

**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, May 22, 2008 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, May 22, 2008 at 1:30 p.m. for a regular meeting with the following members present:

Patrick Lynch, Chairman  
Mark Bogush  
Marc Hamlin

Mark McRae  
Jimmy Meier  
Cynthia Miller

Also present were Mr. Ron Cohen, Board Counsel, Mr. Mark Lenker, CPA, Dr. Bruce Bohnker, Medical Director, and active and retired plan members.

Minutes

1. Approval of the minutes of April 24, 2008 board meeting. Ms. Campbell noted several minor corrections. **It was moved by Ms. Miller, seconded by Mr. McRae and by unanimous vote to approve the minutes of the April 24, 2008 board meeting as amended.**

**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 – 5] **It was moved by Ms. Miller, seconded by Mr. Bogush and by unanimous vote to approve the consent agenda items 2 – 5.**

2. Noted receipt of investment performance report and investment summary for the month ended April 30, 2008 from Bowen, Hanes & Co. Market value of *investments* as of 4/30/2008 was \$1,625,338,584.87. Investment return as of 4/30/2008 has been -1.9% so far this fiscal year to date 10/1/2007 – 4/30/2008.
3. Approved payment to Board Counsel Cohen for legal services rendered during April 2008 in the amounts of:
  - \$27,500 Retiree's Litigation/PRAA Appeal.
  - \$8,355.06 Parker lawsuit.
  - \$16,631.50 General counsel services.
4. Noted receipt of the following: *Please remove and replace in your Policies & Procedures manuals.*
  - a. 102 Agenda Cutoff Date and Time
  - b. 104 Recording of Board Meetings
  - c. 106 Original Pension Records
  - d. 107 Appearance Before Pension Board
  - e. 109 Disruption of Pension Board Meetings or Pension Office Operations
5. Noted receipt of note and email article received 4/24/2008 from retiree W. Leach on N. Pelosi and Windfall Tax.

[Mr. Hamlin entered the meeting at 1:36 p.m.]

Medical/Disability Issues

6. Initial hearing for LOD disability applicant K. Howell, TPD. Noted receipt of Medical Board reports, Medical Director's summary, disability application and qualifying letter, summary review outline prepared by Independent Medical Case Manager, injury report, post-offer pre-employment physical, job description and disability application process timeline. Mr. Howell was sworn in. Trustees posed questions of the Medical Director. **It was moved by Mr. Meier, seconded by Mr. Bogush and by unanimous vote that the Board finds Mr. Howell disabled from the regular and continuous duties of a police officer. It was moved by Mr. Meier, seconded by Mr. McRae and by unanimous vote that the Board finds that the disability was incurred in the service/in the line of duty (LOD). It was moved by Mr. Meier, seconded by Mr. Bogush and by unanimous vote to grant a line of duty disability pension to Mr. Howell for gunshot wounds effective close of business today, May 22, 2008.**
  
7. Initial hearing for LOD disability applicant M. Spirk, formerly of TPD. Noted receipt of Medical Board reports, Medical Director's summary, disability application and qualifying letter, summary review outline prepared by Independent Medical Case Manager, injury reports, post-offer pre-employment physical, job description and disability application process timeline. Mr. Spirk was sworn in and responded to questions from the Board. Trustees posed questions of the Medical Director. Mr. Lynch asked Dr. Bohnker about the issue of the applicant reaching MMI. Dr. Bohnker responded that the medical board had addressed that issue, and directed Mr. Lynch to Dr. Fishalow's report. Mr. Lynch asked the applicant how the injury had occurred. Mr. Spirk responded he felt a pain in his back as he exited his vehicle at the FOP parking lot. Mr. Lynch asked Dr. Bohnker about the degenerative nature of the injury noted in the medical reports. Dr. Bohnker explained matters concerning spinal anatomy and noted that some degeneration was normal with age and that injuries certainly could aggravate that process, although there was no way to determine whether all the degeneration was attributable to age or injury. Ms. Miller asked about a policy regarding pre-existing conditions. Ms. Campbell explained that one of the Chapter 99-01 minimums was the removal of the automatic pre-existing condition exclusion. Mr. Spirk declined an invitation from Mr. Lynch to make a statement at that time. Ms. Campbell read the policy regarding the burden of proof lies with the applicant into the record. There was also some discussion about previous injury reports, one from October of 2002 that was found to be unrelated to the injury(ies). **It was moved by Mr. Meier, seconded by Mr. McRae and by unanimous vote that the Board finds Mr. Spirk disabled from the regular and continuous duties of a police officer. It was moved by Mr. Meier, seconded by Mr. McRae that the Board finds that the disability was incurred in the service/in the line of duty (LOD). Upon voting, motion failed by a vote of 2 – 4, Mr. McRae and Mr. Meier in favor of the motion, and Mr. Bogush, Mr. Hamlin, Ms. Lynch and Ms. Miller opposed to the motion. It was moved by Ms. Miller, seconded by Mr. Hamlin that the board find that the disability was not incurred in the service/non-line of duty (NLD). Upon voting, motion failed by a vote of 4 – 2 with Mr. Bogush, Mr. Hamlin, Mr. Lynch, and Ms. Miller voting in favor of the motion and Mr. McRae and Mr. Meier opposed to the motion.** It was noted that Mr. Spirk is already drawing a longevity pension, so there is no benefit to the Board granting a lower non-line of duty disability

pension benefit. The initial hearing for Mr. Spirk was continued to a future meeting due to the lack of five affirmative votes.

Financial Report Presentation by Mark Lenker of Nobles, Decker, Lenker & Cardoso

8. Noted receipt of financial statements prepared by Mark Lenker of Nobles, Decker, Lenker & Cardoso for the months ending:
  - a. 2/29/2008. Market value of *assets* as of 2/29/2008 was \$1,589,682,121.
  - b. 3/31/2008. Market value of *assets* of 3/31/2008 was \$1,557,542,202. Mr. Lenker reconciled the financial statements to the Bowen, Hanes report and Wachovia custody statement, noting that each entity is on a different basis of accounting. Mr. Lenker advised that the monthly NDL&C financials are on an accrual basis and capture accruals for dividends and interest and include non-investible assets such as the F&P pension office building, which BH&Co. does not report. Mr. Lenker pointed out that the market value of the fund has decreased over the first six months of this fiscal year, noting a \$255 million net change from a year ago. Mr. Lenker responded to questions from the Board, specifically confirming that the City contribution rate is at the ratio of 1:1.34 and explained the timing of quarterly City contributions. **It was moved by Mr. Hamlin, seconded by Ms. Miller and by unanimous vote to receive and file item 8.**

Old Business

9. Update by Board Counsel regarding 13th check beneficiary form for surviving spouses for 13th check. Mr. Cohen pointed out that the language in the contract under section 27 gives only the member the right to designate a beneficiary, and it is effective only in the absence of an eligible surviving spouse. He pointed out that, while the contract was not a model of clarity, especially on this issue, it does grant the specific right to the member and does not give authority to the spouse to designate a beneficiary. Mr. Cohen noted that amounts under \$75,000 are under the probate limit, pointing out that pension benefits typically don't approach that figure. Mr. Cohen advised that this issue is not simply a blank or a gap that could be filled in by board policy—the board does not have that authority.

Mr. Cohen suggested that what the board can consider doing is addressing the matter like the estate system currently in place. Mr. Cohen proposed for consideration that perhaps a single heir could sign an affidavit and an indemnity agreement with the Fund, and the monies could be released directly to that person to avoid probate. While not a perfect solution, Mr. Cohen discussed ways to minimize fraudulent claims.

Ms. Miller asked for clarification. In restatement, she asked if she understood properly that, under the current contract, it was not possible to allow surviving spouses the right to designate a beneficiary. Mr. Cohen confirmed her understanding. Ms. Miller asked if it might be possible to develop a notice of intent of heirs where they could indicate where they want the money to go to give folks a bit of comfort and security, and something that might further reduce fraud and could identify possible recipients in the event of the death of the surviving spouse. Mr. Cohen responded that he was not comfortable with a notice of intent, but suggested some form of acknowledgement may be possible, but it must fit within the operation of law. Ms. Miller restated that the Board must protect the fund. Mr. Cohen advised that it may be possible to accomplish this issue by amending the estate forms already in place and setting a dollar limit such as \$15,000.00. Mr.

Bogush pointed out that, typically, someone entitled to a benefit would have the right to designate a beneficiary. Mr. Cohen agreed; Mr. Bogush observed that this, then, was an atypical situation. Mr. Cohen agreed, again citing the limiting language of the contract. There was some discussion about the dollar amount limit to be assigned to the possible indemnity agreement of a single heir. Citing the size of some pension benefits, including the 13<sup>th</sup> check, Ms. Campbell recommended that a dollar limit of \$25,000.00 be considered. Mr. Cohen noted that as dollar limits increase, the board could begin not to fulfill its fiduciary duty, and stated that the Board must maintain discipline.

Ms. Miller suggested that the board was “tripping over pebbles,” and that the legislature that approved the contract didn’t care one way or another if a surviving spouse was entitled to name a beneficiary or not. Ms. Miller expressed that a lawsuit was not likely. Mr. Cohen suggested that whatever the Fund decided, it should be to make it as easy as possible for payments to be made, but that he was offering his best judgement on the matter. Ms. Campbell noted that the Fund might want to prepare language for the City and the bargaining units, along with a laundry list of similar contract changes that could be added to the next proposed contract change. Mr. Bogush suggested that the member’s rights might be transferred to his eligible spouse upon his death. Mr. Cohen responded that he had in fact considered that, and that, although this was a “gray” area, the pension contract is what it is. Ms. Miller added that in the absence of the living member, why couldn’t the issue be taken care of through administrative policy? Mr. Cohen responded again, that while he was sympathetic, that the contract was the limiting issue. Ms. Miller pointed out that the Fund doesn’t have a contract with the surviving spouse, so why not revert to an administrative solution?

Mr. Lenker offered that the circumstances being discussed today were no different than a member who files a joint tax return, and that if the member and spouse both died, the refund check would go to who the will specifies, and if there is no will, then to the estate. Mr. Lenker advised that if someone dies without a will, the state tells you where the money goes. Mr. Lenker pointed out that normally there is someone designated to manage the affairs, but absent a will, it would go to the estate. Mr. Bogush made the point that the issue was to put the check in the hands of a person. Mr. Lenker said it would go to a person if there is a will, but also indicated that the first question that should be asked before processing any and all beneficiary forms, is “is there a will?” because that will would be the guiding document. Ms. Campbell observed that the Fund has never asked about the presence of a will, and was that something legally the Fund should have been doing over the past decades? Mr. Lenker responded that in his opinion, yes. Mr. Lenker noted that processing beneficiary forms was fine, but he recommended adding the question about a will, and if there was a will, to stop right there.

When asking generally how much it costs or how difficult it is to create a will, Ms. Miller noted that someone could print out a will from software programs such as Quicken, or even handwrite a will. Mr. Cohen advised that letters of summary administration could cost as little as \$200.00.

Ms. Campbell noted that while recent retirees and DROP participants have the ability to select optional forms of payment other than the standard eligible surviving spouse continuation from the 1969 pension contract, that the Chapter 99-01 optional forms are not available to those who retired or entered DROP before 10/1/2002, which is a majority of the pension population.

**It was moved by Ms. Miller, seconded by Mr. Bogush and by unanimous vote that Mr. Cohen be directed to take another look at this issue and the pension contract, in concert with Ms. Campbell and Mr. Lenker, and to come back next month with a specific recommendation on what forms or documents he recommends that the board might be able to adopt to provide for a surviving spouse to designate beneficiaries, if it is possible, including any other benefits that might be problematic.**

[a brief recess was taken 2:55 – 3:02 p.m.]

New Business

10. Fiscal year ending 9/30/2007 13th check.

- a. Noted that actuarial determination/calculation/certification still in process. Not received as of agenda cutoff 5/14/2008. To be distributed, if available, at board meeting. It was not available by the board meeting.
- b. Alternate consideration if not available by 5/22/2008 1:30 p.m. board meeting—scheduling special board meeting to address only actuarial determination/calculation/certification either Thursday 5/29/2008 or Friday 5/30/2008. It was noted that the special meeting to address only the actuarial certification of the fye 9/30/2007 13<sup>th</sup> check would be held on Thursday, May 29, 2008 at 1:30 p.m.
- c. Noted receipt of draft revised P&P 425 updating to current plan language and more contemporary dates for Board approval. Reviewed by attorney, administrator and accountant. Mr. Lynch briefly reviewed the changes and turned the floor over to Mr. Cohen. Mr. Cohen advised that the language referring to beneficiaries was taken from a Florida Supreme Court case. Mr. Bogush asked if the current policy regarding designation of beneficiaries for the 13<sup>th</sup> check was in conflict with the contract? Mr. Cohen pointed out that this policy may be recommended for further amendment in the future, but noted that the board did need to act on the policy amendment today for the funding change and specifying that the 13<sup>th</sup> check is independent of any make-up to the base plan.
- d. Noted receipt of draft letter to participants eligible for fye 9/30/2007 13<sup>th</sup> check benefit for approval. Mr. Hamlin made some suggestions on the draft 2007 13<sup>th</sup> check letter.

**It was moved by Mr. Bogush, seconded by Ms. Miller and by unanimous vote to approve items 10c and 10d, with the noted changes on 10d suggested by Mr. Hamlin.**

11. Chair's call for any new business items from trustees to be placed on next agenda. Mr. Hamlin advised that he would like to see information from Board Counsel regarding malpractice of past pension fund professionals contracted by the Board and possible avenues for recovery, and Mr. Cohen agreed to bring information back to the Board.

12. Noted receipt of listing of upcoming conferences. Disclosure of planned attendance, if any. Ms. Campbell advised that Ms. Fox intended to conduct an on-site visit of the Bowen, Hanes & Co. operation in Atlanta on June 16, 2008. Mr. Meier disclosed that he planned to attend the June FPPTA conference. **It was moved by Ms. Miller, seconded by Mr. Hamlin, and by unanimous vote to receive and file item 12.**

13. Noted receipt of request to be placed on agenda dated 5/11/2008 from trustee P. Lynch regarding American Depository Receipts (ADR). Mr. Lynch brought the issue forward as a result of

attending an FPPTA conference in New York, which was also attended by Mr. Bogush. Mr. Lynch explained that the issue is whether ADRs are in fact foreign investments or domestic, pointing out that if they can be classified as domestic, that would expand the fund's ability to commit more money to international investments. Mr. Lynch requested that Mr. Cohen contact the Division of Retirement (Patricia Shoemaker) regarding this matter and possibly the Attorney General to get a ruling, declaration or opinion that would permit ADRs to be considered non-foreign investments. **It was moved by Ms. Miller, seconded by Mr. Meier and by unanimous vote to pursue this agenda item.**

14. Retirement planning and education

- a. Noted receipt of request to be placed on agenda dated 5/11/2008 from trustee P. Lynch regarding retirement education workshops.
- b. Noted receipt of package of information dated 5/12/2008 from Reinventing Your Retirement. Mr. Lynch brought this item forward as a result of attending an FPPTA conference last year, during which he heard a presentation that impressed him. Mr. Lynch advised that he hears a lot of confusion among members regarding their retirement options, and he believes there is a need for more educational information. Mr. Lynch outlined the potential rates of \$1,000 per day for a workshop, and \$1,500 for a two-day event that would repeat the same workshop the second day. Ms. Miller suggested that there might be a symbiotic relationship with the GE pension plan on this proposal. Mr. Hamlin noted that the fund has always been careful not to engage in financial planning, and asked if this represents a change in the board's position. Mr. Cohen advised that as long as the seminars were informational and did not give specific personal advice, and that if sufficient disclaimers were set forth, there should not be a problem. Mr. Meier advised that disclaimers must make clear that this financial planner is not an agent of the board. Mr. Cohen advised that in his experience, this was common practice of pension funds. Mr. Bogush added that he appreciated the presenter's ability to explain financial matters in understandable terms. Ms. Campbell related a conversation that she had recently with the director of the Employee Benefits Research Institute (EBRI) regarding this very matter, and the recommendation was that the fund engage a third party to assist in the educational and planning process, sharing both the responsibility and liability, noting that a member may not wish to fully disclose personal information to an employee but may be willing to discuss their personal situation more openly with a third party. **It was moved by Ms. Miller, seconded by Mr. Bogush and by unanimous vote to direct Mr. Cohen to develop the appropriate disclaimers and that the Fund approve up to \$6,000 plus expenses to contract for four quarterly seminars, each to be given twice on consecutive days, and perhaps in concert with the GE Pension Fund to possibly further reduce the cost.** Mr. Bogush suggested that the seminars follow the traditional pre-retirement workshops so that members can be somewhat familiar with the plan's retirement options before the third party presentation. **It was moved by Mr. Hamlin, seconded by Ms. Miller and by unanimous vote to receive and file items 14a and b.**

15. Noted receipt of request to address the board dated 5/13/2008 from retiree D. Ribaya regarding 13th Check Program. Mr. Ribaya referenced the spousal designation of beneficiary citing a letter dated November 30, 1998 from Mr. Loper to Ice Miller that included a proposed spousal designation of beneficiary form for the 13<sup>th</sup> check. He identified the form as nearly the same as had been received by Ms. Winell Rodriguez "from us" that was handed out at the last board meeting. Mr. Ribaya stated that he did not believe that the form had ever been sent out. He also

brought up the issue that there were six names of recipients of the 2004 13<sup>th</sup> check who were deceased by the time the check was issued. Mr. Ribaya asked Ms. Campbell how difficult it was for the recipients of these checks to receive them since they had gone to estates. Ms. Campbell responded that for all but one it was a straightforward process. Ms. Campbell advised that in only one situation, a dispute among family members tied that distribution up for more than two years until the family resolved its dispute and finally made application for the benefits, including an affidavit, consent for release, release and indemnity, etc.

[Brief recess at 3:33 p.m. for Public Comment cards to be turned in. There were none.]

16. Chair's report. None.

17. Attorney's report. Mr. Cohen advised that the ADR issue and limit on international investments is not new, it has perennially been taken to the legislature and every year it has failed.

18. Plan Administration.

a. 2008 Board meeting schedule:

June 26, 2008

July 24, 2008

August 28, 2008

September 25, 2008

October 23, 2008

November 20, 2008 \*early due to holidays

December 18, 2008 \*early due to holidays

b. F&P pension office priorities, projects, deadlines. Ms. Campbell noted that the summer months have traditionally been the slower time of the year for the pension office, but that has not been the case so far this year, and perhaps would never be so again, noting that this isn't a sleepy little pension office any more. Ms. Campbell reported that while there have recently been issues with the bureaucratic interface between the fund and the City, as well as unexpected active member deaths, the primary reason for the sustained increase in workload and activity is that the plan has become much more complicated since it began being amended almost yearly since 1998. Ms. Campbell explained that the optional forms of payment adds a layer of complexity to retirement counseling and active member inquiries that did not exist before, and that requires more counseling time to explain the options. Ms. Campbell reported that while several years ago a DROP entry or retirement counseling session may have taken only 10-20 minutes, that there are significantly more questions, more issues to consider, and individual sessions are taking anywhere from 30 to 45 minutes to an hour now. Ms. Campbell advised that call volume has continued to be unusually high, noting that other matters such as ongoing litigation, unexpected active member deaths, feuding beneficiaries, and vandalism of the air conditioning system have also placed unusual demands on staff's time. Ms. Campbell advised that when the police report was filed for the A/C vandalism, that several security recommendations were made, which have since been implemented, such as placing padlocks on the gates behind the office where the units are located, adding another security camera to that area, adding an audible tamper alarm on the units, and tying them into the monitored security system. Ms. Campbell advised that the prior month's pension advice statements for direct deposit had been printed an inch too low on the paper so that when folded and stuffed by machine at City Hall, the addresses did not show. Ms. Campbell advised that the problem was

corrected immediately thanks to a team effort between an accounting supervisor, T&I and the mailroom and that the corrected printouts were mailed only one day later than usual as a result. Ms. Campbell advised that there continues to be landscaping and cleanup work out front as there continues to be both a snake and a rodent problem. Ms. Campbell noted that once again, the pension payroll deadline and agenda and board package deadline fell at the same time this month, which required a great deal of effort on the entire staff's part to meet the deadlines and workload demands.

19. Motion for Taxable Costs in re: Case No. 03-9298, City of Tampa Retired Fire & Police Association, Inc., a Florida Corporation; and its Individual Members Bud Maxey, et al vs. Board of Trustees. Note receipt of:

- a. Letter dated 5/1/2008 from P. Gonyea to Carrington & Carrington re: schedule availability for hearing on Trustees' Motion for Sanctions.
- b. Letter dated 5/1/2008 from P. Gonyea to Carrington & Carrington re: updated schedule availability for hearing on Trustees' Motion for Sanctions.
- c. Letter dated 5/2/2008 from P. Gonyea to Carrington & Carrington re: scheduling of hearing on Trustees' Motion for Sanctions.
- d. Letter dated 5/5/2008 from L. Vincent to Court re: Carrington & Carrington no longer representing TRF&PA.
- e. Letter dated 5/5/2008 from L. Vincent to F. Carrington re: firm no longer representing TRF&PA.

Mr. Cohen reviewed some of the letters received regarding the issue, and noted the Tampa Retired Fire and Police Retiree's Association has advised Mr. Carrington that he no longer represents the organization, as well as giving notice that the Association intends to represent itself in the motion for sanctions before the court. Mr. Cohen advised that only an individual can take the position of self-representation, not an organization, and that the court would preside over the resolution of the matter. Mr. Cohen noted that the motion for sanctions is currently scheduled for June 30, 2008 but is in the process of being rescheduled for a later date. At the request of Mr. Bogush, Mr. Cohen explained the process of substituting an attorney before the court. Mr. Lynch asked about the assessment of damages if Mr. Carrington is replaced, would they be assessed against Mr. Carrington, the retiree association, or both? Mr. Cohen advised that determination is the judge's discretion. **It was moved by Ms. Miller, seconded by Mr. Hamlin and by unanimous vote to receive and file items 19a-e.**

20. Parker Lawsuit, Case No. 07-007198, John N. Parker, for himself and all others similarly situated vs. the Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa. Noted receipt of Joint Motion for Extension of Time in Which to File Class Certification Papers filed 4/22/2008. Mr. Cohen relayed that the extension had been granted and that the process of class certification was in the hands of Mr. Thomas. **It was moved by Ms. Miller, seconded by Mr. Hamlin and by unanimous vote to receive and file item 20.**

Motion to adjourn was made by Ms. Miller at 3:44 p.m.

Notice

Any person who desires to appeal any decision of the Board of Trustees with respect to any matter considered at this Board meeting will need a record of the proceedings and for this purpose, may need to ensure that a verbatim record of the proceedings is made which includes testimony and evidence upon which the appeal is based.

At the June 26, 2008 board meeting, it was moved by Mr. Hamlin, seconded by Mr. Moors and by unanimous vote to approve the minutes of the May 22, 2008 board meeting as written.