



CONTRA  
COSTA  
COUNTY **CCERA**  
Employees' Retirement Association

MINUTES

RETIREMENT BOARD MEETING MINUTES

FIRST MONTHLY BOARD MEETING

9:00 a.m.

April 8, 2015

Retirement Board Conference Room

The Willows Office Park  
1355 Willow Way, Suite 221

Concord, California

Present: Debora Allen, Candace Andersen, Scott Gordon, Brian Hast, Jerry Holcombe, Louie Kroll, John Phillips, William Pigeon, Gabe Rodrigues, Todd Smithey, Jerry Telles and Russell Watts

Absent: None

Staff: Gail Strohl, Retirement Chief Executive Officer, Kurt Schneider, Deputy Retirement Chief Executive Officer; Timothy Price, Retirement Chief Investment Officer; Karen Levy, Retirement General Counsel; Wrally Dutkiewicz, Retirement Compliance Officer; Vickie Kaplan, Retirement Accounting Manager; and Christina Dunn, Retirement Administration/HR Manager

Outside Professional Support: Harvey Leiderman      Representing: Reed Smith LLP

1. **Pledge of Allegiance**

Hast led all in the *Pledge of Allegiance*.

2. **Accept comments from the public**

No members of the public offered comment.

3. **Approval of Minutes**

It was **M/S/C** to approve the minutes of the January 28, 2015 meeting. (Yes: Allen, Gordon, Hast, Kroll, Phillips, Rodrigues, Smithey and Watts. Abs.: Andersen)

It was **M/S/C** to approve the minutes of the February 11, 2015 meeting with a corrections to page 3, b., Charles Nicholson and Eric Jonsson should have "retired Hazardous Materials Specialist" after their names instead of "retired hazmat" and on page 4, Item 10, remove the word "values" from the first sentence. (Yes: Allen, Gordon, Hast, Kroll, Phillips, Rodrigues, Smithey and Watts. Abs.: Andersen)

4. **Routine Items**

It was **M/S/C** to approve the routine items of the April 8, 2015 meeting. (Yes: Allen, Andersen, Gordon, Hast, Kroll, Phillips, Rodrigues, Smithey and Watts)

It was the consensus of the Board to move to Item 7.

7. **Consider and take possible action to change the Board's policy and include more than base pay in pensionable compensation for PEPRA members**

It was M/S to maintain pensionable compensation as base pay only consistent with existing Board policy.

A substitute motion was M/S to allow more than base pay to be included in pensionable compensation.

Telles was present for subsequent discussion and voting.

In public comment, Ken Westermann, Past President of the Deputy Sheriff's Association (DSA) and current board member of DSA speaking on DSA's behalf, stated CalPERS and other '37 ACT counties have included items beyond base pay. He also stated in the past 18 months, the Contra Costa County Sheriff's Office has lost 55 deputies to CalPERS agencies and other '37 Act agencies. He noted many are PEPRA members. He stated the cost to hire and train each new deputy is \$144,000 and then they leave. The DSA is asking for fair consideration, not extraordinary benefits.

The Board discussed the intent of the law, CalPERS regulations, job classifications, increases in final average salaries, differentials and whether or not they are recurring and permanent, FLSA pay, and employer responsibilities.

Leiderman stated it is important that the Board follow CCCERA's Plan Document. He reported that prior to PEPRA there were two categories of compensation earnable that were pensionable, payrate and special compensation. He stated that PEPRA uses a new phrase "pensionable compensation" which is word for word the same definition as payrate. The category of special compensation is not included in the new law.

Ken Westermann, DSA, stated he appreciated the intellectual arguments and debates. He feels special compensation is included in payrate. He stated CCCERA's contribution rates are calculated differently than CalPERS and that CalPERS benefits are higher at a lower cost to its members. He noted the number of PEPRA members that have left is approximately 10 but the number is growing. Employees that are leaving are leaving not only for the salary but also for the pension.

Vince Wells, President of Local 1230, stated he has been a firefighter/paramedic for 18 years and is now a Fire Captain and has received a 10% differential for providing advanced life support for his entire career and not everyone gets that. He noted there are Fire Captains who are not paramedics and they do not receive the 10% differential. It was noted he is a legacy employee and the example is for legacy employees.

Jared Palet, Contra Costa County Fire, Local 1230, stated when they recruit they have different job classifications. If they are hired as a firefighter/paramedic they get paid 10% included in their salary but once they promote to Captain/Paramedic or Engineer/Paramedic, the 10% is then paid as a differential.

Leiderman stated he considers FLSA pay as base pay, just at a different rate.

After discussion, the substitute motion to allow more than base pay to be included in pensionable compensation was voted on. (Yes: Hast, Rodrigues, Smithey and Telles. No: Allen, Anderson, Gordon, Phillips and Watts). Motion Failed.

The original motion and second were withdrawn.

It was the consensus of the Board to move to Item 8.

**8. Consider and take possible action regarding the retiree lookback project: review of past incidents of unusual compensation increases at the end of employment**

Dutkiewicz gave an overview of the retiree lookback project noting that out of the 3,881 retirees he focused on 188 retirees that had a FAS over pre-FAS increase of 30% or more. He also noted that 42 retirees of the 188 were identified as having variable compensation items included in their final average salary.

Dutkiewicz asked the Board if they wanted the review to go deeper at the individual level. The Board requested a report on those that have increases of 30% or more from a particular pay code or from a particular individual.

In public comment, Dan Borenstein, Contra Costa Times, stated he was perplexed as to why 30% is being used. He felt it was an awfully high threshold. He asked if there was a similar chart on hazardous waste and physicians. Dutkiewicz noted the Deputy CEO previously reported on them.

It was **M/S/C** to look at the 30% aggregate threshold (188 people) with a caveat that staff look at the 2 people who had significant promotions as well and come back with the information and then have the Board give direction at that time. (Yes: Allen, Andersen, Hast, Phillips, Rodrigues, Smithey, Telles and Watts. Abs.: Gordon)

It was the consensus of the Board to move to Item 10.

**10. Consider and take possible action regarding the next steps pertaining to call back pay erroneously reported as pensionable which resulted in overpayments of benefits to retirees**

The Board discussed sending a third written notice. Leiderman suggested the Board schedule the hearing now and include that in the third notice.

In public comment, Dr. Steven Tremain, Retired, noting he was in a management position for 22 years. He stated he attended the PDOCC negotiations and it was continually asked if call back pay was a pensionable benefit and the County negotiators continued to answer yes. He noted pensions contributions were continually taken from call back pay. He also noted the County only has one classification for physicians regardless if they are surgeons or not. He stated physician training, experience and competences are an important part of overseeing residents at the medical center and call back pay has to be there for residents noting it is required, regular and recurring.

It was **M/S/C** to proceed with the recommendation on page 2 of the memo with the express proviso that CCCERA will proceed to move ahead and adjust the corrections for those members who do not request a further hearing:

1. Proceed with the fact finding phase as to the members who requested a further opportunity to provide information about their pay.
2. Send a third written notice to those members only, outlining the issues and types of information needed to make a determination on the pensionability of the pay at issue. The notice will provide 30 days by which all written submissions are to be received by CCCERA.
3. After the written submissions and relevant records are gathered and received, the Board may consider the best approach to resolving the claims of those members, based on all information before the Board at that time. Possible approaches may include (a) final decisions by the Board based on the information before the Board at that time; (b) further hearings to develop additional

facts at a public Board meeting; or (c) further hearings before a hearing officer, as authorized under Government Code Section 31533.

4. The question of collection of retroactive overpayments resulting from the inclusion of call back pay for all 43 members will continue to be deferred to a final phase and considered after all final determinations are made by the Board as to the pensionability of the pay at issue.

(Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts)

There was a discussion on who the hearing officer will be and who will do the fact finding. Levy stated the hearing would be similar to a disability hearing and the hearing officer would give an opinion with a recommendation to the Board based on the findings of facts and the Board can either accept the hearing officer's recommendation or do something different. Leiderman recommended the Board give specific instructions to the hearing officer as to what the scope of the hearing will be and recommends using the Office of Administrative Hearings (OAH) and that it be a fact finding, fact determination and also recommended leaving the legal issues for the Board to determine.

It was M/S/C to add to Item 3(c) of the recommendation the express proviso to use the Office of Administrative Hearings (OAH) for a fact finding, fact determination and reserve the legal issues for the Board to determine. (Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts)

In public comment, Eric Jonsson, retired hazardous materials specialist, asked what type of information will be allowed at hearings.

Leiderman gave a brief overview of the hearing process noting the hearing officer gathers the facts, writes a report and submits the recommendation to the Board and the Board makes a decision.

Lacey Friedman, hazardous materials specialist, asked if there will be another side to the table at the hearings. It was noted CCCERA will hire an attorney to represent it at the hearing.

**11. Consider and take possible action to establish an audit committee and adopt an audit committee charter**

The Board discussed the differences between an ad hoc committee and a standing committee.

It was M/S to establish a standing audit committee.

Leiderman suggested a change in the wording to V.4 from "overseeing the appointment of the outside auditor" to "appointing the outside auditor."

The Board also discussed the contents of the committee charter and felt the committee should draft the charter and present it to the Board for approval.

An amended motion was M/S/C to establish a standing audit committee with up to 4 committee members. (Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts)

Hast appointed Smithey as Chair, Phillips as Vice-Chair, Allen and Watts to serve on the committee.

It was the consensus of the Board to move to Item 9.

**9. Consider and take possible action regarding non-service connected disability retirement allowance of deceased member Elizabeth Maaske**

It was **M/S/C** to grant a non-service connected disability to Elizabeth Maaske. (Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts)

It was **M/S/C** to approve the Optional Settlement 2 payment to the named beneficiary. (Yes: Allen, Andersen, Gordon, Hast, Phillips, Rodrigues, Smithey, Telles and Watts)

Telles suggested putting the Active Death form in the quarterly newsletter.

Andersen, Gordon, Kroll and Pigeon were not present for subsequent discussion and voting.

It was the consensus of the Board to move into Closed Session.

## **CLOSED SESSION**

The Board moved into closed session pursuant to Govt. Code Section 54957 and 54956.9(d)(2).

The Board moved into open session.

5. It was **M/S/C** to accept the Medical Advisor's recommendation and grant the following disability benefits:
  - a. Mark Thompson – Service Connected (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Smithey, Telles and Watts)
  - b. Brian Givins – Service Connected (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Smithey, Telles and Watts)
6. There was no reportable action related to Govt. Code Section 54956.9(d)(2).

It was the consensus of the Board to move to Item 15.

### **15. Presentation of cash flow report for the period ending December 31, 2014**

It was **M/S/C** to accept the cash flow report for the period ending December 31, 2014. (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Smithey, Telles and Watts)

It was the consensus of the Board to move to Item 12.

### **12. Presentation of the Byron-Brentwood-Knightsen Union Cemetery District employer audit report**

Dutkiewicz presented the Byron-Brentwood-Knightsen Union Cemetery District employer audit report. He reviewed the scope of the audit, the activities performed and the findings and observations of the audit. He discussed the items he reviewed including the accuracy of payroll information provided to CCCERA, enrollment of all eligible employees, the accuracy of employee sick leave accrual balances, the accuracy of employee vacation accrual balances, and the forfeiture of benefits earned or accrued from the commission of a felony. He also reviewed the follow-up items as well as the District's responses.

### **13. Presentation of the Contra Costa Mosquito & Vector Control District employer audit report**

Dutkiewicz presented the Contra Costa Mosquito & Vector Control District employer audit report. He reviewed the scope of the audit, the activities performed and the findings and observations of the audit. He discussed the items he reviewed including the accuracy of payroll information provided to CCCERA, enrollment of all eligible employees, the accuracy of employee sick leave accrual balances, the accuracy of employee vacation accrual balances, and the forfeiture of benefits earned or accrued

from the commission of a felony. He also reviewed the follow-up items as well as the District's responses.

**14. Presentation of the Central Contra Costa Sanitary District employer audit report**

Dutkiewicz presented the Central Contra Costa Sanitary District employer audit report. He reviewed the scope of the audit, the activities performed and the findings and observations of the audit. He discussed the items he reviewed including the accuracy of payroll information provided to CCCERA, enrollment of all eligible employees, the accuracy of employee sick leave accrual balances, the accuracy of employee vacation accrual balances, and the forfeiture of benefits earned or accrued from the commission of a felony. He also reviewed the follow-up items as well as the District's responses.

Smithey was no longer present for subsequent discussion and voting.

It was the consensus of the Board to move to Item 16.

**16. Consider and take possible action regarding scheduling of May 28, 2015 meeting**

Strohl reported the need to change the May 20, 2015 Board meeting to May 28, 2015. Price noted this would be the first kickoff meeting with Wurts.

It was M/S/C to change the May 20, 2015 Board meeting to May 28, 2015. (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Telles and Watts)

Hast noted there will not be a meeting on April 22, 2015.

**17. Conference Seminar Attendance**

- a. It was M/S/C to authorize the attendance of 1 staff member at the 2015 Milken Institute Global Conference, Milken Institute, April 26-29, 2015, Los Angeles, CA. (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Telles and Watts)
- b. It was M/S/C to authorize the attendance of all appropriate Board members and staff members at the SACRS Spring Conference, SACRS, May 12-15, 2015, Anaheim, CA. (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Telles and Watts)

**18. Miscellaneous**

(a) Staff Report –

Schneider reported the Rodeo-Hercules fire chief sent a letter asking CCCERA to re-amortize their unfunded liability so they can have a lower contribution rate. The Rodeo-Hercules Board is adopting a resolution to authorize the request.

He reported the website designers have put together a survey that will be sent to Board members.

Strohl thanked Schneider for heading up the website project.

She reported there will be an update on retirement data and disability retirement data at the May 6, 2015 meeting.

She also reported we are working on planning a CCCERA employee picnic.

Dutkiewicz reported he is reviewing the Standards and Practice's guide which is used by staff to develop procedures.

Price reported the Wurts contract was executed as of April 1, 2015. Ed Hoffman of Wurts will be present at the May 6, 2015 meeting to discuss the survey they will administer to the Board on risk tolerance and asset exposure.

PIMCO will be present at the May 6, 2015 to give an organizational update.

Kaplan reported they are in the middle of the audit and busy wrapping up year end. She also reported the 1099R's have been submitted.

Dunn reported an RFP was issued for property management and the responses are being reviewed.

Levy reported on the following closed session item:

In closed session on March 22, 2015, the Board agreed to enter into a final and binding agreement to settle legal claims, as follows:

In October, 2014, CCCERA first discovered that it may have been incorrectly paying a spousal continuance allowance to Penelope Brault, contrary to a section of law that requires that the spouse attain the age of 55 on or before the date of the retired member's death in order to be eligible for the spousal continuance. (Government Code Section 31760.2) Penelope Brault had not attained the age of 55 on or before the death of her husband, CCCERA retired member Ronald Brault, and therefore was not eligible to receive a spousal continuance allowance from CCCERA. The total amount of overpayments that CCCERA made to Brault, without interest, was \$172,470.68.

CCCERA terminated Ms. Brault's spousal continuance effective October 31, 2014. CCCERA proceeded to seek recovery of the overpayment and appropriate interest, in accordance with governing law and the duly adopted policies of the CCCERA Board.

Ms. Brault disputed CCCERA's right to collect the amount that CCCERA paid to her in error and interest on those amounts. In recognition of the parties' dispute and in order to avoid the risk, delay, cost and expense of litigation, the parties have agreed to fully and finally settle all disputes, claims and controversies between them on this matter. The Settlement Agreement provides, in summary, that Mrs. Brault shall pay CCCERA the sum of \$100,000 within 30 days of the agreement, and the parties release each other from any and all other claims in this matter.

The vote in closed session was as follows:

Yes: Allen, Andersen, Gordon, Holcombe, Phillips, Pigeon (voting in Hast's absence), Rodrigues, Smithey Telles, Watts

Nos: None

Abstentions: None

(b) Outside Professionals' Report -

Leiderman reported on a case in San Francisco called Protect our Benefits. San Francisco had passed an ordinance in 2011 that said when they promised to pay a supplemental COLA to retirees it was at a time when they had excess earnings and that going forward a supplemental COLA will only be paid when they had surplus earnings. It was challenged and the court ruled against the challengers and the Court of Appeals overturned the ruling saying retirees had a

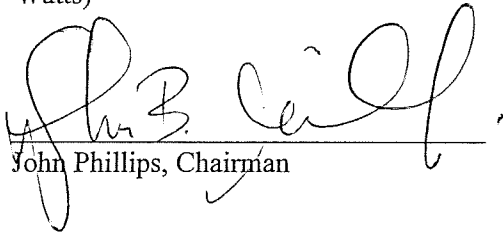
vested right to the supplemental COLA. He noted all of the cases that have been ruled by trial courts on pension and retiree healthcare are now at the appeals court level and are being overturned.

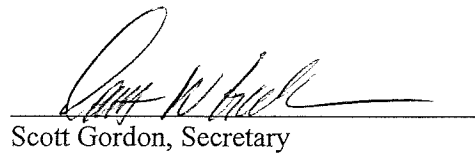
(c) Trustees' comments –

Watts reported he attended the Pension Bridge Conference in San Francisco and highly recommend Board members attend it next year.

Rodrigues would appreciate any ideas regarding SACRS conference topics.

It was M/S/C to adjourn the meeting. (Yes: Allen, Hast, Holcombe, Phillips, Rodrigues, Telles and Watts)

  
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John Phillips, Chairman

  
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Scott Gordon, Secretary