quiet during testimony.

Mr. Cypen added that while the hearing was being conducted at a public meeting, it was not a public hearing. The formal hearing was conducted at the request of Frank Colleran, retiree, who wished to amend the amount of the pension he receives. As the moving party, the burden of proof lies with Mr. Colleran.

Alan Eichenbaum, attorney for Mr. Colleran, provided the Board members, Mr. Cypen, and Mr. Klausner with a presentation packet. He made a brief opening statement, noting that this issue has been ongoing for approximately three years. He asserted that the original version of the Me Too clause, as well as the retirement window that applied in 1994, have been ignored. He described Mr. Colleran's suit as seeking the appropriate application of the Me Too clause, and cited the benefits and percentages to which he felt Mr. Colleran was entitled.

Mr. Cypen swore in and examined Randall Stanley, retirement plan actuary, at this time. Under oath, Mr. Stanley described the process by which he advised the Board on the proper funding and interpretation of the retirement system, and how entitlements are determined, including interpretation and application of the Me Too clause as applied to Mr. Colleran. The same methodology was applied to other individuals similarly situated to Mr. Colleran.

Mr. Eichenbaum cross-examined Mr. Stanley regarding the benefit formula applicable in the Me Too and Me Too 2 clauses. Mr. Stanley described the criteria he had applied in order to arrive at this formula, as well as the formula urged by Mr. Colleran, which he had determined to include inconsistencies. He answered questions regarding the

formula, its calculations, and the benefits associated with these calculations and applicable or not applicable to Mr. Colleran's case. He advised he had not received any direction from the Board regarding the use of a given formula.

Mr. Cypen asked if Mr. Stanley stood by his calculation. Mr. Stanley confirmed this.

Mr. Cypen swore in and examined Robert Klausner, stipulating that he was an expert. Mr. Under oath, Mr. Klausner described why he was retained by the Board, which was to determine the validity of Mr. Colleran's claim. He had arrived at the conclusion that while Mr. Colleran was entitled to the early retirement bonus of 1994, but was not entitled to further benefits in 2002 due to a cap on these benefits.

Mr. Eichenbaum cross-examined Mr. Klausner regarding his interpretation of Mr. Colleran's claim, including the applicability of a waiver signed by Mr. Colleran. Mr. Cypen stipulated that the waiver as previously described was not related to Mr. Colleran's claim. Mr. Klausner acknowledged that Mr. Colleran retired under the 1994 window and was entitled to use the additional benefits clause, as well as a 2% bonus. He had determined that Mr. Colleran was not entitled to additional window benefits of 3%, 2%, and 7% bonuses due to a cap on the Me Too benefits. He noted that Mr. Colleran did not lose any benefits that he was already receiving when he retired under the window in 1994.

Mr. Hole referred to p.10 of the packet provided by Mr. Eichenbaum, which included the waiver signed by Mr. Colleran. He asked if incentives were part of the waiver. Mr. Cypen said the 1994 waiver did not, by itself, preclude the claim Mr. Colleran was making at this time.

Mr. Eichenbaum said his understanding was that both parties agreed the waiver was not related to Mr. Colleran's claim. This was stipulated once again.

Chair Dew said the waiver had bearing on his decision, as it includes incentives described on an attached information sheet. Mr. Eichenbaum stated that Counsel had stipulated the waiver was not related to the claim. Mr. Klausner said the 1994 waiver had not been the basis of his decision: he had based his decision on the fact that an individual cannot get more benefits under Me Too than others received. This was not related to Mr. Colleran's signature of the waiver.

Mr. Eichenbaum concluded that the individuals who did not retire under the 1994 window were subject to a benefit cap on both the number of years and the value; the cap was later raised, which he felt should apply to anyone not included under the additional benefits clause, including Mr. Colleran. He felt these benefits were part of the City's incentives for Mr. Colleran's retirement.

Mr. Naugle asked to know the total percentage of benefits Mr. Eichenbaum was seeking for Mr. Colleran. Mr. Eichenbaum said this was 108%.

Mr. Cypen stated that one of the following three motions would be in order by the Board:

Motion to deny the claim on the bases that have been asserted;

Motion to table the claim, which is not debatable;

Move to grant the claim, which does not require grounds.

Motion made by Mr. Hole to deny Mr. Colleran's claim on the basis of the claims asserted.

Mr. Cypen advised that the motion as stated was not proper, as it did not sufficiently elucidate the issues on which the denial was based.

Mr. Hole restated his motion as follows: motion following the administrative order denying the benefit adjustment, confirming that as well as the testimony of the witnesses.

Vice Chair Rudominer seconded the motion. In a roll call vote, the motion passed 7-0.

INPUT FROM ACTIVE & RETIRED POLICE OFFICERS AND FIREFIGHTERS:

Walt Courtney, President of the Retirees' Association, stated that he was disappointed with the Board's vote regarding Mr. Colleran's case. He read the following statement for the record:

"Money spent on three audits, and Mr. Stanley, attorneys, four years wasted because Mr. Cypen stalled and re-stalled time and time again. Mr. Cypen said he told us the reasons why Frank Colleran's request was denied, it would give away his strategy; if anybody had a right to know, it was the retirees. The Pension Ordinance is very clear about the procedure when a person's request is denied; he just would not tell us the reasons, but a judge saw different. The Pension Board attorney's job description is to make sure the Pension Ordinances are followed. He then said the federal court case would decide this issue: not true. But the most ingenuous part of this is the Board just went along with whatever Mr. Cypen said. The Board had to know what he was doing is wrong, and that the Ordinance is not being followed. Here we are four years later, plenty of money, time, attorneys, a judge, all involved. Time spent for what? Nothing. We wonder if the Board has learned anything. Here's hoping the Pension Board will just not blindly follow such poor advice."

Mr. Courtney continued that the pension system was in place to benefit the retirees, whom he felt were treated poorly in this instance.

Vice Chair Rudominer advised that the issue of Mr. Colleran's claim was separate from the Board's feeling regarding the Retirees' Association. He noted that while the Board has a responsibility to look after the retirees, they have other responsibilities as well. Mr. Courtney replied that he felt proper advice had not been provided to the Board.

Chair Dew stated that the Board has been very aggressive in its concern for the retirees, and had done a great deal for their benefit. He concluded that while he understood the Association's frustration, he hoped Mr. Courtney had not intended his comments to mean the Board acted inconsiderately or treated members of the Retirees' Association poorly. Mr. Courtney said he did not feel he was making personal comments, but was trying to bring the Association's concerns to the Board's attention. Chair Dew said the Board had taken its time and asked the appropriate questions to arrive at their best-informed, legal, and proper decision.

At this time Chair Dew recognized Mr. Stanley for his many years of service and professionalism as actuary, and presented him with a plaque. Mr. Stanley was recognized by the Board and others present with a round of applause.

2012 AUDITED FINANCIAL STATEMENTS:

Ms. Wenguer advised that the audit was not complete at this time. A draft copy was expected to be available at the end of the week.

CAPTRUST: Monthly Investment Review Kevin Schmid

Mr. Schmid stated that he had prepared a comparison of cap weighted and equal weighted indexing, as requested at a previous meeting. While equal weighting has a good track record compared to the cap weighted S&P 500, he felt this was due in part to the heavy weight of mid cap securities in the equal weighted index. Mr. Schmid suggested that if the Board wished to implement equal weighted indexing, the best way to do so would be to consolidate the two indexed vehicles currently with RhumbLine, both of which are cap weighted, in order to prevent "doubling down" on the Plan's mid cap exposure.

He added that one advantage of equal weighted indexing was that the larger companies dominate the cap weighted index, which does not occur with equal weighting. However, he pointed out that it can be more expensive, as more trading and rebalancing is necessary on a monthly basis in order to keep the index in line. He concluded that there are advantages and disadvantages to both formats.

Chair Dew noted that Mr. Schmid's summary shows the five-year growth earnings of the cap weighted index outperforming equal weighting. Mr. Schmid advised that these are snapshot statistics and do not include information on the total return on investment. He added that cap weighting has a higher historical dividend yield and is currently cheaper and less volatile.

Chair Dew requested an update on World Class Capital, which had been briefly discussed at the previous meeting. Mr. Schmid said CapTrust's research department is attempting to schedule a meeting with the firm.

Mr. Hole recalled that CapTrust had also been asked to touch base with GTS. Mr. Schmid replied that he had spoken with Steve Malinowski and another representative of GTS, who had stated they were planning to contact the Board.

Mr. Naugle suggested that Atlantic Creek is a real estate fund in which the Board may be interested. The company seeks multiple value-added real estate opportunities in different types of properties, purchases them, and sells them within five years. Mr. Schmid said most of the real estate in the Plan is core real estate, with some value-added real estate; however, if the Board wishes to take on more risk in this area, he could investigate more value-added opportunities.

Mr. Schmid continued that the Plan's cash balance was in need of an increase. He recommended that while typically they would look to the bond side for additional cash, his suggestion was instead that they raise approximately three months' worth, or \$12 million, from equities.

Mr. Bayne recalled that the Plan was slightly underweighted in bonds due to their current performance, and asked why they would not consider taking more cash from bonds for reasons related to this performance. Mr. Schmid said because the Plan is currently approaching its minimum position in bonds, he did not want to take cash from this allocation. The risks present in the bond market, while worrisome, are also measurable and there are ways to protect against them. He concluded that he was very hesitant to shift into higher equity exposures without clearly understanding the risks involved.

Mr. Schmid continued that the Plan is more overweight in large cap than mid cap, partly because this was where most money earmarked for real estate was kept until it was called up. The Plan is also 2% overweight in small cap. He recommended taking cash from both large and small cap, as well as \$3 million apiece from the four active managers, to rebuild the cash position.

Mr. Cypen advised that when cash is moved from the active managers, Mr. Schmid should reach out to Eagle Asset Management to inform them that this withdrawal was not due to the ongoing issue between Eagle and the Plan.

Chair Dew recalled that he had previously raised the issue of the Plan's performance remaining beneath the 50% mark, and he had requested an informal investment study from CapTrust in order to determine whether this was due to policy or to the managers themselves. Mr. Schmid said one reason is the Plan's moderately aggressive position, with a 70/30 mix of risk assets and fixed income. Within those risk assets, the Plan is highly diversified, which can prevent the Plan from reaching some of the heights in the equities market and can make the Plan appear weak. However, he recalled that in some of the more negative quarters, the policy has held up, although there was some underperformance by managers.

Chair Dew expressed continued concern with the Plan's underperformance, stating that while they did not want to lose money, they also did not want to be positioned in a way that prevented them from realizing potential gains.

Mr. Schmid advised that with regard to the infrastructure asset class, he could schedule an educational presentation for the Board. Mr. Bayne noted that a legislation review would also be presented in May. It was determined that the educational presentation on infrastructure would be held next month as well.

Mr. Cypen provided an update on the ongoing issue with Eagle Asset Management, stating that he had spoken with the firm's attorney to renegotiate. He advised that the total funds owed to the Plan are roughly \$178,000, and the Plan will not make the March 31 payment due to Eagle, or any subsequent payments until the debt has been worked through. He estimated that this would take another quarter to complete.

COMMUNICATION DIRECTOR'S REPORT:

Mr. Nesbitt said a news release has been sent to local and national media regarding the pension obligation bond. The release provides background and basic information on return for the bond's first quarter. Follow-up will be

conducted to inform local reporters about the bond and the pension plan in general.

Chair Dew called the Board's attention to a letter he had sent to the City Commissioners, which includes much of the same information found in the press release. He added that Board members will be emailed any time he has correspondence to send to City officials.

ADMINISTRATOR'S REPORT:

Joint & Survivor Annuitants

Ms. Wenguer reported that it was brought to her attention during the conversion to the new software system that there are Internal Revenue Service (IRS) guidelines regarding the selection of beneficiaries. If an individual selects a spouse, there is no age limit for that beneficiary; however, there is an age limitation on non-spousal beneficiaries. Ms. Wenguer noted that there is still discussion underway regarding whether or not this limit applies to the Plan. She noted that the State has offered no opinion on whether or not the Plan must comply with this limit.

Additional research determined that if there is less than 30 years' age difference between an individual and his or her child beneficiary, there would be no change; however, there is a sliding scale based upon the age of the individual and of the beneficiary. Ms. Wenguer had identified some individuals in the Plan who might be affected by this correction.

Mr. Cypen said the Plan is currently not in compliance, as individuals were erroneously given no limitations on non-spousal beneficiaries. These instances will need to be corrected. Ms. Wenguer reiterated that the age difference is calculated on a sliding scale; however, she asserted that it would be very difficult to apply the policy to individuals who had not been aware of it when selecting their beneficiaries, and recommended that the policy simply be applied in the future.

Chair Dew said he would not be in favor of attempting to recoup any benefits already given; however, he also did not feel the Board should attempt to tell the IRS they did not plan to comply with the policy. Mr. Cypen said he was informed that the policy would have to be implemented retroactively as well as subsequently. If they allow the incorrect policy to continue, the Plan could be reclassified as a non-qualifying plan.

Mr. Naugle asked if the Plan would have had to request reimbursement for any benefits paid out under the incorrect policy. Mr. Cypen replied when there is over- or underpayment, this is determined retroactively and amortized over the life of the individual. Ms. Wenguer added that the individuals would be given the choice of changing their beneficiaries and options, as their selections had been made according to incorrect policy.

Motion made by Vice Chair Rudominer, seconded by Mr. Hole, that the Board follow federal regulation 1.401(A)(9)-6 prospectively and to correct retrospectively. In a voice vote, the motion passed unanimously.

It was decided that a letter would be drafted to the individuals affected by the corrected policy.

Plan Administrator GERS Service

Ms. Wenguer stated that when she was placed in the General Employees Retirement System (GERS) 11 years ago, she had been advised that she would be credited for previous time worked. She has met with the Assistant City Manager, who has requested to know the Board's feelings regarding the buying back of previous service by Ms. Wenguer and other members of Staff. She added that GERS documents permit this buyback.

Mr. Cypen noted that this option is included in the GERS plan documents. Ms. Wenguer explained that the GERS has requested an actuarial study.

It was confirmed by Board consensus that they want to exercise this option and would like it to be expedited. Chair Dew requested that a letter reflecting this consensus and a brief history of the issue be drafted for his signature.

Mr. Bayne left the meeting at 2:15 p.m.

Buy-Back Arrears Policy

Ms. Wenguer recalled that at the previous meeting there was discussion of buyback by an employee who had experienced breaks in his service. Ms. Cintron added that this had required the combination of two policies. Ms. Wenguer concluded that the Board must move to formally adopt the new policy.

Motion made by Vice Chair Rudominer, seconded by Mr. Cameron, that the Board adopt the combined policy regarding member contributions as stated in the document before them. In a voice vote, the motion passed unanimously.

The following Item was taken out of order on the Agenda.

FOR YOUR INFORMATION:

City Commission Letter dated March 19, 2013

CapTrust Letter dated March 19, 2013

Northern Trust Letter dated April 1, 2013

Ms. Wenguer explained that this letter had addressed recent issues with Northern Trust. She noted that Northern Trust had responded and provided the Board with options, which she had forwarded to Mr. Schmid. Mr. Cypen suggested that in the future, the Board should comply scrupulously with the firm's policy, such as sending documents via certified mail.

Ms. Wenguer observed that the timely receipt of documents by Northern Trust had been slowed because information was sent to an accounts department rather than directly to the Plan's contact at the firm. She advised that all letters are prepared by CapTrust. Mr. Schmid confirmed this, adding that he regularly requests any necessary templates from Northern Trust in order to comply with their preferred format. He concluded that in the future, there will be full compliance with Northern Trust's policies, including redundancies whenever possible in order to avoid errors.

Chair Dew requested that Ms. Wenguer and Mr. Schmid arrive at a mutual standard operating procedure on how to proceed with Northern Trust in the future, including redundancies and checks and balances. This policy would be submitted to the Board for review when complete.

Mr. Hole asked if it was necessary for the Board to notify the State of the changes in year-end statements. Ms. Wenguer said Northern Trust had reissued these statements before the year-end report was finalized.

Chair Dew stated that during his tenure on the Board, it has been consistently difficult to obtain complete and accurate payroll data from the City in a timely manner. He recently contacted a supervisor with the City to discuss this, and Ms. Wenguer is working with the City's Payroll and/or IT Department(s) to correct this ongoing issue so the Board could complete its financials at an earlier time. Ms. Wenguer noted that the new software is programmed to provide her office with these reports, which should make the process easier the following year; however, at present the City must still provide this information as well for clarity.

Mr. Hole recalled that the previous month, the Board had been made aware that the actuary was not receiving the correct data from the City. Ms. Wenguer said she had attempted to meet with the IT Director, who was unavailable. Ultimately this had led to Chair Dew's outreach to the City on behalf of the Plan. Since the previous Board meeting, the correct information has been provided to the actuary by other means. Chair Dew advised that the actuary estimates the report will be ready by May 8, 2013.

NEW BUSINESS:

Mr. Hole recalled that Board members were provided with a draft of the Employment Handbook in order to provide comments. Ms. Wenguer said she has received some comments from the members. Chair Dew said he has not yet submitted his comments on the draft Handbook.

Mr. Hole recalled that service provider insurance was scheduled to be verified during the month of April. Ms. Wenguer confirmed that Ms. Cintron confirms the coverage throughout the year.

OLD BUSINESS:

Mr. Hole requested an update on the Bear Stearns lawsuit, as well as the issue of academic incentive pay. Mr. Cypen said the Plan had only been invested in a single traunch with Bear Stearns. Ms. Wenguer agreed to provide an update on this case at the next meeting.

Regarding the academic incentive pay case for retiree Randy Trout, Ms. Wenguer recalled that while this incentive had been discontinued as part of pension pay in 1983, it was confirmed that incentive pay earned before this time was still pensionable.

Mr. Cypen stated that the legal issue is while 1983 was the date for cutoff of academic incentive pay for Firefighters, there was no cutoff date for Police Officers. However, there were no records of academic incentives earned before this time. Ms. Wenguer and Staff are researching this issue to attempt to determine the incentive pay earned by Mr. Trout prior to 1983. Mr. Cypen said he is waiting to find out why the Board made the decision to discontinue incentive payments. If there is nothing in the record to show a reason for this, Mr. Cypen concluded that the action was not legal.

Chair Dew requested that Mr. Fortunato reach out to the Training Department to determine if there was additional information in their files for individuals who retired while receiving academic incentive pay. Mr. Cypen said if the Board had discontinued incentive pay rightfully for Police Officers, Mr. Trout would be unable to receive this pay; if they had not done so rightfully, they would need to address the issue accordingly.

Chair Dew suggested that Ms. Wenguer file a public records request for Mr. Trout's personnel file. Ms. Wenguer advised that she would review the available information, including minutes and/or audio recordings.

There being no further business to come before the Board at this time, the meeting was adjourned at 2:45 p.m.

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