

**MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES
OF THE
TAMPA FIRE & POLICE PENSION FUND
3001 North Boulevard Tampa, FL 33603 (813) 274-8550
Thursday, December 15, 2011 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, December 15, 2011 at 1:30 p.m. for a regular meeting with the following members present:

P.J. Gray, Chairman
Wes Adwell, Vice Chairman
Sharon Fox, Secretary
Mark Bogush
Richard Griner

Patrick Lynch
Mark McRae
Dennis Rogero
Roger Strout

Also present were Dr. Bruce Bohnker, Medical Director, Mr. Jay Bowen, Investment Manager, Mr. Ronald Cohen, Board Counsel, Mr. Patrick Gonyea, Co-Counsel, Mr. Mark Lenker, External CPA, and active and retired plan members.

Please turn off your cell phones and pagers or set them to silent mode.

Mr. Adwell announced that the son of Justin Battles, Tampa firefighter, was paralyzed during his last week of basic training. He continued that there is a fund raiser being held at the Fire Museum and asked that everyone attend or check out the website.

[Mr. Griner entered at 1:31 p.m.]

1. Approved the minutes of the November 17, 2011 regular board meeting. Ms. Corry, Recording Secretary, noted the following changes to the minutes: 1) page 8, scenario 3 should read "...that does *do* business..." 2) page 12, item 18 should note that Mr. Gray agreed to speak with *both* unions, 3) page 14, item 23, last sentence should read "...that it would not be appropriate..." and 4) page 16, item 26 the word "acclimation" was corrected to "acclamation." **It was moved by Ms. Fox, seconded by Mr. Lynch and by unanimous vote to approve the minutes of the November 17, 2011 board meeting as amended.** Ms. Campbell thanked Ms. Corry for a job well done on such a long and difficult set of 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 – 9] **It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to approve consent agenda items 2 – 9.**

2. Ratification of pension benefits. Noted: due to early date of December board meeting, monthly pension payroll not yet closed as of agenda cutoff, thus ratify list for December not available for this board meeting – will be combined with January ratify.
3. Noted receipt of financial statements prepared by Mark Lenker, External CPA of Nobles, Decker, Lenker & Cardoso. Market value of *assets* as of 10/31/2011 \$1,481,548,858.
4. Investment management report by Bowen, Hanes & Co., Inc. Noted receipt of:
 - a. Investment performance report for the month ended 11/30/2011. Market value of *investments* as of 11/30/2011 was \$1,481,918,621.39. Investment return has been +9.4% so far this fiscal year.

- b. 13th Check Account report, invested in Wells Fargo Advantage Government Money Market Fund Institutional Class. Ending market value on 11/30/2011 \$2,141,598.45, yield +0.01%.
 - c. Addendum distributed at meeting. Market value of *investments* as of 12/14/2011 was \$1,438,019,226. Investment return has been +6.1% so far this fiscal year.
5. Approved payment to Board Counsel R. Cohen for legal services rendered during November 2011 in the amounts of:
- a. \$7,347.69 General Counsel.
 - b. \$10,017.00 Parker lawsuit.
 - c. \$8,660.33 Pena lawsuit.
 - d. \$55.00 Artz lawsuit.
6. Admitted Tampa Fire Rescue members to pension fund effective 11/28/2011 contingent upon: 1) furnishing a list of all medical providers and authorizations to obtain such medical records; and 2) passing a complete medical examination:
- | | |
|----------------------|-------------------|
| Benjamin Bentgter | Dante Primus |
| Marvin Mendez | Joshua Shields |
| Garrett Miller | Christopher Shone |
| Christopher O'Connor | Michael Sinyard |
| Cody Otero | Mitchell Smith |
| Myron Priester | Jonathan Tavio |
7. Admitted Tampa Police Department members to pension fund effective 12/13/2011 contingent upon: 1) furnishing a list of all medical providers and authorizations to obtain such medical records; and 2) passing a complete medical examination:
- | | |
|--------------------|------------------|
| Brian Alofs | Vanessa Hubel |
| Brad Baker | Derek Lang |
| Daniel Breijo | Matthew Milana |
| Alfredo Cabale Jr. | Levi Newton |
| Kelly Carraway | Miles Nicholson |
| Richard Diaz | Kevin Riley |
| William Fair | David Sarnowski |
| Patrick Foley | Sheldon Snaggs |
| Sean Gibson | Natasha Stanek |
| Taylor Hart | Robert Traynham |
| David Hazelzet | Bethany Walworth |
| Juan Hernandez | Jacob Wieland |
| | William Woster |
8. Noted receipt of the following P&Ps. *Please remove and replace in your Policy & Procedure Manuals.* Electronic version of P&P manual and reference materials project in process – target completion date first quarter 2012.
- a. 420 – Release of Accrued Monthly Pension Benefits of Deceased Pensioner
 - b. 423 – Right to Non-Line of Duty Disability Benefits and Longevity Benefits (aka NLD to Longevity Conversion)
 - c. 431 – Credited Pensionable Service for Suspensions when Annual Leave Forfeited in Lieu of Unpaid Suspension

- d. 433 – Optional Forms of Payment Election
 - e. 435 – Disability Pensioners Working Elsewhere as Certified Firefighters or Police Officers or Who Have Regained Full Health and Are Capable of Performing His/Her Full Duties in the Tampa Police or Fire Department
 - f. 436 – Complaints About Disability Pensioners' Physical Activities
 - g. 505 – Benefits to Equal Contributions
9. Noted receipt of excerpt from Cypen & Cypen December 1, 2011 newsletter summarizing HB 365, and companion bill SB 910 regarding pension plans.

Medical Disability

10. Initial disability hearing for LOD disability applicant R. Cvitkovich, TFR. Noted receipt of bate-stamped disability application, qualifying letter, notices 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. Bogush disclosed that he was Mr. Cvitkovich's supervisor, but they did not discuss the merits of his case. Mr. Cvitkovich was sworn in and responded to questions from the Board. Ms. Fox noted that Dr. Davis's report was very well written and thanked Dr. Bohnker. Mr. Gray explained that he understands that the Board cannot force a disability applicant to have surgery, but noted that Dr. Schulak offered the option of being declared permanently disabled and at maximum medical improvement (MMI) versus having two surgeries that could give Mr. Cvitkovich a 60-70% chance that he could return to full duty. Mr. Gray asked Mr. Cohen if it is State law, case law or policy that doesn't allow the Board to ask an applicant to elect the surgery? Mr. Cohen explained that no pension plan that he is familiar with has a policy established regarding these situations, but asking an applicant to have surgery would be interfering in an individual's basic fundamental decisions regarding his or her healthcare. Dr. Bohnker explained that standard medical practice is to offer the surgery knowing that it may or may not work. Mr. Gray continued that the stated 60-70% concerns him because it is almost a direct contrast with the other doctors' opinions. Dr. Bohnker responded that some doctors have more confidence in their own abilities than others.

[Mr. Strout entered at 1:39 p.m.]

Mr. Bogush noted that the records reflect that after Mr. Cvitkovich had staples from his surgery removed, he had to splint his wrist and asked why? Mr. Cvitkovich responded that it was a complication with his surgery that caused numbness in his right arm. He continued that he followed up with a neurosurgeon who told him to splint his wrist and after a couple of weeks, his wrist returned to normal. **It was moved by Mr. Bogush, seconded by Mr. McRae and by unanimous vote that the Board finds that there is a disability which permanently incapacitates Mr. Cvitkovich from the regular and continuous duties of a firefighter. It was moved by Mr. Bogush, seconded by Mr. McRae and by unanimous vote that the Boards finds that the disability was incurred in the service (LOD). It was moved by Mr. Bogush, seconded by Mr. McRae and by unanimous vote to grant Mr. Cvitkovich a line of duty (LOD) disability pension for a back injury effective close of business today.**

[A brief recess was taken from 1:42 p.m. to 1:43 p.m.]

Old Business

11. P&P 428 – Deductions from Pension Benefits – minor revisions recommended. Item tabled 10/27/2011 to future meeting, Board Counsel Cohen to provide precise statutory language, Mr. Lynch to propose alternate language. Statutory references attached:
- Chapter 112.0801
 - Chapter 112.10
 - Chapter 175.061(7)
 - Chapter 185.05(6)
 - Internal Revenue Code 6321

Mr. Lynch explained that after reviewing information provided by Ms. Campbell, further discussion and proposed alternate language is no longer needed. **It was moved by Mr. Lynch, seconded by Mr. Adwell and by unanimous vote to approve P&P 428 as recommended.**

12. P&P 605 – Education/Expense Policy – revisions as discussed at 11/17/2011 workshop/board meeting, continuing professional education requirements from investment policy 702 also incorporated herein.

It was moved by Mr. Lynch, seconded by Ms. Fox to approve P&P 605 as recommended for discussion purposes. Mr. Lynch asked why the name of the policy changed and if there is a separate policy for travel? Ms. Campbell responded that changes made reflect what was agreed upon at the last board meeting, noting that the purpose of the travel is for education. **Upon voting, the motion passed by a vote of 7-1 with Mr. Adwell, Mr. Bogush, Ms. Fox, Mr. Gray, Mr. Griner, Mr. McRae, and Mr. Strout in favor of the motion and Mr. Lynch opposed to the motion.**

13. Erma L. Muller / Whidden overpayment due to remarriage, lack notification and inaccurate responses on multiple bi-ennial affidavits/PVQs. Three-prong approach as discussed in 10/27/2011 board meeting:
- Demand letter from Board Counsel Cohen dated 11/21/2011, received by F&P Pension 11/28/2011.
 - Criminal portion turned over to TPD - in process.
 - Private investigation - in process.

Ms. Campbell explained that the Board will be updated on this issue at the next board meeting. She noted that to date, no response to the demand letter has been received. **It was moved by Mr. Lynch, seconded by Ms. Fox and by unanimous vote to receive and file item 13.**

New Business

14. Noted receipt of listing of upcoming conferences. Disclosure of planned attendance, if any. Mr. Lynch disclosed that he will be attending Opal Financial Group's Public Funds Summit in Scotsdale in January. Ms. Campbell disclosed that staff member Michele Ahearn will be attending the FPPTA Trustees School in Jacksonville in February. Mr. McRae undisclosed for the 24th Annual Police, Fire, EMS, and Municipal Employee Pension & Benefits Seminar in Las Vegas. **It was moved by Ms. Fox, seconded by Mr. Adwell and by unanimous vote to receive and file item 14.**

15. Ability to have multiple investment managers requested to be placed on a future agenda by Mr. Lynch on 10/27/2011 now that the Board has the authority to hire multiple managers under Chapter 2011-240, effective 10/1/2011.
- a. Noted receipt of draft P&P 702 – Investment Policy, reformatted for consistency with other P&Ps, and revisions recommended by attorney (statutory references attached), and administrator in consultation with performance measurement consultant and investment manager.
 - b. Chapter 175.071(6)(a) and (b)
 - c. Chapter 112.625(7)
 - d. Chapter 112.661
 - e. ERISA, Section 1104
 - f. 11/30/2011 Performance Summary and Investment History distributed at meeting
 - g. Total Return Comparison Chart: Tampa F&P vs. CalPERS distributed at meeting
 - h. City of Orlando and City of Ft. Lauderdale F&P Investment Mgmt Fees Comparison distributed at meeting

Mr. Cohen noted that the statutory reference of 15c deals with another policy and asked that item 15c be pulled. **It was moved by Mr. Lynch, seconded by Ms. Fox to approve item 15 for discussion purposes.** Ms. Fox referenced the last paragraph of page 1 and explained that she understands what the intent/concept is, but the language says something entirely different than what the Board would expect from their independent consultant. She continued that it is one thing for the consultant to tell the Board how the fund ranks with other funds, but it is something else entirely to ask them in these words to tell the Board who we should be using as an investment manager. She noted that the situation could be misinterpreted that the consultant has to provide the Board with names of who we should be using. Ms. Campbell responded that she has no objection to removing that paragraph because the Board must comply with state statutes to receive the state premium tax money. Mr. Griner noted that he concurs with Ms. Fox. Mr. Lynch explained that the paragraph is a condensed version of the language straight from the statute.

[Mr. Rogero entered at 1:53 p.m.]

Mr. Cohen continued that if the paragraph is removed from the policy, the argument can be made that the recommendation is still being made implicitly. He pointed out that he has seen times where pension boards hear recommendations from the consultant and choose not to follow them, noting that the most important thing is to keep the fund in compliance. Ms. Fox reiterated that she understands the intent, but believes that the interpretation can be different depending on the structure of this fund. Because most plans have multiple money managers, it would be appropriate, for example, if there were an explicit recommendation to replace a money manager who is truly under-performing. Based on performance, the consultant report indicates that the Board is following statute and the Division believes that statute is being followed because the fund continues to receive the state premium tax money. Mr. Strout noted that the paragraph in the policy has more wording than the statute and recommended using the statute language. Mr. Lynch asked if the Board gets these recommendations now? Ms. Campbell noted that the Board does not quote every statute in every policy, but the policies draw from and reference the statutes. She continued that the fund meets and exceeds the statutory requirement, as the consultant reports every quarter even though the statute only requires once every three years (tri-ennially). Ms. Campbell asked how the consultant would make recommendations to the Board about hiring and firing money managers when this fund only uses one? Mr. Lynch replied that he would feel more comfortable if the consultant were explicitly stating her recommendation and suggested the consultant provide an executive summary.

Ms. Campbell responded that the consultant's contract is strictly to independently measure the performance of the investment manager. She explained that if Mr. Lynch desires a different model, the Board would have to issue a request for proposal for a different consultant, noting that currently the Board pays less than \$12,000 per year to meet the statutory requirement. Ms. Campbell added that the current consultant meets all of the policy requirements because when she reports that the money manager is reporting accurately according to the independent performance measurement, it is implied to retain BH&Co. If the implicit retention is not sufficient for any member of the Board, then another consultant will have to be hired. Mr. Bogush opined that he would rather have the consultant lay the numbers out and let the Board decide to retain or not. He continued that everything the Board does requires multiple people to be involved, with the exception of the money manager, with whom the Board is comfortable because he is well diversified, but the state is saying to put weight in one person's recommendation. Mr. Bogush explained that he believes that the proper thing to do is to take the information provided by the consultant and the Board use it to make the decisions, noting that the Board is educated to make those decisions and does a good job. He opined that when there is a professional who is being paid to give recommendations, that individual could possibly paint the Board into a corner and he would prefer to rely on the Board's use of the information provided. He added that he doesn't believe that the Board is breaking any policies and the State doesn't think so either. Mr. Strout noted that he agrees with Mr. Bogush and asked Mr. Cohen to confirm that the Board is in compliance. Mr. Cohen responded that the Board can say that there is an implicit recommendation, but it could be argued that there is not. He continued that he understands the concerns presented and he can argue the implicit nature of the recommendation, but he cannot say that it would be sufficient if challenged. He noted that an explicit recommendation would be sufficient and that the Board doesn't have to follow the recommendations received. Mr. Gray opined that the recommendation is implied in the report and it has never posed a problem. The State has always accepted the Fund's reports.

Mr. Bowen addressed the Board regarding the proposed changes to the Investment Policy. He stated that he would hate to see any changes made that would jeopardize the Fund's unique model. The Board is provided with data and is then responsible for interpreting it. He opined that the statute seems to be directed at multiple-manager models, but the Board has been doing it differently for 38 years, which has resulted in enormous growth and in being highly ranked. He also noted that expenses should also be taken into account and that he has handouts to be distributed at the conclusion of this discussion. Mr. Adwell noted that he agrees with Mr. Bogush and likes the idea of the Board making their decisions based on data and facts. Mr. Lynch asked Mr. Bowen if he has other Florida funds where BH&Co. is the single manager? Mr. Bowen responded that some are single-manager funds and others are multiple, traditional models with quarterly meetings. Mr. Lynch asked what other single-manager fund's consultants say? Mr. Bowen responded that they have the same type of report provided here. Mr. Lynch then asked what they do that is different from this fund? Do they use a consultant? Mr. Bowen responded that he works with a couple of plans that do not use a consultant. Ms. Fox noted that years ago on the General Employees side there was an independent consultant whose job was to corral the managers and let the GE pension board know if they were doing their jobs or not. Basically, that independent consultant was hired to help decipher all of the investment activity for the Board. She continued that the problem she sees is that a company that is supposed to be an independent consultant may not be independent. The independent consultant could be accepting money to say that managers are good for the fund ("pay to play"). When a professional is being paid to provide opinions, the Board doesn't have the control to know what is going on behind the scenes. Ms. Fox noted that having been to many anti-fraud training sessions, it seems that it would be a dangerous situation to ask for an explicit opinion given the Fund's current model. Mr. Rogero explained that he appreciates everyone's concerns about making decisions contrary to a

recommendation provided, but he frequently disagrees and then documents all of the reasons why he chose to go the other route. He opined that he is not inclined to want an explicit recommendation, noting that the implicit recommendation has been working for a long time. Ms. Fox reiterated that she is comfortable with what is being done currently and would prefer that the paragraph be removed unless or until the Division requests a change. Mr. Rogero and Mr. McRae agreed.

Ms. Campbell noted that the neither "explicit" nor "implicit" is specified in the Statute. She continued that page 9, item 18, "Divestiture" – the Board has already complied because the Fund wasn't invested in any scrutinized companies. She noted that item 18, line 6 needs to be revised to read "...if a company is subsequently removed from the SBA list..." Mr. Lynch asked Mr. Bowen if the proposed benchmark is appropriate for his management style? Mr. Bowen responded that it is and that the change brings the benchmark up to date, particularly on the foreign investments side. **The amendment to include the revision of the last paragraph of page 1 to read as the Statute does and the revisions of item 18 was accepted by Mr. Lynch and seconded by Ms. Fox.** Ms. Fox noted that revising that paragraph to include the statutory language doesn't really change current practice, so she is accepting the amendment. Mr. Strout noted that the Board needs to follow their own process and he would rather not have this paragraph paint the Board into a corner. He continued that if it is Mr. Cohen's opinion that the Board is currently complying, then no further changes to the policy should be made. Ms. Fox agreed with Mr. Strout's comments and withdrew her second and the motion failed. **It was moved by Ms. Fox, seconded by Mr. Rogero to approve P&P 702 with the revision of the last paragraph of page 1 being deleted and the revisions of item 18 being accepted.** Mr. Cohen noted that it can be said that the Board is getting an implicit recommendation, as long as the Board is treating it as one and can defend it. He added that this robust discussion was needed. **Upon voting, the motion passed by a vote of 8-1 with Mr. Adwell, Mr. Bogush, Ms. Fox, Mr. Gray, Mr. Griner, Mr. McRae, Mr. Rogero and Mr. Strout in favor of the motion and Mr. Lynch opposed to the motion.**

Mr. Bowen explained that the Fund had a unique model for 38 years. There have been times when various vested interests have tried to break the fund up, but the numbers are indisputable. In the 1980's the move was primarily coming from brokerage communities who were after commissions, now the move is coming from consultants who want to set the Fund's asset allocation and hire various money managers. He noted that with this model, the consultant is key. The Board looks to the consultant on how the Fund should be operated from an asset allocation and expense standpoint. Regarding the handouts distributed, Mr. Bowen continued that it is known in the industry that it is heroic to keep up with the S&P 500 and this fund has always exceeded it. CalPERS, which is known as the largest public fund in the country, is considered the highest of standards because no other fund has more exposure than they do. When looking at performance, this fund has always done better in every time period. Mr. Bowen added that the multi-manager model can lead to improprieties. The whole consultant community has been under scrutiny by the SEC. A lot of consultants are making recommendations that are not performance based. With the Tampa F&P Fund, it is so streamlined that there is no need to worry about these various activities. In regards to investment management fees, Mr. Bowen shared that the City of Orlando's fees are approximately 68% higher with far less assets, and the City of Fort Lauderdale's are approximately 96% higher again with far less assets. He noted that both the City of Orlando and the City of Fort Lauderdale use the multi-manager style. Mr. Bowen concluded that he knows that Tampa F&P stands out because of its single-manager style, but there is 38 years of history to back it up and he greatly appreciates the Board's dedication. Mr. Bowen thanked the Board for their time and for accommodating him.

16. Systematic review/reaffirmation of pension board policies & procedures in increments. Revisions or reaffirmation recommended as noted on each policy.
- a. 701 – Hiring of Investment Counselor – recommend deletion as redundant to 702. **It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to delete P&P 701 as recommended.**
 - b. 704 – Proxies – minor revision recommended to codify current process. **It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to amend P&P 704 as recommended.**
 - c. 706 – Pension Fund Expense Reimbursement – recommend deletion, decades out of date. Ms. Campbell noted that she would like to rewrite this policy and requested that item 16c be removed from this agenda.
 - d. 708 – Actuarial Assumptions – recommend reaffirmation. **It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to reaffirm P&P 708.**
 - e. 709 – Actuarial Valuations – recommend reaffirmation. **It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to reaffirm P&P 709.**
 - f. 711 – Bi-ennial Report – recommend reaffirmation. **It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to reaffirm P&P 711.**
17. Noted receipt of letter dated 11/1/2011, received by F&P pension 11/7/11 from *ineligible* surviving spouse Marianne Smith, surviving spouse of George R. Smith who passed away 5/17/2011, *before* Remarriage/Marriage After Retirement benefit took effect 10/1/2011. **It was moved by Ms. Fox, seconded by Mr. Strout to receive and file item 17.** Mr. Lynch asked if Ms. Smith is ineligible because Mr. Smith died before the benefit was implemented? Ms. Campbell confirmed and noted that the bill took effect after Mr. Smith's date of death. Mr. Adwell asked if anything can be done? Mr. Cohen responded that nothing can be done in the present state of affairs. Mr. Lynch suggested that the Plan Administrator could draft a letter referring the issue to the unions. Ms. Campbell suggested drafting a letter to Ms. Smith, but dealing with referring the issue to the unions separately with the understanding that the Smith family has been contact with the union. **The motion was amended by Ms. Fox, seconded by Mr. Strout and by unanimous vote to receive and file item 17 and have the Plan Administrator draft a response letter to Ms. Smith.**
18. Noted receipt of agenda request by Mr. Lynch dated 11/14/2011 regarding F&P pension contributions and proposed development of easy to understand explanation of the FSCR (full scale contribution rate) from 1969 contained in the pension contract.

Mr. Lynch noted that this is something that he has been working on with Ms. Campbell. He explained that there are times when the City does withholding where the contributions seem excessive, especially at the end of the fiscal year. He continued that this is not a new issue. What happens is contributing plan members call payroll for an explanation who tells them to call the pension office. The pension office then explains that the FSCR is in the pension contract, which generates calls to the union, who then refers the contributing members back to the pension office. Mr. Lynch suggested developing some Frequently Asked Questions (FAQs) to help deal with this issue. He requested the Board's approval to work with Central Payroll and T&I to see if there is any way to fix the fluctuations in contributions. Ms. Campbell added that if a single person acts on behalf of the Board, there needs to be a motion so delegating the Board's authority. Ms. Fox asked if the FAQs are being worked on? Ms. Campbell explained that FAQs have never been done for the FSCR. She continued that the scale was designed in 1969 to be a progressive scale, but we have not been at 100% of this FSCR since the 1980's. The *average* pension

contribution rate this fiscal year as a percent of pay is 11.74%, but plan members believe that it should be exact when it actually fluctuates. She continued that it is hard to plan for and hard to explain. There are times when the system will under withhold and no one knows why and then the next few times it over withholds to make up for the under withholding. At the end of the fiscal year, there is an adjustment to correct for rounding, but at the end of last fiscal year, there were some people who were contributing 20% of pay. Ms. Campbell noted that Mr. Lynch is correct in the phone calls that were generated regarding this issue and plan members were very unhappy. She suggested that instead of everyone trying to explain what the problem is using their own language, it would be best to have a unified answer. To ensure that everything is working, it's a good idea to check with T&I and Central Payroll and it wouldn't be appropriate for a single trustee to act on behalf of the Board without a motion. She added that she doesn't want plan members to continue to think they are over-contributing and that the system doesn't care. Ms. Campbell noted that because the Fund has monthly financials, annual actuarial valuations and external audit, we know that the contributions being withheld are correct in the aggregate, but it is the interim volatility that causes problems. Ms. Fox asked if Ms. Campbell is suggesting that FAQs is the right way to go and they are already being worked on? Ms. Campbell confirmed and explained that she wants to work with T&I and Central Payroll to make sure that the process is working properly. Ms. Fox responded that it sounds like a committee needs to be set up to address the issue. Ms. Campbell stated that the FAQs will be an F&P Pension product so that everyone will have a unified answer. Mr. Gray assigned the issue to Committee 2, and directed them to set up a meeting for discussion. He noted that Committee 2 consists of Mr. Adwell, Ms. Fox and Mr. Lynch as Committee Chair. Mr. Gray added that he has been victim to the fluctuations in withholding, but at the end of the fiscal year it all came out how it should. Mr. Adwell stated that he is happy with the referral to Committee 2 and asked if changing a 40 year old system can also be worked on? Mr. Lynch responded that he is also hoping to accomplish a change. Ms. Campbell agreed and asked if the Committee can agree to meet sometime after the first of the year? Mr. Lynch agreed.

19. Agenda appearance request of retiree F. Urbuteit.
 - a. Dated 12/6/2011 re: Parker litigation, requesting all recipients be paid.
 - b. Email dated 12/7/2011 regarding staff compliment (G. O'Keefe) and public records request complaint.

Agenda item 19 to be addressed following the break after item 25.

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

[Brief recess from 3:04 p.m. to 3:14 p.m. for Public Comment cards to be turned in.]

Mr. Gray placed item 19 back on the agenda so that it can be addressed before item 25 at Mr. Urbuteit's request.

19. Agenda appearance request of retiree F. Urbuteit.
 - a. Dated 12/6/2011 re: Parker litigation, requesting all recipients be paid.
 - b. Email dated 12/7/2011 regarding staff compliment (G. O'Keefe) and public records request complaint.

Mr. Urbuteit noted that at the last board meeting when he questioned Mr. Cohen's letter, Mr. Cohen replied that he stood by his letter. He then asked what changed Mr. Cohen's decision? He also noted that there was an invoice for \$10,000 for Mr. Cohen researching this issue. In October, another invoice was paid for research and in November another for over \$8,600 in research was also paid. Also, in the October 2009 minutes there was another invoice paid for the attorneys researching paying the opt-outs.

Mr. Urbuteit opined that the fiduciary responsible thing to do is to wait until the conclusion of the case and then make payment to all retirees.

21. Chair's report. Nothing to report.

22. Attorney's report. Nothing to report.

23. Plan Administration - F&P pension office priorities, projects, deadlines. Ms. Campbell noted that this week was DROP week in the office and complimented Mr. Lenker and staff on their hard work. She explained that over 350 DROP statements were processed, as well as 72 DROP rollovers that were sent to the custodian for distribution by 12/31 of almost \$17 million. She noted that over 2,000 COLA letters were mailed out the day before the board meeting and that every single pensioner will receive a COLA increase in 2012, and monthly pension payroll of approximately \$5 million was due today. Ms. Campbell continued that the office is still receiving buy-back and remarriage after retirement requests, working through some of the kinks from health insurance open enrollment, and working through external audit. She noted that this has been the best year for DROP statement accuracy, and that Tiffany Ernst, accountant, has been working nights and weekends to ensure a smooth year for DROP processing. Ms. Campbell thanked staff for really pulling together as a team, handling an amazing amount of work and added she is very proud to work with this dedicated and professional team.

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

The statements made by speakers 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. Urbuteit addressed the Board regarding item 19b, but first noted that Ginny O'Keefe of staff does a great job. He continued that he would like to know what the serious reservations were of having a Tampa police officer in the office? He asked if this threat still exists and what the exact concerns were? Mr. Gray responded that at that point in time, there was a group of police officers actively involved in a lawsuit that now includes the Board that is still ongoing at this point. The concern was for the safety and security of the files in the office and making sure those files were protected during termite tenting. Mr. Gray noted that the emails being discussed are from 2006 and that he does not believe that this is still a problem.

Mr. Buggica addressed the Board regarding item 25. Mr. Buggica noted that he is the Secretary of the Retirees Association and that he receives many requests for information every day about what is going to happen with the Parker check and the members of the Retirees Association tries to answer accordingly. Mr. Buggica asked the trustees what they can do for the retired plan members, noting that the retired population votes for the uniform members of the Board because they want the elected members to act on their behalf. Mr. Buggica concluded by thanking Mr. Bowen for doing an excellent job.

Mr. Sinardi addressed the Board regarding items 15 and 25. Regarding item 15, Mr. Sinardi stated that he was around 38 years ago when Mr. Bowen was hired and added that he has done an excellent job. He asked the Board to please do whatever they can to retain Mr. Bowen. Regarding item 25, Mr. Sinardi stated that the retirees are upset, adding that he hopes that there is not a recommendation to pay the opt-outs. If the Court overrides the lower Court's decision, there will be less money to pay the attorney fees.

Litigation

24. Noted receipt of narrative of each of three cases from Board Counsel Cohen, updated monthly as directed by the board in November 2010. Due to early date of December board meeting, December monthly activity not yet closed as of agenda cutoff, so December update of legal fees paid to date on each case not available by agenda publication – will be reflected in January. **It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to receive and file item 24.**
25. Parker Lawsuit, Case No. 07-007198. *Noted: as per legal opinion rendered at 11/17/2011 board meeting, the opt-outs are no longer part of litigation at this time and may not be discussed in closed, executive session. Thus, all opt-out discussion must take place in open session.* Noted receipt of the following:
- a. Excerpt from 10/15/2009 board meeting minutes, #19h, with prior board direction regarding paying opt-outs and resulting letter to opt-outs dated 10/16/2009.
 - b. Letter dated 11/10/2011 from Board Counsel Cohen regarding opt-out payment recommendation.
 - c. Opt-out settlement agreement/release.
 - d. Letter dated 11/15/2011 from W. L. Thomas regarding opt-outs.
 - e. Appellants' Unopposed Motion for 30 Day Extension of Time to Serve Initial Brief filed by B. Rogow 12/1/2011, received by F&P pension 12/5/2011.
 - f. Letter dated 12/6/2011 from P. Gonyea regarding opt-outs, faxed from R. Cohen's office.

Mr. Cohen noted that he would like to discuss item 25f, which contains the advice of he and Mr. Gonyea. He explained that to do that completely, he needs to discuss various issues that have come up and various options to justify these recommendations. Mr. Cohen noted that he and Mr. Gonyea have understood that the payment to the opt-outs has been a desire of the Board as well as putting an end to this litigation, but the insurance company desired the Board to appeal. He continued that the Mediated Partial Settlement Agreement stated that the amount due is the principal amount that was withheld, \$100 for pensioners and \$50 for surviving spouses, as well as some interest. Mr. Cohen continued to explain that the money for the opt-outs was put into a separate custody account, although it wasn't required. The Board then decided to offer a settlement to the opt-outs in October 2009, and shortly after there was a motion by Mr. Thomas to modify class certification. He noted that over 200 people opted out. Shortly after the settlement was offered to the opt-outs, the Board received a motion from Mr. Thomas seeking that the class be mandatory. The class's argument for forcing the opt-outs back in was that they would receive the benefits of the case, but not have to pay attorney fees; however, when the court ruled that the fund would be responsible for the attorney fees, the Motion to Modify Class Certification was withdrawn. Mr. Cohen explained that at that point, the attorney fees were still undefined as well as the lodestar and multiplier. Because of this, it is now his opinion that the Board should wait until the conclusion of the litigation to pay the opt-outs to ensure that enough money remains in the common fund to pay attorney fees if the class becomes responsible for paying them. Mr. Cohen explained that once he and Mr. Gonyea wrote the 11/10/2011 legal opinion, they received a letter from Mr. Thomas objecting. At that point, the appellate counsel was consulted and various options were discussed. Mr. Cohen expressed his understanding that none of the options are satisfactory, but an objection was received, and that payment to the opt-outs could spawn more litigation and it is possible that additional litigation could delay the conclusion of the appeal. He continued that the letter received says that if the Board pays the opt-outs, Mr. Thomas believes that the Board will be in violation, but Mr. Cohen disagrees with that statement. Mr. Cohen explained that another option is to pay the opt-outs from the main fund, but the Board placed the opt-out money into the common fund because we wanted to treat everyone the same. Mr. Cohen opined that there are a lot of

uncertain consequences in this litigation. Another choice is to not act until the case is over and then act accordingly. There is a possibility that the Board could try to work something out with Mr. Thomas and determine how much fees would be from here on out and how much interest, but if the decision is reversed, the money to pay the attorney's fees would likely have to be paid out of the common fund, so to ensure that there is enough money, more money would have to be set aside. He noted that there are unintended consequences with that option as well. He reiterated that the Board's best chance to avoid further litigation is to wait until the conclusion of the appeal.

Ms. Fox stated that she is struggling with this because at one point in time, for a long period of time, the opt-outs were on hold because they had potential to be a part of the litigation, but now she is seeing in writing that they are no longer part of the litigation. She added that the Board owes money to the opt-outs that will have to be paid one way or another. Mr. Gray agreed. Mr. Cohen responded that there are defenses to paying the interest portions of that. Ms. Campbell added that they are still owed the principal and the Board voted in 2009 for the interest. She continued that she believes the Board committed in 2009 to pay the principal plus interest. Ms. Fox opined that if the opt-outs have to be paid one way or another and they are no longer part of the litigation, she doesn't see any reason to hold it. It is such a small portion of the fund (approximately .0275% or .000275) that she doesn't understand why the payment cannot be made from the main fund. She noted that she understands why the payment shouldn't be made from the common fund because the Board already said that we wouldn't do that. She added that mathematically, she believes that it wouldn't have a great impact on contributions or anyone else. Ms. Fox noted that it is in writing that the opt-outs are no longer part of the litigation and asked what legal problem there is with paying them now out of the main fund? Mr. Gonyea responded that everything the Board does with respect to paying the opt-outs or not, runs a risk. There are two places that payment of the opt-outs could come from: the main fund or the common fund. He continued that it has always been his understanding that the Board wants to pay the opt-outs. There are letters that went out in 2009 saying so and it has always been the Fund's intention to make payment. He explained that the Board had to hold back enough money to be able to pay attorneys fees and that money was placed in an interest bearing account. The Fund has an assumed rate of return of 10%, while the common fund is currently earning .01%. The insurance company noted their objection of paying the opt-outs from the common fund based upon Mr. Thomas's letter because they feel that it could spawn more litigation, so the Board could pay the opt-outs from the main fund. The problem with making payment from the main fund is that there is no way of knowing what that money may earn in the future, either positive or negative. Because the Evergreen account is only earning .01%, that money may not be returned to the main fund dollar for dollar. Mr. Gonyea noted that there is no easy choice in this situation. Paying the opt-outs from the main fund involves risks. Mr. Gonyea explained that the Board has to decide if they want to pay the opt-outs and run the risk of more litigation or hold off and revisit the issue at the conclusion of the case. He opined that the Board's safest course of action is to wait until the conclusion of the litigation. Mr. Lynch asked what would happen if the 235 out-optes band together and sue the Fund? Mr. Gonyea responded that the opt-outs are not part of this litigation and they have given no indication that they wish to sue. Ms. Fox restated that the two choices are to pay the opt-outs and take the risk that the Fund will be sued over the differential in what the money would have earned, or don't pay the opt-outs and defend not paying what we know we already owe and have committed to pay in writing. Mr. Gray added that the opt-outs can be paid from the main fund and the Board's risk is that the Fund could gain or lose money. He continued that he understands Mr. Cohen's sentiment, but the statement that the opt-outs are no longer part of the litigation leads him to believe that payment should be made. Mr. Cohen responded that the letter from Mr. Thomas says that he believes that the opt-outs may still owe a portion of the attorney's fees and this may increase proportionally what each person must pay. He continued that he cannot tell the Board that

there won't be a movement to get those funds back. Ms. Fox explained that from what she knows of class action lawsuits, if a person chooses to opt-out, they're out and because they weren't made part of the action by the judge, they are no longer on the hook for litigation costs. Mr. Cohen responded that it is his position that they are not responsible, but it is the Class's position that they may still be, reiterating that the best defensible position is to not pay the opt-outs or try to work something out with Mr. Thomas. Mr. Gray asked why the Board needs Mr. Thomas's permission to pay from the main fund? Mr. Lynch stated that he would be happy to put this in the form of a motion to pay the opt-outs with the cautionary statement that if the attorney's fees have to be paid out of the common fund, they may end up owing Mr. Thomas money. Mr. Strout suggested that if the Court rules that the attorney's fees have to come out of the common fund, they may look to the Fund and not the individual. Mr. Strout continued that the bigger issue is that if new litigation is spawned, the Parker case could be pushed back and asked how close the appeal is to being concluded? Mr. Cohen responded that 9 more months is his best guess. Mr. Rogero responded that he appreciates the legal counsel and their opinion of the most legally defensible position, but noted that he is content to pay the opt-outs and run the risks. Mr. Bogush asked if the insurance carrier would have any excuse not to pay attorney's fees if the opt-outs are paid from the main fund? Mr. Cohen responded they would not, but he doesn't believe that they will fund new litigation. Mr. Gray noted that the Fund is no longer insured with that company. Mr. Cohen responded that it might be considered a related action and they might decline to pay anything further. Mr. Adwell explained that a few months ago he thought this case was coming to an end, then the appeal occurred. Mr. Cohen responded that there was a letter sent out in 2009 that needed to be revisited regarding the payment of the opt-outs (item 25a on today's agenda). He also noted that if the Board decides to pay the opt-outs now, it would be against the legal advice of both attorneys. Mr. Griner likened the situation of owing the opt-outs money to owing payment on a water bill that still has to be paid now or later. Mr. Lynch noted that it was pointed out that a lot of research has been done on this issue. He continued that although both attorneys believe that the Board shouldn't make the payment, it would not violate the settlement agreement. Mr. Strout, in regards to making the payment from the main fund and then reimbursing the main fund from the common fund, asked why the common fund was earning such low interest? Mr. Gray responded that it was part of the agreement with Mr. Thomas and was done at their request. Ms. Fox pointed out that if the opt-outs are paid from the main fund and the main fund lost money in the market, the Board would be protecting the funds from loss, but unfortunately that means the potential of protecting it from gains too. Mr. Gray explained that he would rather defend over-paying someone rather than under-paying. He continued that he disagrees with the theory that paying the opt-outs would threaten the settlement agreement or the Parker appeal. He asked how making payment from the main fund would delay resolution of the appeal? **It was moved by Mr. Lynch, seconded by Mr. Rogero to pay the opt-outs from the main fund with the documents previously presented that includes the precautionary language acknowledging that the opt-outs may end up owing money under certain circumstances.** Mr. Cohen clarified that the 11/10/2011 letter states that there is no legal requirement that the Board must pay the opt-outs. Mr. Gray responded that he understands that. Ms. Fox noted that she has been a part of this Board for a long time and has always prided herself in that opportunity because she has always served with people who want to do the right thing. Based on everything that the Board has heard, even though it is against legal opinion because of potential lawsuits, the Board must make decisions not based on fear. No matter the decision, the fund will continue to be sued. Ms. Fox continued to explain that she would rather the Board have to defend doing the right thing by paying their obligation. Mr. Lynch explained that Board's duty is to pay benefits owed and that is the basis of his motion to pay the opt-outs. Mr. Rogero noted that he agrees with Ms. Fox and thanked counsel again for their advice. Mr. Adwell explained that he appreciates everyone's opinions, but he believes that the Board has a duty to the entire fund and not just a certain group of people and that is why he cannot go

along with paying the opt-outs. Mr. Bogush explained that he doesn't like this situation, but he believes Mr. Lynch summed it up – the Board owes benefits and it is now a choice of which way we want to be attacked. Mr. McRae agreed. Mr. Gray thanked the Board for having the courage to state their opinions. **Upon voting, the motion passed by a vote of 8-1 with Mr. Bogush, Ms. Fox, Mr. Gray, Mr. Griner, Mr. Lynch, Mr. McRae, Mr. Rogero and Mr. Strout in favor of the motion and Mr. Adwell opposed to the motion.** Ms. Campbell asked that the Board direct the attorneys to draft said cover letter with the precautionary language and have it to the office by 10:00 a.m. the following morning. Mr. Cohen confirmed that he could have the letter drafted within the given deadline. **It was moved by Mr. Lynch to receive and file items 25 a-f and to direct Mr. Cohen to draft the precautionary language immediately.** Mr. Strout asked if that precaution should be in the agreement? Mr. Cohen agreed that it should and will be added into the Settlement Agreement. Ms. Gray confirmed that both the cover letter and revised Settlement Agreement should be received by 10:00 a.m. the following morning. **The motion was seconded by Mr. Rogero and passed by a vote of 8-1 with Mr. Bough, Ms. Fox, Mr. Gray, Mr. Griner, Mr. Lynch, Mr. McRae, Mr. Rogero and Mr. Strout in favor of the motion and Mr. Adwell opposed to the motion.**

26. Artz Lawsuit, Case No. 07-012048. Update by board counsel, if any. Noted receipt of the following:
- Appellants' Unopposed Motion for Extension of Time to File Initial Brief filed by M. Feldman 11/28/2011, received by F&P pension 11/29/2011.
 - Court Granting of Motion dated 12/2/2011, received by F&P pension 12/6/2011.
- It was moved by Mr. Lynch, seconded by Mr. Griner and by unanimous vote to receive and file items 26 a&b.**

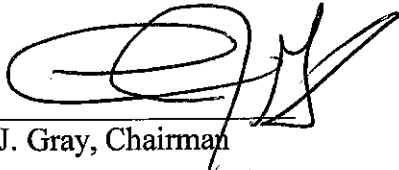
27. Pena Lawsuit, Case No. 08-013997. Update by board counsel, if any. Nothing to report.

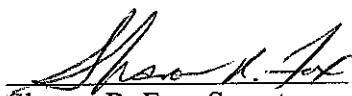
Motion to adjourn was made by Ms. Fox at 4:28 p.m.

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.


P.J. Gray, Chairman


Sharon R. Fox, Secretary


Tiffany S. Corry
Recording Secretary

2012 Board meeting schedule

January 26, 2012

February 23, 2012

March 22, 2012

April 26, 2012

May 24, 2012

June 28, 2012

July 26, 2012

August 23, 2012

September 27, 2012

October 25, 2012

November 15, 2012 *early due to holidays

December 20, 2012 *early due to holidays