

## **Meeting Minutes - December 12, 2006**

The meeting of the Des Plaines Police Pension Board was called to order by President Chiaro at 9:07 a.m. in Room 101 of City Hall.

**Roll Call.** Present – Trustees Freeman, Marks, Muehlenbeck and Salas; President Chiaro. (5). Also present were board attorney Mathias Delort, annuitants Wendall Whitted and James Roel, recording secretary Tina Whitted, and Board Financial Advisor Thomas McShane.

**Approval of Minutes.** Motion by Muehlenbeck, seconded by Salas, to approve the minutes of the October 10, 2006 meeting. Motion carried by unanimous voice vote.

**Disbursements.** The board reviewed the proposed disbursements. It was noted that payments were pending for both the fiduciary and public officials' liability policies. Payments included refunds of over-withholding made from the paycheck of two deputy chiefs; the refund will be given to the City which will then have to deduct taxes before paying the remainder to the deputy chiefs. Motion by Salas, seconded by Freeman, to pay the disbursements as listed, totaling \$21,363.93. Ayes: Trustees Freeman, Marks, Muehlenbeck and Salas; President Chiaro (5). Nays: None. Motion carried, 5 - 0.

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

**Sarkis Case.** Attorney Delort advised the board that the City had requested another extension of time to file its brief in the appellate court. Until the City files its brief, the applicant cannot file its final brief which would allow the court to issue a ruling.

**Roszkowiak Disability Application.** Attorney Delort advised the board that depositions of Drs. Tu and Lami were completed. The City has decided not to depose the third doctor. The attorneys for the parties had agreed to not request a

hearing pending resolution of the Supreme Court decision in the Marconi case. However, now that the case has been resolved, the case can be set for hearing once the attorneys advise they are ready. Chiaro asked whether there was interest in having the board depose the third doctor. The board discussed the pros and cons of this, but did not reach any final determination on it.

**Lalowski Disability Application.** Chiaro asked about the status of the subpoena the board served on the City of Sycamore for personnel records. Delort advised that the city was still improperly resisting the subpoena, but would probably release the records if we could obtain a signed authorization from Lalowski. He noted his office was trying to secure it from Lalowski's attorneys. The board then discussed the City of Des Plaines' pending motion to intervene, noting that it had granted similar motions in the past.

Motion by Chiaro, seconded by Muehlenbeck, to grant the City's motion to intervene. Motion carried by unanimous voice vote.

**Schroeder Disability Application.** The board noted receipt of an application for a disability pension from Officer Schroeder. It was also noted there are pending disciplinary charges against him. Attorney Delort advised that the situation might become complicated, but that under existing case law, it would appear that if Schroeder were fired before his pension case was resolved, he could receive a pension, but not if he actually resigned his position before the pension case was resolved. Delort noted that his office was in the process of compiling medical records and that the board would later appoint physicians to examine him.

**Recent Cases.** Attorney Delort reported on recent court decisions, summarized as follows:

Marconi - Illinois Supreme Court ruled in favor of pension board's decision to deny application for psychological disability. In so doing, the court did not determine whether the three doctor rule

was constitutional, or whether all three doctors selected by the board had to agree that an applicant was disabled. The court deferred to the pension board's determination that the doctor who found the applicant was not disabled to be more credible than the other doctors.

Wade - After the Marconi decision, the Illinois Supreme Court granted an appeal in this case, which may very well resolve the three-doctor questions left open by Marconi. However, it is unlikely the court will issue a ruling on this case for another year or so.

**Sudan Legislation.** Attorney Delort also reported on the status of the federal lawsuit challenging the Sudan legislation. Judge Kennelly denied the Attorney General's motion to dismiss, and has decided that the plaintiffs' request for an injunction should be considered along with the case on the merits. Briefs are being filed, and the case has been set for argument for January 3, 2007.

### **Old Business.**

**Actuarial Study/Tax Levy.** A letter has been sent to Mayor Arredia requesting the higher tax levy computed by the Division of Insurance, rather than the lower one computed by actuary Tim Sharpe. The board took this position because Sharpe's assumed rate of return is lower than the fund's actual performance. In addition, it was noted that the board's insurance carrier has questioned the drop in funding level and this caused some delays in obtaining insurance. It was hoped that once a new City Finance Director was hired, progress could be made in this area.

### **New Business.**

**Weirick Spousal Benefits.** The board noted the death of Officer Robert Weirick and the application for a surviving spouse's pension submitted by his widow, Karla Weirick. Motion by Chiaro, seconded by Muehlenbeck, to award a surviving spouse's pension

to Karla Weirick in the initial amount of \$2,755.40/month, effective on the date of death. Ayes: Trustees Freeman, Marks, Muehlenbeck and Salas; President Chiaro (5). Nays: None. Motion carried, 5 - 0.

**Purchasing of Supplies.** Attorney Delort advised the board that the documents on the pending disability cases are much more voluminous than those in past cases. Accordingly, his office is scanning them to disk. He recommended that the board purchase laptop computers so that the board members can review the evidence in these cases and obtain reports from the board's accountants and financial advisers by e-mail. The computers would remain property of the board. Chiaro indicated that the laptops should be equipped with anti-virus software and other features. Motion by Chiaro, seconded by Salas, to purchase six laptop computers at a total cost not to exceed \$9,000.00. Ayes: Trustees Freeman, Marks, Muehlenbeck and Salas; President Chiaro (5). Nays: None. Motion carried, 5 - 0.

**Electronic Attendance Rule.** Attorney Delort explained the new state law which regulates how board members may attend meetings electronically (i.e., by speakerphone). He recommended that the board's rules be changed to reflect the new law and presented two options for the board's consideration: Option A, under which electronic attendance would be allowed as a matter of course, and Option B, under which electronic attendance would be considered on a case-by-case basis. Motion by Chiaro, seconded by Marks, to amend the board rules by adopting Option B. Ayes: Trustees Freeman, Marks, Muehlenbeck and Salas; President Chiaro (5). Nays: None. Motion carried, 5 - 0. Attorney Delort will update the rules and provide electronic and written versions to board staff.

**Annual Benefit Increases.** The board reviewed the report from Lauterbach & Amen listing the annual benefit increases for various beneficiaries. Motion by Chiaro, seconded by Marks, to award the

benefit increases as listed in the report. Motion carried by unanimous voice vote.

**Annual Meeting Schedule.** The board reviewed a draft schedule of six regular meetings for 2007. Motion by Salas, seconded by Muehlenbeck, to schedule the board's regular meetings in 2007 as listed. Motion carried by unanimous voice vote.

**HELPS Retiree Act.** The board reviewed information from Lauterbach & Amen regarding a new federal law allowing health insurance deductions to be taken on a limited pre-tax basis. This information was distributed to all beneficiaries. Additionally, various articles regarding pension issues were distributed to the board members for their information.

**Accounting Reports.** The board reviewed the monthly financial statements from Lauterbach & Amen. Motion by Salas, seconded by Chiaro, to approve the statements for September and October, 2006, subject to audit. Motion carried by unanimous voice vote.

It was noted that Lauterbach & Amen has transferred the direct deposit system from Chase to Harris Bank. Under the existing protocols, the monthly transfer to the account was normally higher than that needed to pay the benefits and vendors. This resulted in a balance when the account was closed, which will be transferred to an existing account.

**Investment Report.** Thomas McShane of Wachovia Securities presented a report for the recent period. As requested, he reported on his analysis of the holdings in the Pacific Life annuity. He recommended that the board take no action with respect to this investment, as the gain to be made by reinvesting the money at this time would be less than the possible gain to be earned next year. By consensus, the board agreed with this recommendation.

The fund had \$46,256,862 in assets at the close of November, up about \$600,000 from the close of September. There were substantial gains earned by several managers; in particular, from Kayne Anderson. The current holdings are 51% in fixed income, 45% equities, and 4% cash. McShane noted that the prior holdings in TCW small cap had been liquidated. He recommended holding off reviewing the investment policy until the Sudan law issues were resolved.

McShane introduced Mark Guira and Peter Clerkin from McDonnell Securities, which manages the fund's fixed income assets, which comprise about half of the fund's portfolio. In the ten years McDonnell has managed this part of the fund, the assets have grown from \$10 to \$24 million dollars; \$4 million of that is attributable to new deposits. During that time, the name of the firm changed from Van Kampen to McDonnell. The average annual growth has been 6.43%, slightly higher than the Lehmann Brothers Government Bond Index of 6.27%. Last year, this part of the fund was up 4.79% vs. a 4.58% return for the Lehmann Index. However, these gains are not net of fees, which are 20 basis points.

McDonnell manages about \$11 billion in assets for various customers. Mark Guira is responsible for managing the Des Plaines account; Sue DiSanto handles operations; and Tim Cook handles reporting.

Guira and Clerkin reviewed how McDonnell makes investment decisions, reviewing portfolio characteristics such as duration, quality, maturity and sector. They also reviewed current economic trends and various yield curves over the past few years, and how interest rate shifts affect portfolio rates of return. They believe that the U.S. dollar may be weak and that global rates are rising; these factors, combined with geopolitical tensions, result in no clear market direction.

Chiaro congratulated McDonnell on the steady progress it has made for the fund over the years.

**Adjournment.** Motion by Chiaro, seconded by Marks, to adjourn at 11:42 a.m. Motion carried by unanimous voice vote.

Approved:

Nick Chiaro

Chairman