

## Meeting Minutes - December 11, 2007

The meeting of the Des Plaines Police Pension Board was called to order by President Chiaro at 9:04 a.m. in Room 101 of City Hall.

**Roll Call.** Present – Trustees Freeman, Muehlenbeck, Salas, Marks, and President Chairro (5). Absent: None. Also present were Annuitant Wendall Whitted, Board Attorney Joseph Perkoski, Board Financial Advisor Thomas McShane, and City Finance Director Bob Simpson.

**Approval of Minutes.** Motion by Muehlenbeck, seconded by Salas to approve the minutes of the September 17, 2007 hearing on Officer Dick Lalowski's application for disability pension, the minutes from the October 9, 2007 hearing on Officer Dick Lalowski's application for disability pension and the October 9, 2007 regular meeting minutes. Motion carried by unanimous voice vote.

**Disbursements.** The Board reviewed the recommended disbursements as set forth in the December 11, 2007 warrant list. Discussion ensued concerning a correction to a disbursement item appearing on the October 9, 2007 warrant list with respect to Dr. Wahlstrom. The check issued to Dr. Wahlstrom from the October 9, 2007 warrant list has been voided and the new amount payable to Dr. Wahlstrom appears on the December 11, 2007 warrant list. Motion by Salas, seconded by Muehlenbeck to pay disbursements as listed, totaling \$86,209.51. Ayes: Trustees Freeman, Muehlenbeck, Salas, Marks and President Chiaro (5). Nays: None. Motion carried, 5 - 0.

### **Board Attorney's Report.**

**Sarkis Appeal Update.** Attorney Perkoski advised the Board that there has been no decision from the Appellate Court concerning the appeal. The appeal has been fully briefed as of June 13, 2007. Attorney Perkoski also advised that David Ader, the attorney for the City of Des Plaines, is filing a motion with the Appellate Court requesting that if oral arguments are to be scheduled that they be scheduled after January 17, 2008 due to Ader's absence in January.

**Officer Schroeder Disability Claim Update.** Attorney Perkoski discussed his recommendation that the Board authorize additional IMEs based upon his review of the three IMEs provided. Attorney Perkoski advised that the three IMEs do not provide clear direction for the Board to make an appropriate assessment of Officer Schroeder's disability claim. Attorney Perkoski also discussed his recommendation that the Board consider the use of an additional attorney from his firm to present the evidence at Officer Schroeder's disability hearing so that the Board has a clear presentation of the evidence. The Board gave direction to Attorney Perkoski to pursue additional necessary evidence for the consideration of the disability claim including the conducting of two additional IMEs. The Board further gave direction concerning the use of a separate attorney to present the evidence at Officer Schroeder's disability hearing.

**Lalowski Complaint for Administrative Review.** Attorney Perkoski discussed the Complaint for Administrative Review filed on behalf of Officer Lalowski by his attorney, David Smollen. The Complaint for Administrative Review asserts that the Board's determination was in error and that Officer Lalowski's disability was in the line of duty. Attorney Perkoski advised that his office will proceed to file its appearance in the case along with the initial pleadings.

**Review of New Court Decisions.** Attorney Perkoski discussed a recent decision by the Illinois Supreme Court in *Wade v. City of North Chicago Police Pension Board* issued on November 1, 2007. The primary importance of the *Wade* decision is that the Supreme Court has finally resolved the issue of the so-called "three doctors rule." The *Wade* court held that there need not be unanimity among the three IME doctors with respect to a finding of disability for the board to determine that a claimant is disabled. The Supreme Court in *Wade* further affirmed that the ultimate decision with respect to a determination of disability is not the IME doctors but a pension board itself in reviewing the evidence presented. Attorney Perkoski further noted that the Supreme Court in *Wade* stated that a pension board's duty with respect to the evidence is to render a decision which is consistent with the "manifest weight of the evidence."

Attorney Perkoski also discussed a decision in the Illinois Appellate Court in *Rozak v. Kankakee Firefighters' Pension Board*. In *Rozak*, the Illinois Appellate Court Third District, held that the pension board's finding that a claimant was not disabled based upon the firefighter's lack of credibility was against the manifest weight of the evidence. The Appellate Court noted that a consideration of the claimant's credibility must be related to the medical evidence considered with respect to the disability. Attorney Perkoski further noted that the *Rozak* case also held that pension boards may withhold disability pension benefits from officers refusing to undergo medical treatment only if the refusal, rather than the initial injury, is the cause of the continuing disability.

Attorney Perkoski also discussed a decision by the Illinois Appellate Court, Fourth District, in *McKee v. Board of Trustees of the Champaign Police Pension Fund*. In *McKee*, the Appellate Court for the Fourth District held that the police pension fund acted consistent with its discretion in denying the claimant's duty related disability pension application on the basis that the claimant did not provide three credible certificates of disability. Attorney Perkoski also noted that the *McKee* decision is important as it affirms the right of a pension board in appropriate cases to select additional physicians to conduct evaluations in rendering a decision in a disability claim.

Attorney Perkoski also discussed legislative updates, including the transfer of creditable service from Article 3 Pension Funds to Article 7 IMRF Funds; the transfer of creditable service from Article 7 IMRF Funds to Article 3 Pension Funds and the transfer of creditable service from Article 3 Pension Funds to Article XIV, SERS Funds. Attorney Perkoski noted that Lauterbach & Amen, LLP had prepared examples depicting the transfer of creditable service under the new rules. Attorney Perkoski also discussed PA 095-0521 concerning service certification for Illinois financial entities. This new law requires pension funds to have certain financial entities holding money on behalf of the pension fund complete a certification form which essentially stipulates that the financial entity is in compliance with the requirements of the Illinois High Risk Home Loan Act. Attorney Perkoski expressed his opinion that the law would not apply to brokerage accounts. Thomas McShane expressed his

agreement with that opinion and noted that the only account that it may apply to would be the Fund's Harris Bank account. Lauterbach & Amen will be consulted to ensure that Harris Bank completes the necessary forms on behalf of the Fund.

## **New Business.**

**Open Meetings Act Compliance.** The Board discussed a summary of the Illinois Open Meetings Act issued by the City of Des Plaines City Attorney's Office. The City Attorney's Office issued an inter-office memorandum dated October 17, 2007 summarizing Open Meetings Act compliance and recent changes to the Act. A copy of the inter-office memorandum was distributed to all Board Members.

**2008 Pension Board Meetings.** The Board discussed the schedule for Pension Board meetings in 2008. The dates are established consistent with the Board's policies and include February 12, April 8, June 10, August 12, October 14 and December 9, 2008.

Motion by Salas, seconded by Muehlenbeck, to approve the 2008 Pension Board regular meeting schedule to include February 12, April 8, June 10, August 12, October 14 and December 9, 2008. The motion was carried by unanimous voice vote.

**Schedule for Pension Benefit Increases.** The Board reviewed and discussed the schedule for pension benefit increases for calendar year 2008 forwarded by Lauterbach & Amen, LLP on November 16, 2007.

**Irene Mensching.** The Board was advised of the passing of annuitant Irene Mensching. Ms. Mensching was born on September 24, 1922 and passed away on November 1, 2007. She was the surviving spouse of Captain Dale Mensching.

**Approval of Lauterbach & Amen, LLP Balance Sheets for September and October 2007.**

The Board reviewed the balance sheets of Lauterbach & Amen for September and October 2007.

Motion by Salas, seconded by Freeman, to approve the Lauterbach & Amen balance sheets for September and October 2007. Ayes: Trustees Freeman, Muehlenbeck, Salas, Marks and President Chiaro (5). Nays: None. The motion was carried, 5-0.

## **Financial Report.**

**Review of Funds Portfolio/Asset Allocation.** Thomas McShane advised the Board concerning the status of the Fund's portfolio and asset allocation. McShane presented and discussed the new format of the financial report. McShane noted that the overall portfolio value is up 12.75% above the benchmarks. McShane stated that the Fund's decision to limit exposure to small caps is primarily responsible for the increase in value. McShane noted the positive performance of Great Lakes Large Cap Value Fund which is up 20.2%. The report detailing the total Fund performance as of September 30, 2007 is attached to these minutes as Appendix A and made a part of these minutes. The report depicting the Fund's asset allocation review as of November 30, 2007 is attached as Appendix B and made a part of these minutes.

McShane further discussed his concern with the Fund's Fayez Sarofim—Large Cap Growth fund manager. McShane noted that Fayez Sarofim's top five equity holdings are very similar to Great Lakes—Large Cap Value Fund. McShane then noted that Wells—Large Cap Growth has equity holdings in different companies. McShane's primary concern with Fayez Sarofim is its duplication. Based on this concern, McShane is recommending that the Board transfer \$1,000,000 from its holdings in Fayez Sarofim to Wells Large Cap Growth. McShane noted that Fayez Sarofim should be maintained by the Fund as a smaller player in the portfolio.

McShane further discussed the Fund's holdings in SG Capital—Small Cap Growth Manager. McShane noted that the holding is currently up 3.27%, which is positive given the current market. McShane also discussed the Fund's holdings in McDonald—Fixed Income Manager, noting that its increase in value of 5.64% is positive in the current

market and exceeds the fees relative to the holding. McShane also discussed his recommendation that the Fund continue to stay at its current investment of 45% equities with possible future moves from value to growth holdings.

Motion by Salas, seconded by Muehlenbeck to transfer \$1,000,000 from Faye Sarofim—Large Cap Growth to Wells—Large Cap Growth. Ayes: Trustees Freeman, Muehlenbeck, Salas, Marks and President Chiaro (5). Nays: None. Motion carried, 5 - 0.

### **Old Business.**

**Matthew Laprell Refund.** The Board discussed the refund issued to Matthew Laprell for rollover to Capital Bank and Trust. Laprell began his service with the Department on January 8, 2001 and resigned on September 30, 2004. The amount of the refund is \$18,090.69.

**Lalowski Pension Amount.** The Board further discussed the disability pension amount granted to Officer Dick Lalowski. Officer's Lalowski's starting date with the department was August 1, 1994. Officer Lalowski was granted a 50%, off-duty pension, effective October 13, 2006. The pension amount is \$35,634.96 annually based upon a salary of \$71,270. Officer Lalowski would also receive retro-pay from October 13, 2006 to November 1, 2007 in a gross amount of \$37,455.03 (a net amount of \$27,172.35).

**Actuarial Valuation.** Bob Simpson discussed the City of Des Plaines' actuarial valuation report and the amount recommended for the City Council's approval. Simpson noted that the tax levy requirement as of the end of the 2007 year noted in the actuarial report is \$2,352,290. The amount recommended for the City Council's approval is \$2,450,000.

### **Adjournment.**

Motion by Muehlenbeck, seconded by Salas to adjourn at 11:45 a.m. The motion was carried by unanimous voice vote.

Approved:

*Nicholas Chiaro*

Nick Chiaro

Chairman