

**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
Wednesday, January 20, 2010 11:00 a.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 Wednesday, January 20, 2010 at 11:00 a.m. for a regular meeting with the following members present:

Sharon Fox, Chair	Patrick Lynch
Mark Bogush, Vice Chair	Mark McRae
P.J. Gray, Secretary	Cynthia Miller
Wes Adwell	John Moors
Richard Griner	

Also present were Mr. Bruce Bohnker, Medical Director, Mr. Ron Cohen, Board Counsel, Mr. Patrick Gonyea, Co-counsel, Mr. Mark Lenker, CPA, and active and retired plan members.

Chairman Fox announced to the board that she would prefer to be addressed as Chairman Fox, Madame Chairman or Madame Chair.

1. Approved of the minutes of the December 17, 2009 board meeting. Ms. Campbell addressed corrections to the draft minutes: 1) page 4, item 13, line 2, Debbie Stevenson's title was corrected from Inter-Governmental Relations *Expert* to *Manager* and Sal Territo's title was corrected from Assistant City Attorney to *Chief* Assistant City Attorney, 2) page 8, item 26, line 5, the word efficiency was changed to sufficiency and 3) Mr. Bogush requested that the minutes reflect that Chairman Fox was not present at the beginning of the meeting, in addition to showing her entering the meeting at 1:40 p.m. in brackets on page 2. **It was moved by Mr. Lynch, seconded by Mr. Gray and by unanimous vote to approve the minutes of the December 17, 2009 board meeting as corrected.**

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 – 7] Ms. Campbell addressed typographical corrections to the agenda: 1) item 4b, the correct dollar amount was \$26,139.68, 2) item 7, for 5/6/2010 the time was changed from 10:00 a.m. & 5:30 p.m. to 10:00 a.m. and 2:00 p.m. and 3) an extra “/” was removed from the date of 5/5/2010. **It was moved by Mr. Lynch, seconded by Mr. Gray and by unanimous vote to approve consent agenda items 2 through 7 as corrected.**

2. Ratified pension benefits.
3. Bowen, Hanes & Co., Investment Manager Information. Noted receipt of the following:
 - a. Bowen, Hanes & Co. investment performance report for the month ended 12/31/2009. Market value of *investments* as of 12/31/2009 was \$1,332,026,238. Investment return as of 12/31/2009 has been +6.4% so far this fiscal year.
 - b. 13th Check Account Statement. As of 12/31/2009, market value is \$2,140,750, invested in Evergreen Institutional US Govt. Money Market Fund with a current yield of 0.01%. Separate custody account established as per partial mediated settlement agreement in Parker litigation dated 9/23/2009.
 - c. Investment Letter Summary by Jay Bowen dated 1/4/2010.
 - d. Investment Summary by Jay Bowen dated 1/4/2010.
 - e. Proxies voted report for quarter ended 12/31/2009.

- f. Bond portfolio rating report dated 1/11/2010 and recommendation to hold, for board authorization.
 - g. Addendum distributed at meeting. Market value of *investments* as of 01/19/2010 was \$1,366,035,554. Investment return as of 01/19/2010 has been +9.1% so far this fiscal year.
4. Approved payment to Board Counsel R. Cohen for legal services rendered during December 2009 in the amounts of:
- a. \$4,391.18 General Counsel.
 - b. \$26,139.68 Parker lawsuit.
 - c. \$4,579.09 Artz lawsuit.
5. Noted receipt of listing of officers and committees.
6. Noted receipt of financial statements for the month ended 11/30/2009 prepared by Mark Lenker of Nobles, Decker, Lenker & Cardoso. Market value of *assets* as of 11/30/2009 was \$1,317,474,804.
7. Noted that quarterly retirement and financial planning educational workshops are to be held at the F&P Pension office at 3001 North Boulevard as follows:
- | | | | | | |
|-----------|----------|----------|-----|---------|------------------------------|
| Tuesday | 3/2/2010 | 10:00 am | and | 5:30 pm | a RICHER Retirement Strategy |
| Wednesday | 3/3/2010 | 10:00 am | and | 2:00 pm | a RICHER Retirement Strategy |
| Wednesday | 5/5/2010 | 10:00 am | and | 5:30 pm | DROptions & the ABCs of IRAs |
| Thursday | 5/6/2010 | 10:00 am | and | 2:00 pm | DROptions & the ABCs of IRAs |

Medical Disability

8. Initial hearing for LOD disability applicant Mark Mathias, TFR. Noted receipt of Bate-stamped disability application, qualifying letter, notice of injury, pre-employment physical, firefighter job description, disability process timeline, summary review outline by independent medical case manager, sample letter to Medical Board, Medical Board reports, and Medical Director's summary.

Mr. Mathias was sworn in and responded to questions from the board. Mr. Lynch noted that the first, uncorrected qualifying letter was not included in the board package. Ms. Miller suggested that the first, insufficient qualifying letter be distributed to the board prior to any motions being made. Ms. Campbell left the room to obtain it from staff and returned, passing out the first, insufficient qualifying letter and the letter from staff informing the doctor of the corrections/additional information needed. Ms. Miller asked about preexisting conditions? Ms. Campbell explained that after Chapter 99-01, the plan was amended to remove the blanket preexisting condition exclusion, so a disability cannot be denied based solely on the basis of a preexisting condition. She pointed out that the board still has the ability to take a preexisting condition into consideration when making a decision, but the denial cannot be based solely on the preexisting condition. She said that the board can evaluate whether or not the disability is an aggravation of a preexisting condition, or if the applicant is unable to meet the burden of proof that the injury was received in the service, because there is evidence to the contrary. Mr. Cohen added that there is no longer a provision for 175/185 plans that says a disability can be denied outright solely because the applicant has a preexisting condition, but the preexisting condition can be a factor that the board considers. Mr. Cohen stated that the burden of proof is on the applicant, and the board has to make its determination based upon the evidence contained in the disability package and what the applicant's medical condition was when he or she was hired. Ms. Miller pointed out specific statements within the IME reports that helped to determine her vote.

It was moved by Mr. Bogush, seconded by Mr. Lynch and by unanimous vote that the board finds that there is a disability which permanently incapacitates Mr. Mathias physically from the regular and continuous duties of a firefighter.

It was moved by Mr. Bogush, seconded by Mr. Adwell that the board finds that the disability was incurred in the service (in the line of duty, LOD). Upon voting, the motion carried by a vote of 7-2 with Mr. Adwell, Mr. Bogush, Mr. Gray, Mr. Griner, Mr. Lynch, Mr. McRae and Mr. Moors in favor of the motion and Ms. Fox and Ms. Miller opposed to the motion.

It was moved by Mr. Bogush, seconded by Mr. Gray that the board grant Mr. Mathias a line of duty (LOD) disability for a back disability effective his last day on payroll. Upon voting, the motion carried by a vote of 7-2 with Mr. Adwell, Mr. Bogush, Mr. Gray, Mr. Griner, Mr. Lynch, Mr. McRae and Mr. Moors in favor of the motion and Ms. Fox and Ms. Miller opposed to the motion.

9. Initial hearing for LOD disability applicant Joe Perez, TFR. Noted receipt of Bate-stamped disability application, qualifying letter, notice of injury, pre-employment physical, firefighter job description, disability process timeline, summary review outline by independent medical case manager, sample letter to Medical Board, Medical Board reports, and Medical Director's summary.

Mr. Perez was sworn in and responded to questions from the board. Ms. Miller pointed out specific statements within the IME reports that helped to determine her vote.

It was moved by Mr. Lynch, seconded by Mr. Gray, and by unanimous vote that the board finds that there is a disability which permanently incapacitates Mr. Perez physically from the regular and continuous duties of a firefighter.

It was moved by Mr. Lynch, seconded by Mr. Gray, 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. Lynch, seconded by Mr. Gray, and by unanimous vote that the board grant Mr. Perez a line of duty (LOD) disability for a back disability effective close of business today.

Old Business

10. Status report by Ms. Miller regarding City Council workshop 1/28/2010 at 9:00 a.m.

Ms. Miller reported that she and Ms. Campbell have been meeting with various council members, as she reported would be taking place last meeting. She said that the general presentation will be regarding how the pension plan works. Ms. Miller expects the presentation to be short. She added that the meeting is open to the public for those who wish to attend. Mr. Lynch asked why council requested this presentation? Is it because a retiree suggested that there is a way to save money? Ms. Miller stated that the council motion was that she and Bonnie Wise come to explain how the pension plan works, so we are doing the presentation that was requested. Ms. Miller added that she and Ms. Campbell will be addressing questions from council members as they ask them.

New Business

11. Noted receipt of listing of upcoming conferences. Disclosure of planned attendance, if any.

Ms. Campbell disclosed that she would like to attend the Administrators Institute in Lake Buena Vista. Mr. McRae tentatively disclosed for the Benefits Conference for Public Employees in Phoenix, Arizona. **It was moved by Mr. Gray, seconded by Mr. Lynch and by unanimous vote to receive and file item 11.**

12. Chair's call for any new business items from trustees to be placed on next agenda. None.

[Brief recess from 11:30 a.m. to 11:35 a.m. for Public Comment cards to be turned in.]

13. Chair's report. None.

14. Attorney's report.

Mr. Cohen reported that he was asked by Chairman Fox to address emails that were passed on to him about a possible Sunshine violation. He stated that he looked into this possible violation, and it is his legal opinion that there was not a Sunshine violation or a violation of any other law. He strongly suggested that there not be any discussion regarding what took place during closed executive sessions. Mr. Gray asked if the board would be informed of what the allegation was? Mr. Lynch pointed out that the allegation would be addressed in item 16.

15. Plan Administration.

F&P pension office priorities, projects, deadlines.

Ms. Campbell reported that January is a short month for pension payroll for computer access because the City has to close out calendar year-end and tax year-end. We also have to program the COLA, run it and then test it to make certain everything worked properly. Then the City has to zero out balances after they run 1099's, and then change the tax tables to the 2010 tax tables. Because of all of these deadlines, we are shut out of the system for almost two weeks longer than usual, giving us less time to process a full month's pension payroll. Ms. Campbell announced that our \$5 million monthly pension payroll was due today in direct conflict with today's board meeting, but the deadline has been met, and now we move on to the next deadline.

16. Noted receipt of request to address the board by retiree D. Ribaya regarding possible Sunshine violation 9/24/2009.

a. Noted receipt of excerpt from 9/24/2009 minutes, item 14f.

Mr. Ribaya addressed the board regarding a possible Sunshine violation that he alleges took place 09/24/2009. He explained that the board voted to accept the partial settlement agreement in open session, however, he obtained public documents that show the board talked about Mr. Thomas's offer of \$300,000, but he didn't see any vote on that in open session, even though it was denied. He stated that was his allegation and he has brought it to the board, and now he may pursue it via other avenues if he so chooses. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file item 16.**

Public Comments Limited to two (2) minutes per person and maximum of ten (10) persons.

The statements made by the speaker under Public Comments are solely the opinion of each speaker and do not necessarily reflect the views of the Board of Trustees, its staff, or its professionals.

Mr. Vincent addressed item #10. He explained that he is concerned about City Council looking into the pension contract. Mr. Vincent said that he's concerned about the information being provided by some supposedly knowledgeable retiree. He strongly suggested that the board make sure the pension contract is left alone because it has served us all well.

Litigation

17. Pena Lawsuit, Case No. 08-013997, Fred Pena, 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. Update by board counsel, if any.

Mr. Cohen noted that this case has been dormant for a while. He recently received word from Plaintiff's counsel that he wants to discuss the case, so he has set up a conference call with Mr. Townsend and Mr. Gonyea, and we will see what comes of that.

18. Artz Lawsuit, Case No. 07-012048. Update by board counsel, if any.

Mr. Cohen noted that we have filed our Motion to Dismiss and that hearings were already scheduled for Thursday, January 28, 2010 at 2:30 p.m. for the other parties (City and Unions) Motions to Dismiss. We asked that our Motion to Dismiss be heard at the same hearing, so we plan on being there and being prepared to argue our motion, if given the opportunity. Some of the allegations of wrongdoings in some cases are identical, some are similar, and some are completely different between the parties. The plaintiff has asked to amend his complaint, but so far, nobody has agreed.

19. 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 the following:

- a. Defendant's Memorandum of Law in Opposition to Motion to Modify Class Certification Order prepared by R. Cohen and P. Gonyea.
- b. Plaintiff's Reply to Defendant's Memorandum of Law in Opposition to Plaintiff's Motion to Modify Class Certification.
- c. Version 3 of possible timeline, as of 1/12/2010.
- d. Settlement Agreement and Stipulation for Final Declaratory Judgment, as of 1/12/2010.
- e. Joint Motion for Preliminary Approval of Class Settlement and Stipulated Final Judgment, as of 1/12/2010.
- f. Order of Preliminary Approval, as of 1/12/2010.
- g. Stipulated Final Declaratory Judgment, as of 1/12/2010.
- h. Noted receipt of posting for Executive Session to be held at the end of today's regular board meeting. (approximate start time between 11:45 a.m. and 12:15 p.m., duration approximately one hour)

Mr. Cohen stated that in accordance with his instructions of the last meeting, he and Mr. Gonyea have finalized the settlement documents. They have been signed by all parties and filed with the court. **It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to receive and file items 19a-h.**

- i. Board Counsel request for advice concerning Parker lawsuit and explanation of legal requirements for the Closed / Executive Session, limited to litigation expenditure strategy and potential settlement discussions in 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.
- j. Chair's announcement that only current trustees, Wes Adwell, Mark Bogush, Sharon Fox, PJ Gray, Rich Griner, Patrick Lynch, Mark McRae, Cynthia Miller, and John Moors, Board Counsel R. Cohen, Co-counsel P. Gonyea, Plan Administrator J. D. Campbell, and a court reporter, Melinda McKenna, are authorized to attend the Closed/Executive Session.
- k. A court reporter will be present to take a verbatim transcript of the Closed / Executive Session. The transcript will not become a public document until the conclusion of this litigation in its entirety.

[There was a brief recess from 11:49 a.m. to 11:56 a.m. for the court reporter to set up.]

- l. Closed / Executive Session convened at 11:56 a.m.
- m. Meeting reopened to the public at 12:55 p.m.
- n. Board motions, if any. None.

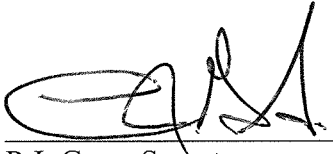
Motion to adjourn by Mr. Lynch 12:56 p.m.


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.

Persons needing a special accommodation to participate in this meeting should contact the F&P pension office at (813) 274-8550 or (888) 335-8550 – toll free, or the Florida Relay Service at (800) 955-8770 – toll free, or dial 711 from any phone (regular phone/land line or cell phone) for the Florida Relay Service. Please make your requests at least five (5) working days before this meeting.


Sharon R. Fox, Chair


P.J. Gray, Secretary


Tiffany S. Corry
Recording Secretary

2010 Board meeting schedule

February 25, 2010

March 25, 2010

April 22, 2010

May 27, 2010

June 24, 2010

July 22, 2010

August 26, 2010

September 23, 2010

October 28, 2010

November 18, 2010 *early due to holidays

December 16, 2010 *early due to holidays