

**City of Delray Beach
Police and Firefighters' Retirement System**

**Minutes of
July 15, 2009**

Members: Off. Jeroloman, Asst. Chief Phillips, Sgt. Myers, Chief Giaccone, Lt. Liguori, Lt. Tabeek, Commissioner Adam Frankel, Mel Sacharow, Asst. City Manager Doug Smith

Steve Cypen, Board Counsel
Karen Schell, Pension Coordinator

Guests: Dave Farrand, Esq.; Melina Walinski, Asst. Finance Director; Terrill Pyburn, Asst. City Attorney

Off. Jeroloman, Chairman, called the meeting to order at 2:07pm. Roll call was taken of members and guests.

1. Approve Minutes of June 9, 2009 Meeting:

Mr. Sacharow made the motion to approve the minutes with grammatical changes only. Commissioner Frankel seconded the motion. None opposed.

2. Security Monitor Presentations:

The Board interviewed three (3) security-monitoring firms – Grant & Eisenhofer P.A., Abraham, Fruchter & Twersky, LLP and Coughlin Stoia Geller Rudman & Robbins, LLP.

Coughlin Stoia Geller Rudman & Robbins, LLP - Sandra Stein, Laura Stein and Jonathan Stein

- Provides a Portfolio Monitoring Report that provides a summary of the approximate market losses the Fund appears to have suffered in connection with securities class actions.
- Lead plaintiff status not required.
- Agree to provide client with quarterly reports of the status of monitoring efforts, and in addition to apprise client of any material losses which the attorneys believe should possibly be pursued by litigation.
- Solely responsible for such costs as in their judgment necessary to fulfill their duties in filing a class actions on behalf of the Fund (expenses associated with obtaining information from custodian)
- Duplication of reporting would only be from interaction of other monitoring sources.
- Spin off of Milberg

- Fee – If the Board were appointed a lead plaintiff a fee is negotiated and that fee is paid to special counsel who in turn shares that fee with Board counsel.
- In-house monitoring

Contract Items:

- Florida law would apply
- Provision for attorneys fee if there were a dispute
- Willing to assist in filing claims even if they were not discovered by the firm
- Malpractice Insurance - \$75 million layered policy.

Grant & Eisenhofer – Marc Weinberg

- Litigation firm that concentrates on federal securities, corporate governance actions and complex litigation. Represents public and private institutional investors.
- To avoid potential conflicts of interest, the firm does not represent corporate clients.
- File a limited number of lawsuits and serve as lead or co-lead counsel in each suit filed.
- To protect the interests of institutional investor clients, G&E offers to monitor (at no charge) all new and potential litigation in the areas of shareholder derivative actions and federal securities fraud litigation.
- Case Monitoring gives institutional investors the opportunity to become aware of any legal action that may impact their investments.
- Reporting – Will monitor for each fiscal quarter all newly filed securities and similar cases and provide an estimate of its loss. Evaluate cases that are of interest to the Fund other than pending or proposed federal securities class actions. At the end of each fiscal quarter, G&E will provide a report on each case and evaluate the Funds holdings for that quarter and provide a report for each case in which they act as counsel for the Fund.
- Fee – for any shareholder litigation initiated by the Fund for which the Fund wishes to be represented by G&E, the two would enter into a retainer agreement for such litigation and any such retainer agreement would provide that G&E would advance all costs incurred to litigate the case. G&E would also be entitled to reimbursement of these expenses from any recovery. If there is no recovery, the Fund will owe nothing.

After discussion, Lt. Liguori made the motion to retain Grant & Eisenhofer and Coughlin Stoia Geller Rudman & Robbins. Mr. Sacharow seconded the motion. None opposed. Straw Poll: Phillips – Grant & Eisenhofer & Coughlin, Frankel – Coughlin, Tabeek – Grant & Eisenhofer, Giaccone – Grant & Eisenhofer, Sacharow – Coughlin, Liguori – Coughlin and Grant & Eisenhofer, Smith – Coughlin, Myers – Grant & Eisenhofer, Jeroloman – Grant & Eisenhofer and Coughlin

3. Reports:

a. Steve Cypen, Board Counsel – Status of Pending and Potential Matters:

i. Status of Pending and Potential Matters

Overtime 99-1 – Mr. Cypen stated that he withheld preparing a final judgment in the hope that the State would allow modification of the judgment and not file an appeal. In fact, the State did file a notice to appeal.

Chief Phillips stated that it's the City Attorney's opinion that one of the reasons why the State would appeal is because the ruling is tied to a contract overriding the legislative intent, and would allow for this to happen in other types of cases.

Mr. Cypen stated that this opinion would be incorrect. There are two (2) rulings – one being the contract is sacrosanct and a preexisting contract cannot be overridden by legislation. The second ruling is that Delray Beach is a local law city with a supplemental plan that would make it exempt from the provision of the extra benefits. He advised the State that he would agree to remove the contract part and leave the supplemental benefits. The States responded 'no' and informed that they were having a harder time with the supplemental plan issue.

Chief Phillips stated that no one in management from police, fire, pension board or in-house unions was involved in the case. The unions from the County or the State are fighting the fight that Delray did not necessarily want fought. Mr. Cypen stated that Bonni Jensen, Esq. is being told to appeal the case. Chief Phillips asked if the police union had ever voted on settling for attorney fees. Off. Jeroloman stated that it had been discussed amongst the union representatives.

Certification – Mr. Cypen stated that the stipulation has been agreed upon and will be filed sometime in November 2009.

Smith Barney – Smith Barney's motion to compel arbitration was unsuccessful and they have taken an appeal. The rules allow for a stay and the only way a stay would be denied is if the court finds that the appeal is frivolous.

Schwab Contract - No resolution.

Mr. Cypen stated that there was a ruling that came down involving the Orlando Police Pension Board. Orlando's disability provision clause states that if a member has a pre-existing condition and that condition is aggravated in the line of duty the member cannot receive a service incurred disability. The courts ruled that the Board was correct in

finding that the condition was aggravated and therefore not entitled to disability. The court did find that the aggravation disqualification provision did not meet a minimum standard of Chapter 185 because Chapter 185 does not state that the aggravation of a pre-existing condition is a disqualifying event. The Orlando Board took a position that this was an extra benefit because the aggravation provision was in place when 99-1 went into effect. The cost to remove the clause would have been \$1.8 million so the Orlando Board decided the case based upon the extension of the clause. The court ruled that the clause requiring that the monies needed to be available to buy a benefit does not apply to anything other than a regular retirement.

The Delray Beach board might have an interest in seeing this ruling upheld because there is no money to fund the 300 hours of overtime. The court ruled that the clause saying that the monies to fund the overtime can be paid incrementally does not apply to this section of the law.

ii. Update-Richard Vurchio (Alison Bieler's Memo dated July 7, 2009)

Mr. Cypen stated that there were six (6) people (Richard Vurchio, Alexander Batista, Gayl Nye, Stephanie Thompson, Andrew Heithaus and Ivery Williams) who were given inaccurate information. Under the law, if someone acts upon erroneous information the Board is precluded legally from changing the terms. He stated that for Vurchio, Batista, Nye and Thompson it would be appropriate for the Board to authorize the payment of retirement benefits as promised. Mr. Cypen stated that Board should also move to ratify the retirement benefits already being paid to Heithaus and Williams.

Mr. Sacharow made the motion authorizing that the pension benefit payments for Vurchio, Batista, Nye and Thompson should be paid at the time they were promised. Sgt. Myers stated that with regard to Stephanie Thompson – she was advised to take the non-duty disability so she would start collecting immediately. He stated that Ms. Thompson decided not to take the non-duty disability and understood that she would not be eligible to receive a benefit until she reached the age of 50 years. Mr. Cypen stated that if a misrepresentation was clarified before she acted then the motion should be amended and her name removed. Off. Jeroloman stated that due to erroneous information given to the employee by City officials the unfunded liability will increase by 1 to 2 million dollars. Mr. Sacharow amended his motion to include only Vurchio, Batista and Nye. Chief Giaccone seconded the motion. None opposed.

Mr. Sacharow made the motion to ratify, confirm and approve the dates on Andrew Heithaus (May 22, 2004) and Ivery Williams (December 15, 2003). Lt. Liguori seconded the motion. None opposed.

iii. CS SB 538

Mr. Cypen stated that there are two (2) possible ordinance changes for the Board to consider. Firstly, allow for the increase in foreign investments (10 at cost to 25% of market).

Should the Board decide to make no changes then the ordinance would stay the same, which would not violate the law (effective July 1, 2009). The Board could choose to revise the foreign investment to 25% of market and revise the guidelines. Secondly, Mr. Cypen suggested that due to the controversial nature involving the extension of existing trustee term limits (2 to 4 years), this item should be placed on a future agenda for discussion.

iv. Approval of Placement Agent/Fee Policy

Mr. Cypen stated that this situation generated from the Sun Trust/BNP Paribas negotiations. Placement agents need to be disclosed to the Board which ultimately makes the final decisions. For example, in the amended Molpus (timber manager) documents there is a 3% placement fee if an agency is utilized, and a servicing placement fee going forward. The fees are taken on an up front basis. Mr. Cypen stated that he is waiting for a response from Molpus on whether there is a placement agent in place. He suggested that the Board consider adopting a Placement Agent/Fee Policy (per CALPERS). Mr. Cypen stated that Paribas documents contained a placement agency fee with ILM.

Sgt. Myers stated that the Board should revisit the Paribas product since they have now partnered with Wells Fargo (replaced Sun Trust).

Mr. Cypen stated that Mr. Welker should be informed that there is a significant change in the Paribas/Wells Fargo product and would not receive automatic approval even though it was previously approved with another vendor (Sun Trust). Therefore, it should be put on the August agenda. (Off. Jeroloman stated that he would contact Mr. Welker prior to the next meeting.)

4. New Business:

a. Off. Jeroloman – Discuss Options for Self Directed DROP:

Off. Jeroloman stated that Mr. Bauer informed him that he was no longer affiliated with Omega Recordkeeping (DROP Administrator). Since there is no possibility of an agreement with Schwab, and Matrix Trust is tentative, the Board needs to retain an institution that can act as the custodian of the DROP assets.

Off. Jeroloman stated that the West Palm Beach Police DROP offers an 8.25% fixed rate of return, or the rate of return earned by the Plan. The Florida Retirement System offers a 6.5% fixed rate of return. He stated that the Board might consider a fixed rate of return somewhere in the middle or consider ICMA.

Mr. Cypen stated that a guaranteed rate of return is a cost item, and the Board could not eliminate the self-directed DROP. If the monies were left in the plan the plan return would not be a cost item.

Mr. Cypen stated that the 175/185 rule of law states that the Plan has to be independently monitored and reported once every three (3) years. ICMA should be able to streamline a group of funds that would be made available to the participants. There should be no transfer or termination fees with ICMA.

After discussion, Mr. Sacharow made the motion to contact ICMA and request a presentation on the DROP custodial services. Sgt. Myers seconded the motion. None opposed.

Mr. Cypen suggested that a back-up motion would be in order just in case the custodian of record notifies of their intent to terminate their affiliation with the DROP. He suggested that the Board consider a Salem Trust stable savings or an interest bearing money market program.

Lt. Liguori made the motion to contact Salem Trust and see if they offer a stable savings or interest bearing money market program. Chief Giaccone seconded the motion. None opposed.

b. Approve Warrants 1303 through 1312:

Ms. Schell stated that the amount of Joseph Liguori's DROP pension benefit would be \$7,130.58 retroactive to July 1, 2009 (Warrant #1310). (Note: Lt. Liguori will abstain from voting/signing this warrant.)

Asst. Manager Smith questioned Warrant #1312 which approved the travel reimbursement (mileage) for Off. Jeroloman. He stated that the mileage was calculated from Wellington – the City's administrative policy is from the worksite to the event. He asked if there were IRS issues to consider. The Pension Board's travel policy is from the trustees' residence.

Mr. Cypen stated that there is no IRS issues to consider, but a Board issue. Normally, for the sake of uniformity the distance is measured from the hub of the City Hall. (Note: the Board's policy has been from the residence.)

Commissioner Frankel made the motion to approve and authorize payment of Warrants 1303 through 1309 and 1311 & 1312. Asst. Chief Phillips seconded the motion. None opposed.

Warrant 1303: Approve DROP Retirement Pension Benefit to Commence Retroactive to June 1, 2009 for Jeffrey A. Miller (\$4,101.17)

Warrant 1304: Approve DROP Retirement Pension Benefit to Commence Retroactive to June 1, 2009 for Tina Heysler (\$7,692.45)

Warrant 1305: Approve Normal Retirement Benefit Enhancements for September 2009 – Robert Brand (\$4,648.29), Dennis Morley (\$2,613.98) and Thomas Nabors (\$3,987.61)

Warrant 1306: Bogdahn Consulting (\$11,125 Consulting Services for 04/01/09 through 06/30/09), Foster & Foster (\$15,647 Professional Services Rendered (Actuary), Invoice #824)

Warrant 1307: AT&T (\$215.18 Account #5110450), FedEx (\$108.31 Invoice #923705833)

Warrant 1308: Holland & Knight LLP (\$1,588.12 Professional Services Rendered – \$150 Invoice #2404583 for June, \$375 Invoice #2392129 for May, \$63.12 Invoice #2380626 for April and \$1000 Invoice #2345066 for January); Barry S. Balmuth, PA (\$475 for Professional Services Rendered, Invoice #13400 and #13415)

Warrant 1309: Approve Refund of Pension Contribution to Mark Singer (\$25,419.55 with 20% IRS Withholding Tax)

Warrant 1311: Approve DROP Retirement Pension Benefit to Commence Retroactive to July 1, 2009 for Benjamin Knapp (\$6,473.10)

Warrant 1312: Approve Travel Reimbursement for Chuck Jeroloman to Attend FPPTA Conference, Boca Raton (\$189 – Parking \$24 and Mileage (300) \$165)

Mr. Sacharow made the motion to approve payment of Warrant 1310: Approve DROP Pension Benefit to Commence Retroactive to July 1, 2009 for Joseph Liguori (\$7,130.58). Lt. Tabeek seconded the motion. Roll call vote: Myers-Yes, Jeroloman-Yes, Phillips-Yes, Tabeek-Yes, Giaccone-Yes, Smith-Yes, Sacharow-Yes, Frankel-Yes. None opposed. Lt. Liguori abstained from the vote.

5. Board Member Items:

Early Retirement Window – Asst. City Manager Smith stated that at the request of Lt. Tabeek he had spoken to the City Manager regarding the possibility of opening an early window retirement option. He stated that the City Manager had not made a final determination, but should by the end of July.

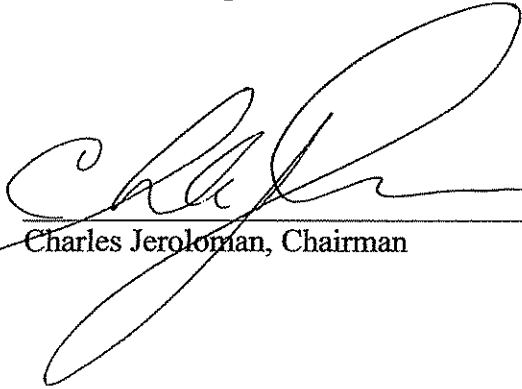
Kurtis Firehock (Beneficiary of Peter Firehock) – Ms. Schell stated that an annual disbursement, that needs to be calculated, is made from Peter Firehock's DROP account. The account balance was obtained from Omega and the annual payment was calculated. The Board approved the warrant and the check was issued. In error, and without anyone being aware, Pension Resource Centers had setup an automatic annual payment with Salem Trust that ultimately lead to two (2) checks being sent to the beneficiary. Mr. Firehock was contacted and agreed to return one (1) of the checks he received in error, but the check he did cash overpaid him by \$681.68.

Mr. Cypen suggested that Mr. Firehock should be contacted and told that he has two (2) options – return the \$681.86 in full or make monthly payments. If something should happen to Mr. Firehock, prior to the refund of the monies owed, the remaining amount would be deducted from the disbursement made to his named beneficiary.

Sgt. Myers made the motion to adjourn the meeting at 4:40pm. Mr. Sacharow seconded the motion. None opposed.

City of Delray Beach Police & Firefighters' Retirement System

The undersigned are the Chairman and Secretary of the Police and Firefighters' Retirement System, Board of Trustees, and the information provided herein are the Minutes of the Meeting of said body for July 15, 2009, which minutes are formally approved and adopted by the Police and Firefighters' Retirement System, Board of Trustees on August 19, 2009.



Charles Jeroloman, Chairman

NOTE TO THE READER: If the minutes that you have received are not complete as indicated above, then this means that these are not the official minutes of the Police and Firefighters' Retirement System, Board of Trustees. They will become official minutes only after they have been reviewed and approved, which may involve some amendments, additions or deletions to the minutes as set forth above.

Copies to:	Members of the Board	Asst. Finance Director, M. Walinski
	City Commissioners	Finance Director, J. Safford
	City Manager, D. Harden	Human Resource Director
	Police & Fire Departments	Asst. City Attorney, T. Pyburn