

**MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES
OF THE
TAMPA FIREFIGHTERS & POLICE OFFICERS PENSION BOARD
3001 North Boulevard
Tampa, FL 33603 (813) 274-8550
Thursday, August 24, 2006 1:30 p.m.**

The Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa met in the Pension Office Conference Room on Thursday, August 24, 2006 at 1:30 p.m. for a regular meeting with the following members present:

Marc Hamlin, Chairman	Sharon Fox - participated telephonically
Patrick Lynch, Vice-Chairman	Dan Lombard
John Moors, Secretary	Jimmy Meier
Mark Bogush	Cyndy Miller
	Tracy Walker

Also present were Ron Cohen – Interim General Board Counsel, Jose Fernandez – Actuary with Buck Consultants, Mark Lenker – External CPA, Dr. Cynthia Lewis-Young, Medical Director & Dr. Bruce Bohnker, Medical Director, and active and retired plan members.

Minutes

1. Approval of minutes of the following:
 - a. July 27, 2006 regular board meeting.
 - b. July 27, 2006 Rock Creek Center Committee meeting.

It was moved by Mr. Lynch, seconded by Mr. Moors and by unanimous vote to approve the above minutes as written. Mr. Bogush requested greater detail on speakers appearing before the board in future minutes.

Consent Agenda Items on the consent agenda shall be acted upon in one motion. If an item requires additional discussion, that item shall be removed from the consent agenda for discussion. [Items 2 – 11] Mr. Hamlin advised that he wished to remove item 5 from the consent agenda for discussion. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to approve the consent agenda, items 2-11, except item 5.**

2. Ratified pension benefits.
3. Noted receipt of Chapter 175 state premium tax monies in the amount of \$2,303,029.03 on 8/10/2006, an increase of \$58,999.38 over the prior year. Also noted receipt of Chapter 185 state premium tax monies in the amount of \$3,381,121.35 on 8/21/2006, an increase of \$46,024.99 over the prior year.
4. Approved payment in the amount of \$1,138.50 for legal services rendered during July 2006 in connection with Rock Creek Center by Womble, Carlyle, Sandridge & Rice.
6. Approved payment to Ronald J. Cohen, P.A. for legal services rendered during July, 2006 in the amounts of:
 - a. \$12,032.64 Retiree's litigation.
 - b. \$2,074.75 General counsel services.
7. Noted receipt of Thomson Financial Performance Measurement Report as of 6/30/2006.

8. Noted receipt of investment performance report for the month ended July 31, 2006. Market value of *investments* as of 7/31/2006 \$1,381,459,122. Investment performance fiscal year to date as of 7/31/2006 +5.7%.
9. Admitted Tampa Police Department members to pension fund effective 8/15/2006 contingent upon: 1) furnishing a list of all medical providers and authorizations to obtain such medical records; and 2) passing a complete medical examination:
 - Carden, Kevin V.
 - Cholnik, Marc C.
 - Groen, Jeremy J.
 - Holt, Henry L.
 - Morales, Brian M.
 - Schanel, Charles J
 - Segree, Donald C.
10. Admitted Tampa Fire Rescue members to pension fund effective 8/21/2006 contingent upon: 1) furnishing a list of all medical providers and authorizations to obtain such medical records; and 2) passing a complete medical examination:
 - Dominique, Seth L.
 - Ladue, Robert C.
 - Neylan, John K.
 - Parra, Mario A.
 - Roberts, Rush A.
 - Spruill, Justin L.
 - Stoker, Scott C.
 - Volpe, Lance A.
 - Williams, Nick S.
11. Noted receipt of amended P&P 104 Recording of Board Meetings as approved at 7/27/2006 board meeting.
Please remove and replace in your policy and procedure manuals.
 - a. Noted receipt of revised pages 1 and 2 of Table of Contents of P&P manual.

Actuarial Valuation Presentation by Jose Fernandez, Actuary from Buck Consultants

12. Actuarial valuation presentation by Jose Fernandez, actuary from Buck Consultants. Noted receipt of actuarial valuation for the fiscal year ended 9/30/2005.
Mr. Fernandez reviewed the 9/30/2005 actuarial valuation and highlights from the report. Mr. Fernandez noted that there was a substantial increase in the covered payroll figure due to the inclusion of other components in pensionable income, specifically the inclusion of up to 300 hours of overtime. Mr. Fernandez also noted that the makeup to the base plan from the investment losses sustained in 2001 and 2002 are now complete. Mr. Fernandez reviewed the separate components of the fund, including the base account, the PRAA both allocated and unallocated, DROP and 13th check. Mr. Fernandez responded to questions from the board. Mr. Fernandez thanked Ms. Campbell for providing excellent quality data, for researching and responding to questions regarding the data promptly during the valuation preparation phase, and for reviewing and commenting on the draft

valuation. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to approve the 9/30/2005 actuarial valuation as presented.**

a. Establish the employee contribution rate for the fiscal year 10/1/2006 – 9/30/2007. **It was moved by Mr. Lynch, seconded by Mr. Walker and by unanimous vote to establish the employee contribution rate at 2.05% for the fiscal year 10/1/2006 – 9/30/2007.**

13. 13th Check – Noted receipt of 13th check calculation and actuarial certification dated 8/16/2006 prepared by Buck Consultants. Mr. Fernandez reviewed the calculation of the 13th check and the actuarial certification thereof, noting that the calculation is based upon 3% of investment earnings on *the base plan liabilities for those eligible for the 13th check* (the present value of future benefits for those eligible). Mr. Bogush asked what the differences were in the preliminary forecasts for the 13th check and this final calculation and when the final calculation was available. Mr. Fernandez noted that previous calculations/forecasts were based upon estimated information and were intended to be very conservative until the final information was available with the completion of the full actuarial valuation. Mr. Bogush asked when the information was available. Mr. Fernandez responded that the valuation was completed and dated 8/16/2006. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to approve the June 2006 13th check calculation and actuarial certification at \$6,266 for eligible retirees and \$3,133 for eligible surviving spouses, which remains on hold until the retiree litigation is concluded.**

Medical Disabilities

14. Initial hearing for LOD disability applicant Johnny Campbell, TPD. Noted receipt of Medical Director's summary, Medical Board reports, disability application, qualifying letter, notice of injury(ies), summary review outline, pre-employment physical, job description, and disability application timeline. Mr. Campbell was sworn in and responded to questions from the board. Mr. Lynch disclosed that Mr. Campbell is a friend of his and that they had discussed the disability process but not the merits of the case. The Medical Director responded to medical questions from the board. **It was moved by Mr. Meier, seconded by Mr. Lombard and by unanimous vote that the board finds that Mr. Campbell is permanently incapacitated physically from the regular and continuous duties of a police officer. It was moved by Mr. Meier, seconded by Mr. Lombard that the board finds that the disability was incurred in the line of duty. It was moved by Mr. Meier, seconded by Mr. Moors and by unanimous vote that Mr. Campbell be granted a line of duty disability for shoulder injuries effective close of business today, August 24, 2006.**
15. Initial hearing for LOD disability applicant Beverly Conrad, TFR. Noted receipt of Medical Director's summary, Medical Board reports, disability application, qualifying letter, notice of injury(ies), summary review outline, pre-employment physical, job description, and disability application timeline. Ms. Conrad was sworn in and responded to questions from the board. **It was moved by Mr. Lynch, seconded by Mr. Walker and by unanimous vote that the board finds that Ms. Conrad is permanently incapacitated physically from the regular and continuous duties of a firefighter. It was moved by Mr. Lynch, seconded by Mr. Moors that the board finds that the disability was incurred in the line of duty. Upon voting, the motion carried by a vote of 8 – 1 with Mr. Bogush, Ms. Fox, Mr. Lombard, Mr. Lynch, Mr. Meier, Ms. Miller, Mr. Moors, and Mr. Walker in favor of the motion and Mr. Hamlin opposed to the motion. It was moved by Mr. Lynch, seconded by Mr. Lombard that Ms. Conrad be granted a line of**

duty disability for shoulder injuries effective close of business today, August 24, 2006. Upon voting, motion carried by a vote of 8 – 1 with Mr. Bogush, Ms. Fox, Mr. Lombard, Mr. Lynch, Mr. Meier, Ms. Miller, Mr. Moors, and Mr. Walker in favor of the motion and Mr. Hamlin opposed to the motion.

[a 5 minute recess was taken 2:20 – 2:25 pm]

16. Initial hearing for LOD disability applicant Nora Dillaha, TPD. Noted receipt of Medical Director's summary, Medical Board reports, disability application, qualifying letter, notice of injury(ies), summary review outline, pre-employment physical, job description, and disability application timeline. Ms. Dillaha was sworn in and responded to questions from the board. The Medical Director responded to questions from the board. **It was moved by Mr. Lombard, seconded by Mr. Walker that the board finds that Ms. Dillaha is permanently incapacitated physically from the regular and continuous duties of a police officer. Upon voting, the motion carried by a vote of 7 – 2 with Mr. Bogush, Mr. Hamlin, Mr. Lombard, Mr. Meier, Ms. Miller, Mr. Moors, and Mr. Walker in favor of the motion Ms. Fox and Mr. Lynch opposed to the motion. It was moved by Mr. Lombard, seconded by Mr. Walker that the board finds that the disability was incurred in the line of duty. Upon voting, the motion carried by a vote of 7 – 2 with Mr. Bogush, Mr. Hamlin, Mr. Lombard, Mr. Meier, Ms. Miller, Mr. Moors, and Mr. Walker in favor of the motion Ms. Fox and Mr. Lynch opposed to the motion. It was moved by Mr. Lombard, seconded by Mr. Walker that Ms. Dillaha be granted a line of duty disability for finger injuries effective close of business today, August 24, 2006. Upon voting, motion carried by a vote of 7 – 2, with Mr. Bogush, Mr. Hamlin, Mr. Lombard, Mr. Meier, Ms. Miller, Mr. Moors, and Mr. Walker in favor of the motion Ms. Fox and Mr. Lynch opposed to the motion.**
17. Noted receipt of letter dated 8/14/2006 from Medical Director Dr. Cynthia Lewis-Younger regarding concerns expressed at 7/27/2006 board meeting regarding blood borne pathogen related disability applications. Dr. Lewis-Younger responded to concerns expressed in the last board meeting regarding blood borne pathogen related disability applications and medical boards to address those disabilities. She recommended that the board first look to the disabling condition and consider a medical board in that area of specialty as opposed to a medical board of infectious disease specialists. For example, if a blood borne pathogen causes an underlying disease, but the disabling condition resulting from the disease is different (i.e. hepatitis C but the disabling condition is psychological), that the board consider convening a medical board in the area of the resulting disabling condition. She also recommended that the board consider including a draft affidavit for those conditions that may qualify for the presumption under Section 112.181, Florida Statutes to eliminate potential delays in obtaining an affidavit. Ms. Miller expressed concern over providing legal advice in the form of a draft affidavit and instead recommended that the presumption language from the statutes be contained in the disability application packages instead. Dr. Lewis-Younger reiterated her recommendation that the board look first to the alleged impairment/disabling condition rather than focusing on the infectious agent. An educational session for the board to be conducted by the Medical Directors was recommended. **It was moved by Mr. Lynch, seconded by Ms. Fox that this issue be referred to Committee #1 composed of Mr. Bogush, Mr. Meier - Chair, and Mr. Moors, and to schedule a short educational session with the Medical Directors for the full board at noon before the October 26, 2006 board meeting.** During discussion, Ms. Fox, Mr. Lynch and Ms. Miller thanked Dr. Lewis-Younger for her assistance and recommendations in this matter. Mr. Bogush advised Dr.

Lewis-Younger that he believes that the medical director and pension office staff do an excellent job on disabilities. After call for the question, **motion carried by unanimous vote.**

18. Disability re-evaluation project.

- a. Noted receipt of status report by individual as of 8/17/2006. **It was moved by Ms. Miller, seconded by Mr. Moors and by unanimous vote to receive and file item 18a.**
- b. Noted receipt of letter received 8/14/2006 from random sample disability pensioner T. R. Higgins. Due to refusal to execute necessary authorizations to release, medical records collection is at a standstill. Noted receipt of standard authorization to release, customized authorization to release prepared by T. R. Higgins, copy of first and second requests to execute Humana and Blue Cross Blue Shield releases for EOBs, and blank standard authorizations to release required by each of those two health insurance companies.
- c. Noted receipt of Board P&P #408 – Bi-ennial Re-evaluation of Disability Retirees.
- d. Noted receipt of Board P&P #409 – Re-evaluation of Disability Retirees.

There was discussion regarding the process by which disability re-evaluations are conducted, past practice, and precedent. There were questions regarding due process, which Mr. Cohen was asked to research and report back to the board, specifically whether the existing policy stating that pension benefits may be withheld until compliance is achieved is appropriate without a due process hearing in advance. Alternatives to attempt to achieve compliance from T. R. Higgins were discussed, including explaining the process in detail and reassuring T. R. Higgins. **It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to direct Ms. Campbell to draft a letter for Mr. Cohen's review to be sent certified mail, return receipt requested to T. R. Higgins explaining and outlining the process, including the board policies and procedures, and requesting that the appropriate release forms be executed within ten business days or the board will be forced to proceed.**

Old Business

19. Retiree's declaratory action. No activity to report since last board meeting.
20. Motion to Tax Costs update by R. Cohen, Litigation Counsel. Mr. Cohen reported that there had been a hearing scheduled on the motion for 8/21/2006, but that it had been postponed as some receipts were not properly attached to the motion and filed with the court or opposing counsel. Mr. Cohen also advised that Carrington & Carrington had filed a motion to delay any hearing on this motion until after the appeal has been concluded. Mr. Cohen advised that he would keep the board updated on the status of this agenda item.

[a 5 minute recess was taken 3:10 – 3:15 pm]

21. Former board counsel - withdrawal / substitution of counsel in litigation.

- a. Ratification by board of Vice Chairman/Acting Chairman Patrick Lynch's letter of July 12, 2006 that J. B. Loper's contract expired 6/30/2006, to withdraw from representation in the litigation, and to transfer all F&P pension files to R. Cohen. **It was moved by Mr. Lynch, seconded by Mr. Moors and by unanimous vote to ratify the Acting Chairman's letter of July 12, 2006 to J. B. Loper.**
- b. Motion by the Board to instruct Mr. Loper that his contract expired on June 30, 2006, that the Board wants Mr. Loper to take no further legal action on behalf of the Board, and that the

- Board is of the unequivocal understanding that J. B. Loper no longer represents the Board of Trustees in any matter at this time. **It was moved by Mr. Lynch, seconded by Mr. Meier to have the Chairman sign a letter prepared by Mr. Cohen instructing Mr. Loper that his contract expired on June 30, 2006, that the Board wants Mr. Loper to take no further legal action on behalf of the Board, and that the Board is of the unequivocal understanding that J. B. Loper no longer represents the Board of Trustees in any matter at this time.** During discussion, Mr. Cohen was asked what the reasonable and customary practice was in a situation like this, and Mr. Cohen advised that Mr. Loper may want to keep some copies of files. There was discussion regarding directing Mr. Loper to provide copies of all files to Mr. Cohen. After call for the question, **motion carried by unanimous vote.**
- c. Noted receipt of email dated 7/24/2006 from J. B. Loper to R. Cohen, P.A. disputing withdrawal /substitution of counsel. **It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to receive and file item 21c.**
 - d. Noted receipt of letter dated 8/3/2006 from R. Cohen to J. B. Loper regarding withdrawal / substitution of counsel and forms to execute. **It was moved by Mr. Lynch, seconded by Mr. Lombard and by unanimous vote to receive and file item 21d.**
 - e. Noted that as of 8/17/2006, J. B. Loper has not properly and officially withdrawn from representation.
 - f. Directed interim board counsel and litigation counsel R. Cohen to write letter to former board counsel affirming Board direction to appropriately and professionally withdraw from representation immediately in the method prescribed by interim board counsel and litigation counsel R. Cohen, and to govern himself appropriately in the transition of counsel according to the canons of professional ethics within the legal profession.

[agenda item 5 removed from consent agenda for further discussion after agenda item 21]

5. Approve payment to James B. Loper for legal services rendered during July 2006 in the amounts of:
 - a. \$1.80 General counsel services.
 - b. \$2,888.94 Retiree's litigation. [contract expired 6/30/2006, not renewed]There was discussion regarding reasonable and customary charges related to transition in counsel and whether or not these were invoices reasonable. In referring to the 7/12/2006 letter to Mr. Loper by Acting Chairman Lynch, it was noted that some transition costs were expected to be incurred and billed. **It was moved by Mr. Meier, seconded by Ms. Fox to approve payment for the invoices in items 5a and 5b.** During discussion, Mr. Lynch noted that his understanding is that no further charges from Mr. Loper were anticipated or authorized, particularly once the files had been copied by an external copy service and transferred to Mr. Cohen, so he anticipates no further bills from Mr. Loper. **Upon voting, motion carried by unanimous vote.**

[Ms. Miller stepped out of the room at 3:30 and returned at 3:35 pm and was not present for the vote on agenda item 5a and 5b]

22. Rock Creek Center Committee report.
 - a. Noted receipt of 1/27/2006 appraisal by Taylor, Pope & Herring, Inc. in the appraised amount of \$770,000 for the remaining 23 acres for board approval. **It was moved by Mr. Lynch, seconded by Mr. Moors and by unanimous vote to approve the 1/27/2006 appraisal by Taylor, Pope & Herring.**

- b. Reminder of Rock Creek Center Committee meeting Thursday, 9/28/2006 at 12:30 pm before regular board meeting at 1:00 pm, if sale of remaining 23 acres has not closed by that date. Mr. Moors noted that he will be out of town on that date but recommended that the committee meet without him. A substitute was discussed and rejected, and the RCC Committee agreed to meet on that date and time without Mr. Moors.

23. Committee #2 report – RFP for legal services.

- a. RFP published on website 8/18/2006.
- b. Notices faxed 8/18/2006 that RFP is available on website 8/18/2006.
- c. Proposals due 9/8/2006 5:00 p.m. EST.
- d. Finalist interviews 9/28/2006 2:00 – 5:00 pm after regular board meeting at 1:00 pm.

It was noted that Mr. Cohen voluntarily stepped out of the room during this agenda item. Ms. Campbell noted that the RFP had been published on the F&P pension website and commended F&P staff member Elizabeth Bass for her efforts on the website, including researching, purchasing, testing and operating the scanner for this RFP as well as future projects. Ms. Campbell advised that the RFP notice will run for three days each in the legal section of the *St. Petersburg Times* and *Tampa Tribune*. The RFP Committee (Committee #2) will meet 9/14/2006 at 9:00 a.m. to rank the proposals that will have been scored individually by the committee members. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file item 23.**

New Business

24. Request to address the board by Trustee T. Walker regarding consideration of making available a fixed rate of return option for the DROP—once per year election opportunity in January of fixed rate vs. fund performance rate. Mr. Walker requested that the board consider approaching the unions to request that they collectively bargain an enhancement to the current DROP program to provide an option to select a fixed rate of return once per year on the DROP funds to protect those conservative members who fear loss of principal in a market downturn. Mr. Walker also requested that consideration be given to more than once per year distributions from DROP. Mr. Lenker recommended that if such an option for a fixed rate is adopted, that the selection be made by October 1 of each year as opposed to January for DROP statement and calculation purposes. Ms. Miller and Ms. Fox advised that this was a matter of collective bargaining between the City and the unions and noted that the board is not involved in collective bargaining matters, nor do they believe that it appropriate to do so. **It was moved by Mr. Walker, seconded by Mr. Lombard to refer this issue to Committee #2.** Ms. Miller wished to state on the record that the pension board's role is the administration of the pension fund, not to assist in negotiations. Ms. Fox also stated on the record that it is not under the board's authority as administrators of the pension fund to become involved in collecting bargaining. **Upon voting, motion carried by a vote of 5 – 4 with Mr. Bogush, Mr. Lombard, Mr. Meier, Mr. Moors and Mr. Walker in favor of the motion and Ms. Fox, Mr. Hamlin, Mr. Lynch and Ms. Miller opposed to the motion.** Timing of scheduling a committee meeting was discussed briefly, and it was agreed by consensus that it be scheduled after the fiscal year ends 9/30 due to the committee's current priority, the legal services RFP.
25. Approved fee for external audit by KPMG of F&P Pension fund in the amount of \$17,500. Ms. Miller asked what the fees have been the previous several years, and Ms. Campbell responded that they had been \$7,000, \$7,250 and \$8,000, noting that the City of Tampa also saw a dramatic increase in fees which had been successfully negotiated down somewhat. **It was moved by Mr. Lynch,**

seconded by Mr. Moors and by unanimous vote to approve the fee for the external audit by KPMG of \$17,500 with the proviso that Ms. Campbell tries to negotiate the fee downward.

[Ms. Miller stepped out of the room at 4:15 pm and returned at 4:45 pm]

26. Request to address the board by retiree Thomas Beury regarding a DROP issue. Mr. Beury left the meeting prior to reaching this agenda item. Mr. Lynch disclosed that he had extensive discussions with Mr. Beury on this topic.

[agenda items 27 and 28 taken out of order by request]

28. Request to address the board by PBA President K. Durkin regarding board authorization to utilize Buck Consultants for actuarial cost studies for potential benefit improvements. Mr. Durkin distributed a letter dated 8/24/2006 to the board for their consideration and requested that the Board pay for the actuarial studies as outlined in the letter. There was discussion regarding past practice and precedent wherein the board reimbursed the unions for actuarial studies once a benefit enhancement had been enacted through special act of the legislature. Mr. Durkin requested that the board fund all of these studies. Mr. Durkin and Mr. Parker advised that active members are not willing to pay for actuarial studies to improve the pension benefits for retirees and requested that the board pay for those studies. **It was moved by Mr. Lynch, seconded by Mr. Walker that the pension board authorize the unions to utilize Buck Consultants for actuarial cost studies for potential benefit improvements.** A friendly amendment was recommended “at no cost to the pension board.” Mr. Lynch withdrew his motion. There was further discussion regarding the board’s role as administrators of the pension fund, not as participants in collective bargaining. Mr. Lynch withdrew his motion. There was further discussion regarding having the board pay for only the two studies that involve retirees. **It was moved by Mr. Lynch, seconded by Mr. Meier that the board authorize the unions to use Buck Consultants, the fund’s actuary for studies, and that the board pay for numbers 2 and 4 as outlined in the 8/24/2006 letter. Upon voting, motion failed by a vote of 2 – 7 with Mr. Lynch and Mr. Meier in favor of the motion, and Mr. Bogush, Ms. Fox, Mr. Hamlin, Mr. Lombard, Ms. Miller, Mr. Moors, and Mr. Walker opposed to the motion.** Ms. Campbell requested that the board take a step back and consider only what was listed on the agenda today—board authorization to utilize Buck Consultants for actuarial cost studies for potential benefit improvements—and to take up the matter of payment as the next step. Mr. Parker echoed that sentiment and requested that the board simply authorize the unions to use Buck and that the unions will bring back cost proposals to the board the following month. **It was moved by Mr. Walker, seconded by Mr. Meier and by unanimous vote to authorize the unions to utilize Buck Consultants for actuarial cost studies for potential benefit improvements.**

27. Request to address the board by retiree Larry Brown regarding a DROP issue. Mr. Brown read a statement to the board written by DROP retiree T. Beury on behalf of approximately 90 fire and police retirees that were excluded from the multiplier increase from 2.5% to 3.15%, requesting the board’s assistance in remedying the approximately 160 fire and police retirees who were not included in the multiplier increase by paying for an actuarial study to determine the cost to bring those approximately 160 retirees up to 3.15%. Mr. Brown handed the Chairman a letter from attorney Steve Wenzel retained by the approximately 90 DROP members withdrawing the previous letter sent to the board’s previous attorney James Loper advising of potential legal action by this group. In

closing, Mr. Brown asked that the board do what is right. **It was moved by Mr. Walker, seconded by Mr. Meier and by unanimous vote to receive and file item 27.**

29. Request to address the board by retiree K. O. Maskrey regarding 13th check. Mr. Meier disclosed that he had a telephone conversation about two weeks ago with Mr. Maskrey on this topic. Mr. Maskrey read a statement to the board requesting that the board reconsider its decision to withhold the 13th check and provided his history of involvement with the police department and pension board over several decades. Mr. Maskrey requested that the board quit listening to the lawyers, listen to your hearts, to listen and do what is right, to turn loose of the 13th check, to do what is right and possibly avoid more litigation. **It was moved by Mr. Lynch, seconded by Mr. Walker and by unanimous vote to receive and file item 29.**
30. Request to address the board by trustee M. Bogush regarding Plan Administrator. Mr. Hamlin disclosed that Mr. Bogush had called him by phone to discuss this issue, and that he informed Mr. Bogush that he felt it would be a Sunshine violation for two trustees to hold this discussion outside of a noticed, public, Sunshine meeting. Mr. Bogush asked Ms. Campbell to explain how the agenda is put together because he feels that his agenda item was deliberately placed at the end of the meeting. Ms. Campbell advised that the agenda begins with minutes, consent agenda, presentations by professionals and disabilities so that the professionals billing hourly can be released from the meeting once their agenda items have been concluded, old business and new business--standard operating procedure.

Mr. Bogush related that his wife Kimberly has been working at the pension office for approximately three years and that he has been on the board for approximately nine months, and that he believes that the working relationship between Kimberly and Jennifer soured approximately four months ago when he contacted Ms. Campbell about Kimberly's late performance evaluation. Mr. Bogush related his recollection of that telephone conversation, which was substantially different from Ms. Campbell's written recount of that telephone conversation, and advised that he feels that Ms. Campbell performs deception, embellishes, and wields power over employees inappropriately. Mr. Bogush explained that pension office employees do not have the same protection as other city employees under either a union or civil service. Mr. Hamlin distributed board P&P 607 – Pension Staff Discipline and Appeal Process and pointed out that board P&P 607 governs in this matter.

Mr. Bogush explained that he is quite frustrated because he is here today more as a husband than a trustee. Mr. Bogush related that in his telephone call to Ms. Campbell regarding the late performance evaluation, that he refused to accept any excuses by Ms. Campbell, and that he later wrote Ms. Campbell an email on 5/2/2006 (which he distributed to the board) that he was concerned that a retro payment would result in being taxed at a higher tax bracket which would make him upset if it has "cost them money." Mr. Bogush related that he had reviewed his wife's personnel file at the pension office and that he felt that there were improper and illegal items in the file, that prior to April 2006, when Kimberly had made a mistake that, as her husband, he had told her that she should get things right, and that she responded to Ms. Campbell via email acknowledging her mistakes. Mr. Bogush advised that after his phone call to Ms. Campbell in April 2006, he believes that things started to change and that he believes Kimberly was suffering because of his actions. Mr. Bogush advised that he has second guessed himself many times over this issue, wondering if he has overstepped his boundaries. Mr. Bogush related that Ms. Campbell offered three alternatives to address the retro pay matter, that he couldn't remember one of the alternatives, but that he didn't think the other two

alternatives were appropriate. Mr. Bogush related that he just wanted the evaluation done, that it wasn't about money. Mr. Bogush also noted that Ms. Campbell doesn't seem to be in the office very much. Mr. Bogush related a luncheon held at the Tampa Firefighter's Museum that he attended after sitting in on an orientation session for TFR new hires to emphasize the importance of complete disclosures on medical records. Mr. Bogush related that Ms. Campbell emceed the luncheon, which he attended with his wife Kimberly, and that he and Kimberly were embarrassed by the introduction by Ms. Campbell. Mr. Bogush also related a story told by Ms. Campbell at the luncheon which he felt was inappropriate and has since discussed with the firefighter who was the unnamed subject of part of the story. Mr. Bogush related that after the luncheon when Kimberly had returned to the pension office that Ms. Campbell spoke to her about a perceived disrespectful reaction by Kimberly while Ms. Campbell was speaking. Mr. Bogush related that Ms. Campbell asked Kimberly if she wanted to work in the pension office, which he perceived as deceitful and threatening and he believes has created a hostile work environment, which he believes places the board at legal risk. Mr. Bogush acknowledged that there are always two sides to every story, but that he believes that Kimberly does not embellish, but that Ms. Campbell does embellish, that she is ruthless and out of line. Mr. Bogush stated that "I'm a pissed off husband and trustee." Mr. Bogush related that he and Kimberly began keeping records because he felt that Kimberly was being harassed and threatened. Mr. Bogush also advised that Ms. Campbell is no longer willing to meet with him or talk to him one-on-one without a witness. Mr. Bogush related that Ms. Campbell did apologize to Kimberly for embarrassing her with the introduction at the fire museum and that she had asked for an index card from Kimberly to use for future introductions. Mr. Bogush advised that he had contacted numerous attendees of the luncheon, with varying reactions and results, including talking to the unnamed firefighter who was the subject of part of one of the stories told by Ms. Campbell.

Mr. Bogush advised that he thinks that Ms. Campbell feels that Kimberly provides a direct pipeline of sensitive information to him, which shouldn't be a problem because he is a trustee and a spouse. Mr. Bogush advised that he believes that he and Kimberly represent a threat to Ms. Campbell because they hinder her ability to wield power over the pension office employees. Mr. Bogush then distributed an email that he sent Ms. Campbell on June 8, 2006 when he found out that she had been trying to reach him while he was on duty, acknowledging that he received the message at 10 p.m. at the station as well as the next day when Kimberly came home from work and asked if Jennifer "ever got a hold of you?" Mr. Bogush advised that he was upset that he got information that one of the parties that the board had specifically directed to be named in the Motion to Tax Costs had been omitted. Mr. Bogush advised that within 60 seconds of his email to Ms. Campbell going through, that she called him on his cell phone to ask what was up with the nasty email? Mr. Bogush advised that he wasn't as polite as he was the last time. Mr. Bogush acknowledged that he could have called her back when he got either or both messages, but that he did not. Mr. Bogush advised that he demanded an apology from Ms. Campbell, that he refused to accept any excuses, and that he was very forward but did not "scream." Mr. Bogush related that Ms. Campbell sent him a response email the next day, and then he received an email from retiree J. Ballinger shortly after that. Mr. Bogush then related an incident in the pension office where Kimberly was reviewing a disability application package with a firefighter and Ms. Campbell interrupted them after more than an hour to put Kimberly back on the phones out front because board packages were being prepared. Mr. Bogush related that the firefighter was afraid that he had gotten Kimberly in trouble, and that he has spoken with this firefighter about it.

[Ms. Fox disconnected her telephone participation at 5:20 pm]

Mr. Bogush related that Ms. Campbell does not typically assign firefighter new hires or disabilities to Kimberly, and that this disability applicant was reassigned to another staff member with no explanation. Mr. Bogush related another instance when an employee of the GE pension office spent a day training at the F&P pension office and that he heard that Ms. Campbell was considering transferring Kimberly to the GE pension office, which he didn't believe that she had the authority to do. Mr. Bogush related that he believes the relationship between Kimberly and Ms. Campbell started deteriorating when he attempted to intervene on Kimberly's behalf in April 2006 about her late performance evaluation. Mr. Bogush related that he made an appointment with Ms. Campbell on Wednesday, August 16, 2006 at 2:30 pm and that she was unwilling to talk to him one-on-one and Ms. Campbell had a witness present for the meeting. Mr. Bogush advised that he asked Ms. Campbell for the file she was keeping on him, and that she advised him that there is no such file. He advised that he also asked to see Kimberly's personnel file, and that Ms. Campbell told him that she would schedule a time in the near future for him to review the file because she was leaving the office to go down to the courthouse for Mr. Cohen and Mr. Gonyea. Mr. Bogush did state that when he scheduled the appointment with Ms. Campbell, Ms. Campbell did ask if she needed to bring anything to the appointment, and he said no, but he was not pleased. Mr. Bogush again related that he thinks that some of the items in Kimberly's personnel file are borderline illegal and that Ms. Campbell has placed the pension board in position for possible legal action.

Mr. Hamlin responded that Ms. Campbell is responsible to the Chairman, that when she is working out of the office or taking time off, that it is cleared with him as the Chairman, and that he is responsible for authorizing time off. Mr. Hamlin advised that he talks to Ms. Campbell quite a bit about pension office operations, that no other employees have complained to him about Ms. Campbell, that her performance evaluations of pension office employees are very thorough, that he had orally admonished her for Ms. Bogush's late performance evaluation, and that he has found Ms. Campbell to take constructive criticism well. Mr. Hamlin pointed out the inherent conflict of interest for Mr. Bogush acting as both a spouse and trustee. Mr. Hamlin advised that he felt that much of today's presentation by Mr. Bogush was "nit-picky" and "petty" and asked what Mr. Bogush expects the board to do? Mr. Moors related that as administrator of the Tampa Convention Center, when he is faced with a personnel matter such as this, that he refers it to Employee Relations for assistance. Mr. Hamlin pointed out that P&P 607 governs in this matter and that the process outlined in the policy was not followed by either by Kimberly or Mr. Bogush.

Ms. Miller advised that she was concerned about the conflict of interest with Mr. Bogush, a trustee, being married to Ms. Bogush, who worked in the pension office, but that if he was elected by the membership, and the membership is aware of the marriage, then she was satisfied. Ms. Campbell pointed out that Mr. Bogush was not elected to the board, that no one else signed up to run, and that he became a trustee by default. Ms. Campbell advised that on the candidate deadline afternoon when Mr. Bogush advised that he may sign up to run before close of business, that she contacted Mr. Loper to pose the conflict of interest question, and that while Mr. Loper acknowledged that there could be a conflict of interest, that he wouldn't take a definitive position, citing a similar situation at the Tampa United Methodist board that he serves on where a father is on the board and a son works in the office. Ms. Campbell advised that Mr. Loper stated that it would be a conflict of interest if the spouse involved himself in personnel matters, but that we should only deal with it if the issue arose in the future.

Mr. Lynch advised that he thinks that this whole presentation was inappropriate, that it doesn't pass the "smell test," that no pension office employees have ever complained to the Chair or Vice Chair, and that he would certainly not involve himself in his spouse's employment such as going to the school board, especially if he served on that board.

Mr. Walker recommended that the board not interfere in pension office management. Mr. Hamlin advised that the board has delegated the authority to Ms. Campbell to run the pension office and that she should be allowed to do so, noting that he has never had any complaints as Chairman or trustee from any pension office employee. Mr. Walker asked Mr. Cohen if it was appropriate for Ms. Campbell to discuss matters with trustees as Plan Administrator, and Mr. Cohen responded that yes it is absolutely appropriate, and in fact necessary. Ms. Campbell asked Mr. Cohen if there was anything illegal in Ms. Bogush's personnel file that he has reviewed, and Mr. Cohen responded that no, there was nothing illegal in anything that he has reviewed.

Mr. Cohen advised that the Chairman requested that he review the conflict of interest portion of the statutes as well as the nepotism statutes for the board. Mr. Cohen reviewed the State Code of Ethics as contained in Chapter 112, Part III of the Florida Statutes which is to ensure that public officers conduct themselves independently and impartially and don't use their office for private gain.

Mr. Cohen reviewed the nepotism statute governing the restrictions on employment of relatives, which was formerly administered by the Attorney General with guidance communicated in part through Attorney General Opinions (AGO), but that it is now under the Commission on Ethics, which has also followed previous AGOs. Mr. Cohen noted that Ms. Bogush was employed in the pension office prior to Mr. Bogush becoming a trustee; therefore, her employment is not a violation of the nepotism statute. However, Mr. Cohen quoted the following language: "A public official may not appoint, employ, promote, advance or advocate for appointment, employment, promotion or advancement" of a relative, noting that those four actions (appoint, employ, promote, advance) don't necessarily address the supervision of an employee/relative. Mr. Cohen reviewed some special issues involved in the supervision of an employee who is a family member. Mr. Cohen noted that advancement or promotion can mean an increase in importance or the terms or conditions of a relative's employment.

Mr. Cohen then reviewed section 112.313(6) Misuse of Public Position. "No public officer or employee of an agency shall corruptly use or attempt to use official position ... to secure a special privilege, benefit or exemption for himself or others." Mr. Cohen advised that the Commission on Ethics has held that in light of this prohibition, it is best to avoid even the appearance of favoritism towards a relative.

Mr. Cohen defined "corruptly" as used in the statute as "done with the wrongful intent and for the purpose of obtaining or compensating or receiving compensation for any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties."

Mr. Cohen then reviewed the laws on voting, making motions or speaking on issues when a trustee has a conflict of interest. Mr. Cohen stated that section 112.3143 Voting Conflicts makes it clear that "No local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss which he or she knows would inure to the special private gain or

loss of any principal by whom he or she is retained or the parent organization of a subsidiary or a corporate principal or which he or she knows would inure to the special private gain or loss of a relative or a business associate of the public officer.” Mr. Cohen stated that under this statute, the term “relative” does include a wife. Further, “such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the manner from which he or she is abstaining from voting, and within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in memorandum form filed with the person responsible for recording the minutes of the meeting who shall incorporate the memorandum in the minutes.” Mr. Cohen advised that he believes that this applies to this board.

Mr. Cohen noted that there is another provision in the statutes that states “no appointed public officer shall participate in any manner which would inure to the officer’s special private gain or loss which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or the parent organization or subsidiary of a corporation of a corporate principal by which he or she is retained or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer without first disclosing the nature of his or her interest in the matter.” It appears that Mr. Bogush is an “appointed public officer” under the statute, because he has not been elected by the public at large.

Mr. Cohen stated that the term “participate” means “any attempt to influence the decision by oral or written communication, whether made by the officer or at the offer’s direction.”

Mr. Cohen advised that if an appointed public official is to “participate” in a matter which would inure to his special private gain or the private gain of a relative, the appointed official must make a disclosure in one of the two following fashions: 1) by written memorandum filed in advance of the meeting with the person responsible for recording the minutes; or 2) in the event that the disclosure was not made in advance, then it should be disclosed orally at the meeting when it becomes known that the conflict exists and by filing a written memorandum disclosing the nature of the conflict within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting. Mr. Cohen advised that in the case of an appointed public official, participation in a decision, even with the disclosure, might be considered to be a misuse of public office. Mr. Cohen responded briefly to questions. Mr. Hamlin recommended that this agenda item be concluded.

Ms. Campbell advised that she could rebut these allegations point by point but would not waste the board’s time to do so. Ms. Campbell asked to address only several key points, first noting that the wording that Mr. Bogush related for the introduction at the fire museum luncheon was not accurate, and apologized again to both Mr. and Mrs. Bogush for any embarrassment caused in a fumbling introduction. Ms. Campbell related that she asked Kimberly if she was happy here at the pension office that afternoon, because if she was not, why not, so we could find a way to work on it. Second, Ms. Campbell advised that she offered three alternatives to both Mr. and Ms. Bogush to address their concern over tax withholding on the retro pay for the late evaluation, setting all three alternatives forth, noting that it seemed that finding a solution did not seem to be what Mr. Bogush was seeking, but rather an issue to complain about in perpetuity. Third, Ms. Campbell pointed out that on the Motion to Tax Costs, when it was discovered that Mr. Keene had been omitted, the motion had already been filed with the court just before the deadline, so it was too late to do anything about it—and if it was so important to Mr. Bogush, why not make himself available for telephonic participation at the meeting as other trustees have done when out of town, and as was offered? Further, Ms.

Campbell recommended that perhaps Mr. Bogush's anger over a certain party being omitted despite clear board direction, should be directed at the person who prepared and submitted the Motion to Tax Costs to the court, not the messenger/plan administrator. Ms. Campbell advised that taken in totality, Mr. Bogush's phone calls, emails, and in person contacts are perceived as threatening--simply look at some of the language used in the emails written by and handed out by Mr. Bogush today. Finally, Ms. Campbell noted that the decline in Kimberly's performance and attitude began in August 2005, not in April 2006, which is well documented.

Mr. Lombard advised that this entire presentation has upset him tremendously, that he is quite late for personal time with his son, but he has stayed well past 5:00 pm because he felt this agenda item was so important. Mr. Lombard advised that he likes all three people involved: Mr. Bogush, Ms. Bogush, and Ms. Campbell, and requested that they consider going to EAP to work through some of these issues. Mr. Lombard advised that this "petty bickering" reminds him of the very unpleasant divorce proceedings that he has been going through and that it is making him physically ill to hear it. Mr. Hamlin advised that he finds this entire presentation to be embarrassing and that he is embarrassed to be on this board.

Mr. Hamlin recommended that Ms. Bogush avail herself of the process set forth in board P&P 607. Mr. Hamlin offered to talk to the entire pension office staff to research this matter, and to review P&P 607 with each staff member and to obtain their signature so that there can be no question that they are aware of P&P 607 and the process.

31. Noted receipt of listing of upcoming conferences. Disclosure of planned attendance, if any. Mr. Hamlin advised that he may conduct an on-site visit of the Bowen, Hanes & Co. operations in late September. Mr. Meier and Ms. Campbell disclosed that they plan to attend the October FPPTA conference. Ms. Miller advised that she would like to attend an Opal Financial conference in January and that she would email the details to Ms. Bogush for inclusion on the next upcoming conference list. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file item 31.**

32. Plan Administration.

a. 2006 schedule

September 28, 2006	12:30 p.m. Rock Creek Center Committee meeting
September 28, 2006	<u>1:00 p.m.</u> Regular Board Meeting followed by
September 28, 2006	2:00 – 5:00 p.m. (approximately) Legal Services RFP finalist interviews
October 26, 2006	12:00 noon Medical Director educational session for full board
October 26, 2006	1:30 p.m.
November 16, 2006	1:30 p.m. *early due to holidays
December 14, 2006	1:30 p.m. *early due to holidays

Mr. Moors reminded the board that he would be absent for both the September and October board meetings.

- b. Noted receipt of graphic display of disability applications currently in process.
- c. Pre-retirement workshops. Thursday 9/14/2006 at 2:00 pm and Friday 9/15/2006 at 10:00 am at the Tampa Convention Center, rooms to be announced. Ms. Campbell noted that the target audience is composed of more than 300 participants with greater than or equal to 19 years of service.
- d. Trustee elections

Noted receipt of Fire Trustee election notice. Elections tentatively scheduled for October 4, 5, 6, 2006.

Noted receipt of Police Trustee election notice. Elections tentatively scheduled for October 17 - 18, 2006.

It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file item 32.

The meeting was adjourned at 6:20 p.m.

September 28, 2006 board meeting: It was moved by Mr. Lynch, seconded by Ms. Fox and by unanimous vote to approve the minutes of the August 24, 2006 board meeting as written with the change as discussed to the first motion on page 8 #28.