

Meeting Minutes - June 10, 2008

The meeting of the Des Plaines Police Pension Board was called to order by President Chiaro at 11:00 a.m. at the Law Offices of Robbins, Schwartz, Nicholas, Lifton and Taylor, 20 North Clark Street, Suite 900, Chicago, IL 60602.

Roll Call. Present: Trustees Muehlenbeck, Salas, Marks and President Chiaro (4). Absent: Trustee Freeman (1). Also present were Annuitant Wendall Whitted, Board Financial Advisor Thomas McShane, Board Attorneys Joseph Perkoski and Brett Harvey.

Approval of Minutes. Motion by Salas, seconded by Muehlenbeck, to approve the April 8, 2008 regular meeting minutes and the April 8, 2008 Executive Session minutes. Motion carried by unanimous voice vote.

Disbursements. The Board reviewed the recommended disbursements as set forth in the June 10, 2008 warrant list. Motion by Marks, seconded by Salas, to pay the disbursements as listed in the June 10, 2008 warrant list in the total amount of \$32,472.78. Roll call vote taken. Ayes: Trustees Muehlenbeck, Salas, Marks and President Chiaro (4). Nays: none. Motion carried 4-0.

Board Attorney's Report

a. Sarkis Appeal Update. Attorney Perkoski advised that the Illinois Supreme Court issued an order on May 29, 2008 denying the Board's Petition for Appeal. Perkoski explained that the Supreme Court did not review the merits of the appeal but simply decided to allow the Appellate Court's decision finding that the Board should have awarded an in-the-line-of-duty pension to Sarkis stand. As a result, the Board will need to adjust Sarkis' annuity from a 50% / Off-Duty Pension to a 65% On-Duty Pension. Lauterbach & Amen will be directed to provide the calculation for the adjustment.

b. Lalowski Complaint for Administrative Review Update. Attorney Perkoski advised the Board that after a number of continuances, Lalowski's Counsel finally filed his Brief in Support for Administrative Review. Perkoski also noted that this was immediately followed by a second Motion to Amend the Brief to correct the typographical errors appearing in the Brief. Copies of the pleadings were distributed to the Board. Perkoski advised that the Board's response in opposition is due to be filed on or before June 27, 2008. Perkoski will provide a copy of the Board's brief consistent with that timeframe.

c. Review of New Court Decisions. Attorney Perkoski provided a summary of three recent cases impacting the Pension Board. The following was discussed:

1) Fields v. Schaumburg Firefighters' Pension Board, et al.

This case was recently decided by the Illinois Appellate Court, Sixth Division, on May 30, 2008. Ultimately, this case holds that a village employee's unilateral communication with a pension board member regarding the member's benefits is not an "administrative decision" of the board of trustees.

In this case, a village employee mistakenly calculated a 43% increase to a member's pension benefits. The village employee sent a letter to the member notifying the member that a raise in his pension was overlooked and that his pension would be increased. The village's director of finance caught the mistake five (5) months later and informed the member that his pension benefits would be reduced and he would have to repay the overpayment. The member argued that the village employee's letter was a "final administrative decision" which had to be altered, amended or modified within 35 days from the decision. The member argued that the board lost jurisdiction to amend his benefits calculation since it waited more than 35 days to do so.

The court relied upon the cases of Sola and Rosler to determine that the village employee's letter was not a final administrative decision. The court noted that the village employee was not a member of the board and did not suggest in any way that she was speaking on behalf of the board or that the board was aware of the change in the calculation of benefits. The court further held that, to find a final administrative decision, there must be communication between the board and the member or, if the member submitted an application but the board took no official action, the court must be able to deduce the board's action from its subsequent communication to the member. In this case, the court did not find evidence of either of these options.

2) Merlo v. Orland Hills Police Pension Board

This case was decided by the Illinois Appellate Court, Third Division, on June 4, 2008. This case involves line-of-duty pension benefits. Not surprisingly, the Appellate Court found that the officer in this case was injured in the line-of-duty and therefore should receive a line-of-duty pension.

In this case, the pension board denied the member's application for a line-of-duty pension. The member petitioned the circuit court for a review of the board's decision. The circuit court overturned the board's decision and the Appellate Court affirmed the circuit court's decision. The Appellate Court held that this case involved a mixed question of fact and law and therefore applied the clearly erroneous standard of review.

Here, an officer responded to a call of juvenile mischief at a community center. When the officer arrived, the juveniles were gone, but he noticed that the kids had placed all the parking blocks in a pile in the center of the parking lot. The officer attempted to move the parking blocks and injured his back.

The pension board argued that the officer did not injure himself while performing an act of duty because he was not injured when he responded to the disturbance call. Rather, the officer was injured while moving parking blocks – an activity that is the statutory duty of the village's public works department (i.e. ordinary citizens).

The Appellate Court relied on the Alm case to hold that the officer in question had a duty not just to confront the juveniles in the parking lot but also to eliminate the safety hazard which was created while the juveniles were on the premises. As such, the officer was engaged in the performance of his duty for the protection of life and property which was part of an official order or requirement of his office. The court further held that the board was asking it to assess the officer's acts at the specific instant of injury and not the capacity in which the officer performed those acts. The court determined that the officer was responding to a call from a civilian reporting that juveniles created a safety hazard. As such, he was acting in the capacity of a police officer and properly exercised his discretion when he decided to move the parking blocks.

3) The Village of Roselle v. Roselle Police Pension Fund

This case was decided by the Illinois Appellate Court, Second Division, on May 19, 2008.

The Appellate Court determined that surviving spouses are not entitled to cost-of-living pension increases under Article 3 of the Pension Code and that pension boards are without statutory authority to grant such increases to surviving spouses.

In this case, the police pension board argued that Section 3-112 of the Pension Code is ambiguous and ultimately permits surviving spouses to

“step into the shoes” of the officers and therefore receive cost of living increases.

In its decision, the Appellate Court held that the interpretation of Section 3-112 of the Code provided by the Board’s legal counsel was illogical and in derogation of the express language of the statute. The court held that the logical interpretation of Section 3-112 is that a surviving spouse is entitled to the pension benefits the officer was receiving at the time of his or her death.

d. Review of Legislative Changes. Attorney Perkoski reported on the status of the Pension Reform Legislation previously labeled as HB 4905 and SB 2090. Perkoski explained that the Bill has been revised and retitled as HB 5088 which is substantially the same as HB 4905 and SB 2090. The change appears to have been necessary to prevent the legislation from being delayed until the fall vetoes’ session. Perkoski reviewed the primary provisions of HB 5088 explaining that the Bill provide: 1) Vendor Conflict of Interest Protections; 2) Vendor Contract Disclosure requirements; 3) Pension Board gift ban; 4) Increased frequency of State Audits of pension funds; 5) State pension services fund anti-sweep provisions; 6) Anti-fraud disability language; 7) Public disclosure of local pension fund health and viability; 8) Municipal verification of benefit calculations for police funds; 9) more accurate cost impact estimates for future pension legislation; and 10) regular studies on fiscal conditions and unfunded liability factors of the downstate and suburban police and fire pension funds by the independent commission on governmental forecasting and accountability. Perkoski explained that the general assembly has 30 days from May 31, 2008, to send the Bill to the Governor. Thereafter, the Governor has 60 days to take action on the Bill. Attorney Perkoski reiterated his statements at previous meetings concerning his belief that the Pension Board is currently in a good position to address any enhanced scrutiny of its functions based on the Board’s current policies and practices.

Attorney Perkoski further discussed House Bill 5158 which amends Article 3 of the Illinois Pension Code to allow payment of a survivor’s pension to the surviving wife and children of a marriage occurring after retirement provided that the surviving spouse and deceased police officer were married for at least one year immediately preceding the date of death of the retiree. The Board discussed the potential financial impact of this amendment.

Old Business. It was reported that there was no old business to discuss.

New Business.

a) **Gaston Freeman.** President Chiaro reported information that he had received information that Trustee Freeman had passed away on June 9, 2008. The Board will review the process for replacing Trustee Freeman. Trustee Salas reported that he will organize a police color guard for funeral services. Annuitant Whitted advised that he would ensure that an appropriate notice is placed on the Board's website.

Retirement of Deputy Chief William Schneider. The Board discussed the pension calculation provided by Lauterbach & Amen for Deputy Chief William Schneider. His entry date is April 11, 1977 and his retirement date is April 25, 2008. The effective date of pension is April 26, 2008 and is based upon 31 years of credible service with the applicable salary of \$120,814. The amount of the originally granted monthly pension for Deputy Chief Schneider is \$7,550.88.

Motion by Salas, seconded by Marks, to approve the pension calculation as provided by Lauterbach & Amen for Deputy Chief Schneider with the amount of the originally granted monthly pension being \$7,550.88. Roll call vote taken. Ayes: Trustees Muehlenbeck, Salas, Marks and President Chiaro (4). Nays: none. Motion carried 4-0.

b) **Acceptance of Certificates of Disability.** Annuitant Whitted reported that all certificates sent to Annuitants affirming disability had been returned.

c) **Trustee Election Results.** Annuitant Whitted reported that the election results were calculated on May 1, 2008 by Recording Secretary Tina Whitted and Police Cdmr. Daniel Nieman. The results are as follows: 71 ballots cast for the Beneficiaries Board position with 63 votes for Nicholas Chiaro, and 8 for Barbara Blume. With respect to the Active Police Officer Board positions, 42 votes were cast. With 41 votes for Larry Marks, 39 votes for Jim Salas, and 1 vote for Jason Roszkowiak. Motion by Muehlenbeck, seconded by Salas to accept the reported election results. Motion carried by unanimous voice vote.

d) **Election of Board Officers.** The Board discussed the appointment of Board officers. Motion by Muehlenbeck, seconded by Chiaro to maintain the current Board officers in their respective position. Motion carried by unanimous voice vote.

Approval of Lauterbach & Amen Balance Sheets for March and April 2008. The Board discussed the balance sheets issued by Lauterbach & Amen for March and April 2008. Motion by Muehlenbeck, seconded by Marks to approve Lauterbach & Amen balance sheets for March and April

2008. Roll call vote taken. Ayes: Trustees Muehlenbeck, Salas, Marks and President Chiaro (4). Nays: none. Motion carried 4-0.

The Board also discussed the renewal of Lauterbach & Amen's contract for services with the Board. The Board's attorney will review the contract renewal and the Board will act on this matter at the next meeting.

Financial Report.

Financial Advisor Thomas McShane presented the Board with his April 2008 Performance and Review report. McShane discussed the continual problems in the economy and its impact on the market. With respect to projected growth, McShane noted that small caps are on the rebound, despite lagging over the previous 12 months. Additionally, growth equities had outperformed value equities over the past 12 months. McShane further noted that while international investments seem to be on the rise, they will only continue rising as long as international currency continues to out value the US Dollar.

McShane further discussed the Total Fund Performance ending in April 8, 2008 noting a drop of 1.38%, which is just slightly below the Benchmark of 1.58%. A copy of the "Total Fund Performance" chart for the period ending April 2008 is attached and incorporated as Appendix A. McShane further discussed the performance of the Fund's investment managers from April 2007 to April 2008. A copy of the April 2008 Performance and Review report provided by McShane is attached and incorporated as Appendix B.

McShane provided additional information on the performance of individual investment managers discussing Great Lakes – Large Cap Value; Wells – Large Cap Growth; SG – Small Cap Growth, Amerifunds - International Equity; and McDonnell – Fixed Income, noting that all are performing within expectations. McShane discussed his recommendation that the Board look to change its allocation of assets with Fayez – Large Cap Growth, which has produced less value with less return on risk. McShane also noted that Fayez has a number of duplicate holdings with Great Lakes – Large Cap Value. McShane also discussed his recommendation that the Board look to replace Kayne – Small Cap Core based on their performance producing less value with less return on risk. The Board will review these recommendations with possible action at the next meeting.

Motion by Salas, seconded by President Chiaro to transfer \$500,000 from the Funds holdings in McDonnell – Fixed Income to SG – Small cap Growth. Roll call vote taken. Ayes: Trustees Muehlenbeck, Salas, Marks and President Chiaro (4). Nays: none. Motion carried 4-0.

Executive Session. Motion by Salas, seconded by Chiaro, to enter closed session at 12:57 p.m. pursuant to 5 ILCS 120/2 (c) (11). The motion was carried by unanimous voice vote.

End executive session, return to regular session at 1:03 p.m.

Adjournment. Motion by Chiaro, seconded by Marks to adjourn at 1:03 p.m. The motion was carried by unanimous voice vote.

Approved:

Nick Chiaro

President