

**City of Delray Beach  
Police and Firefighters' Retirement System  
Minutes of  
August 18, 2010**

Members: Chief Ralph Phillips, Sgt. Brady Myers, Lt. John Palermo, Lt. Joe Liguori, FF Justin Caruso, Chief Greg Giaccone, Commissioner Adam Frankel, Asst. City Manager Doug Smith, Mel Sacharow

Anne Woods, Plan Administrator                      Steve Cypen, Board Counsel  
Karen Schell, Pension Administrator

Guests: Mike Welker, Bogdahn Consulting; Milena Walinski, Asst. Finance Director; Terrill Pyburn, Asst. City Attorney; David Drucker  
P.D. Retirees – Brian Bollan, Bob Brand, Greg Young, Chuck Jeroloman, Marc Woods  
F.D. Retirees – Bill Adams, Mark Dagnan, Pam Garcia, Fred McAlley, Mike McCleary, John Tomaszewski, Doug Vaughn

Lt. Liguori, Chairperson, called the meeting to order at 1:15pm. Roll call was taken of members and guests.

1. Approval of Meeting Minutes:

a. June 16, 2010 – After review, the minutes were approved with grammatical changes only. Mr. Sacharow made the motion to approve the minutes. Commissioner Frankel seconded the motion. None opposed.

b. May 19, 2010 – Mr. Sacharow made the motion to approve the minutes as submitted. Chief Phillips seconded the motion. None opposed.

2. Unfinished Business:

a. Lt. Liguori, Chairperson

i. Further Discussion-Certification Overpayments (William Adams, Pamela Garcia, John Hanson, Katherine Hoecher and John Tomaszewski): After statements were made by Mr. Adams and Chief Tomaszewski, the trustees had a lengthy discussion on the course of action that should be taken to rectify the situation.

Lt. Liguori stated that during the negotiation between the legal counsels representing the Board (Barry Balmuth) and the City (Jim Linn) there was an agreed upon stipulation. Due to the ordinance change dated March 11, 2004, the wording of the definition of compensation was changed to state that certification for firefighters would no longer be included in pension earnings.

Ms. Walinski stated that at the time the litigation commenced she provided Mr. Linn with the names of the five (5) retirees in question and requested clarification. She stated that she did not receive a response from Mr. Linn. Ms. Walinski stated that as of date, contributions have not been collected from John Hanson and Katherine Hoecherl.

Ms. Schell stated that she provided Foster & Foster (actuary) with information (total career earnings, option forms, etc.) for the persons who retired from 1993 through 2004. Foster & Foster recalculated both the pension, to assure that the amount coincided with the option form; and then recalculated the pension to include certification earnings. She stated that at a prior meeting, the Board had agreed that the amount of the contribution owed would be deducted from the gross payment.

Mr. Sacharow made the motion to collect the contributions attributed to certification pay from all fire retirees who have not paid contributions from October 1, 1993 to March 11, 2004 (date of ordinance change) including Mr. Hanson and Ms. Hoecherl. Sgt. Myers seconded the motion. Mr. Smith-No. Motion passed. (Note: Adams, Garcia, Hanson, Hercherl and Tomaszewski will have no changes in the monthly pension benefit.)

3. New Business:

a. Lt. Liguori, Chairperson

i. Hagens Berman (Class Action Litigants) Contract Discussion – Sgt. Myers made the motion to retain Hagens Berman, subject to contract approval. Commissioner Frankel seconded the motion. None opposed.

b. Karen Schell, Pension Administrator-Finance

i. Interpretation of Code, Section 33.71. Separation from Employment for Military Service – Ms. Schell stated that the code reads is as follows: 1) The members must return to City employment within one (1) year from the earlier of his date of military discharge or release from service. 2) The maximum credit for military service is a maximum of 5 years. 3) In order to qualify for credited service the member must have been discharged or release from service under honorable conditions. When an individual is on military leave he/she does not receive compensation from the City.

Ms. Schell stated that there is a fire employee who had served 5 years 4 months in the military and is currently preparing to begin the process to retire. During this time, he did not receive pensionable earnings, and neither he nor City made contributions. Ms. Schell questioned if it would be possible for this individual to purchase the additional 4 months of military service.

Mr. Cypen stated that under State law, the interpretation of 175/185 is that you cannot require a contribution by the employee. The City would be responsible to pay the entire contribution; and the individual is allowed a total of 5 years.

4. Reports:

a. Steve Cypen, Board Counsel

i. Status of Pending and Potential Litigation Matters:

99-1 Overtime – The Division of Retirement (DOR) position has been sustained that any excess premium tax monies after March 12, 1999 cannot be used for the COLA so long as the minimum benefit of 300 hours of overtime has not been met. The Plan will be required to prepare an accounting of the police versus the fire monies and a decision on implementation will need to be resolved. The DOR indicated that the Board should make its decisions and report back to them. Mr. Cypen stated that he had already received the DOR's approval should the Board decide to take a prospective approach. Once the statutory minimums are met, the COLA can then be increased over the 1% guaranteed by the City through the 1993 Agreement.

Lt. Liguori stated that the amount of monies that it will take to fund the overtime would be greatly affected by the time frame specified. Should the decision be made to proceed prospectively then the actuarial calculation would be based over the last five (5) years. Should the decision be made to go retroactively as of 2001, then the calculation would be based on the prior five (5) year period. (Note: The Actuary indicated that using a 5 year period would provide enough data to determine a projected figure.)

Sgt. Myers stated that in a letter dated July 19, 2010, that was sent to the City and City Commission, Jim Linn stated that the 1993 Agreement is no longer valid. Should this statement be correct, then the 1% COLA would no longer be guaranteed. Mr. Cypen stated that he disagreed with Mr. Linn.

Mr. Cypen stated that the premium tax monies would pay the unfunded liability, but the member would be responsible for the 6% contribution. He recommended that on a yearly basis, the Board should evaluate and determine the number of overtime hours that would be included and the member contribution would be based on that amount.

Sgt. Myers requested that the Board consider the following: The inclusion of retirees from either 1999 or 2003 to present. Retroactive earnings would not be calculated, but the pension benefit would be reset prospectively based on the affordable overtime determined by the actuarial analysis. This proposal would

be a cost effective way to include the retirees who would have been eligible to receive overtime if the State law would have been enforced in 1999.

Mr. Cypen stated that the opinion of the DOR is that the ruling should have been appealed back in 2003; and it's his opinion that the probability of the Board being successfully sued by anyone should not happen once the Board receives the State sanction (DOR approval).

Mr. Cypen stated that the actuary would have to determine what amount of money above the \$830,000 is divided between the police and fire. The amount determined to the police portion would be added to the escrow account to fund the overtime.

Lt. Liguori stated that the \$504,000 is the threshold for the 1% guaranteed COLA on a yearly basis going forward. The difference between the \$830,000 and the \$504,000 (\$325,000) is currently funding the current COLA for all members.

Commissioner Frankel made the motion to table this item to the next meeting when the actuary would be able to provide further explanation. Mr. Sacharow seconded the motion. None opposed. (Note: The trustees agreed to schedule a special meeting for August 25, 2010 at 1:30pm.)

Benchmark Financial Services – Mr. Cypen stated that the case is pending and the parties are exchanging discovery. Mr. Cypen approved a form of motion summary judgment which will subsequently filed.

Smith Barney – Smith Barney appealed the judge's order denying arbitration. Jerry Congress argued the case in Atlanta. Mr. Congress reported that one of the three judges was hostile and the hearing went poorly.

b. Mike Welker, Bogdahn Consulting

i. DROP Plan: The plan is performing well. Approximately 75% of the portfolio is invested in the stable value fund. ICMA provided a list of emerging market and developing market equity institution managers – Lazard Emerging Markets and Oppenheimer Developing Markets. The Board requested that Mr. Welker contact ICMA to discuss the choice between Lazard and Oppenheimer, and the fee structure. The information will be presented to the Board at the next meeting.

ii. Pension Plan: The market value of the portfolio for quarter ending 06/20/2010 was \$99,577,694 (down from \$107,935,436 at quarter ending 03/30/2010).

	<u>Market Value (\$)</u>	<u>Allocation (%)</u>
Asset Allocation: Domestic Equity	44,594,194	44.8
International Equity	12,919,405	13.0
Domestic Fixed Income	24,363,060	24.5
Real Estate	7,167,024	7.2
Timber	6,123,703	6.1
Cash (per account)	4,410,308	4.4

Abbey Capital (managed futures) was funded the end of June with 5% of the portfolio. PIMCO was also funded with 3.3% from the Russell 1000 Growth Index. The portfolio was rebalanced with a portion from ICC Multi-Cap and ICC Fixed Income. Of the rebalance, 5% went to Abbey and approximately 1.5% to PIMCO. Due to an impasse with Lazard in obtaining the side letter, the additional 5% that was targeted to Lazard will not be transferred to fund the product.

Sgt. Myers made a motion that the 5% allocation previously targeted to Lazard, would be reallocated to the PIMCO fund. Mr. Sacharow seconded the motion. None opposed.

Comparative Performance:

	<u>1<sup>st</sup>. Quarter</u>	<u>10/2009 to 06/2010</u>	<u>Since Inception</u>
Total Fund Portfolio (Net)	-6.09	0.50	-0.41
Total Fund Policy	-5.53	1.06	1.66
Difference	-0.56	-0.56	-2.07

Mr. Welker stated that the growth portion of the portfolio has been lagging. He suggested that DG Capital (5% of the overall fund) be put on the watch list for two (2) more quarters before considering termination. Growth products have been an area of problem for a lot of pension funds.

c. Update 2009 Annual Report – Lt. Liguori stated that the report was submitted to the State and after review they noted a number of inconsistencies and requested additional information and corrections. He suggested that the Board consider entering into a RFP for an auditor.

Mr. Sacharow made a motion to acquire names of auditing firms that could be considered for a RFP/RFQ. Chief Giaccone seconded the motion. None opposed.

5. Expenditures:

a. Approve Payment of Warrants 1453 through 1467: Mr. Sacharow made the motion to waive the reading of the warrants and approve payment. Sgt. Myers seconded the motion. None opposed.

Warrant 1453: Approve DROP Retirement Pension Benefit to Commence Retroactively Effective July 1, 2010 for Randall W. Wilson (\$5,176.97)

Warrant 1454: Approve DROP Retirement Pension Benefit to Commence Retroactively Effective June 1, 2010 for Michael McCleary (\$5,533.61)

Warrant 1455: Approve Normal Retirement Pension Benefit Effective October 1, 2010 for Charles Jeroloman (\$4,372.25)

Warrant 1456: Approve Normal Retirement Pension Benefit Effective October 1, 2010 for Geoffrey A. Cooper (\$5,966.24)

Warrant 1457: Approve Normal Retirement Benefit Enhancements for October 2010 – Russell Anzalone (\$4,845.35), Geoffrey Cooper (\$5,966.24), James Dalton (\$5,375.65), Raymond Fitzner (\$4,375.26), Charles Jeroloman (\$4,372.25), Arthur Neddo (\$4,000.76), Robert Stevens (\$3,978.67), Randy Straghn (\$3,008.27), Thomas Tustin (\$6,419.68)

Warrant 1458: Foster & Foster Inc. (\$1,938, Professional Services Rendered on Invoice #1480)

Warrant 1459: Barry S. Balmuth, P.A. (\$1,665.79, Invoice #13619 – Benchmark Financial Litigation)

Warrant 1460: Investment Management Fees for Quarter 04/01/2010 through 06/30/2010: Lazard Asset Management (\$8,310.81, Invoice #1660298), Wentworth, Hauser & Violich (\$7,633, Account #80105563), DG Capital (\$9,329.75, Account #80105950), Delaware Investments (\$19,987, Invoice #06302010ASR630), RBC Global Asset Management (\$17,342.69, Account #D119000)

Warrant 1461: Reimbursement to Anne Woods for Temporary Office Assistant (\$125)

Warrant 1462: Printing Plus (\$43, Invoice #13053 – Copies of 2009 Annual Report), FedEx (\$273.43, Account #210739513, Invoice #716968212), Platinum Plus for Business (\$147.76, Account #1505), AT&T (\$100.43, Account #5110450)

Warrant 1463: Approve Normal Retirement Pension Benefit to Commence Effective October 1, 2010 for – Wayne Dorcas (\$5,138.75)

Warrant 1464: Approve Certification Lump Sum Distributions (less 20% Mandatory Tax) – Susan Bateman (\$12,942.98), Tiffany Andrews (beneficiary of John Andrews \$5,206.23), David Bonelli (\$14,796.33), Robert Brown (\$4,294.70), Thomas Buce (\$3,907.54), Peter Carafano (\$8,897), Michael Cato (\$5,081.74), Kurtis Firehock (beneficiary of Peter Firehock \$638.64), Raymond Fitzner (\$7,706.55), Elario Garito (\$4,831.76), Maurice Haas (\$5,445.72), Charles Hardin (\$19,710.29), Michael Hendricks (\$4,929.05), Joseph Kopel (\$3,859.76), Selwyn Lee (\$4,904.06), Thomas Mook (\$3,944.41), Robert Moreland

(\$9,761.46), Ronald Pangburn (\$11,561.89), Pete Schofield (\$7,284.38), Barry Searles (\$6,278.96), Randy Straghn (\$10,391.59), Bernard Tillson (\$7,593.82), Douglas Vaughn (\$27,541.99), Michael Wigderson (\$5,313.33), Wayne Yoder (\$2,793.11)

Warrant 1465: Approve Revised Monthly Pension Benefits Effective September 1, 2010 Due to Certification Pay Adjustment – Susan Bateman (\$2,945.90), Tiffany Andrews (beneficiary of John Andrews \$444.79), David Bonelli (\$3,570.97), Robert Brown (\$2,675.68), Thomas Buce (\$2,744.66), Peter Carafano (\$3,388.59), Michael Cato (\$3,430.83), Raymond Fitzner (\$4,268.55), Elario Garito (\$2,827.07), Maurice Haas (\$4,199.37), Charles Hardin (\$5,319.12), Michael Hendricks (\$4,090.57), Joseph Kopel (\$3,313.03), Selwyn Lee (\$2,797.97) Thomas Mook (\$3,016.05), Robert Moreland (\$5,653.76), Gayl Nye (\$1,176.09), Ronald Pangburn (\$2,727.28), Pete Schofield (\$2,316.72), Barry Searles (\$2,554.89), Randy Straghn (\$2,934.90), Bernard Tillson (\$3,106.87), Douglas Vaughn (\$4,920.70), Michael Wigderson (\$4,684.39), Wayne Yoder (\$3,902.77)

Warrant 1466: Approve Commencement of Normal Retirement Pension Benefit Effective October 1, 2010 for – Thomas Tustin (\$6,419.68)

Warrant 1467: Approve DROP Retirement Pension Benefit to Commence Effective August 1, 2010 for – Jeffrey Messer (\$4,970.26)

b. Approve Administrative Expenses for Office Supplies:

The request was made to purchase a Fire King file cabinet and a digital recorder. Mr. Frankel made a motion to limit the cost for the items as follows: Fire King \$3500 and digital recorder \$700. Chief Phillips seconded the motion. None opposed.

Sgt. Myers made the motion to adjourn the meeting. None opposed.