

**PALM BAY POLICE AND FIREFIGHTERS' PENSION PLAN
BOARD OF TRUSTEES
Regular Meeting 10-05**

Held on the 7th day of April, 2010 at Robert J. Conlan Professional Center, 1501 R. J. Conlan Blvd., NE, Suite 260, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

Richard B. Adams, Chairperson, called the meeting to order at the hour of 9:08 a.m.

ROLL CALL:

PRESENT

Richard B. Adams, Chairperson, Board Appointee
Timothy W. Lancaster, Secretary, Police Elected
Douglas R. Smith, Trustee, Fire Elected
John J. Mazziotti, Trustee, City Councilmember
Milo Zonka, Trustee, City Councilmember

EXCUSED

Also in attendance was Ms. Kathy Adams, Board Administrator. William A. Yonce, Sr.; James Brock; Benjamin Kiszkiel and David Ginsburg, President, IAFF, Local 2446, were in attendance. Mr. Gregory R. Miller, Esq., The firms of Beggs & Lane, LLP; Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A.; and Ledbetter & Associates, P.A. and Mr. Stephen H. Cypen, Board Attorney, telephoned at 9:30 a.m.

AGENDA REVISIONS:

Mr. Lancaster asked that Old Business, Item 2. b. be moved for discussion prior to Mr. Miller's presentation.

CONSENT AGENDA:

All items of business marked with an asterisk were considered under Consent Agenda and enacted by the following motion:

Motion by Mr. Smith, seconded by Mr. Zonka that the Consent Agenda be approved. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea.

ADOPTION OF MINUTES:

***Regular Minutes 10-04**

The minutes were considered under Consent Agenda and approved as presented.

PBP&F Pension Fund
Regular Meeting 10-05
April 7, 2010

OATHS OF OFFICE:

Administer to Timothy W. Lancaster, Re-elected Police Representative; Douglas R. Smith, Re-elected Fire Representative; New Trustees John J. Mazziotti and Milo Zonka-Ms. Adams administered the Oath to the above-mentioned trustees.

CERTIFICATES OF APPRECIATION:

William A. Yonce, Sr. and James W. Brock-Mr. Adams presented Certificates of Appreciation to Mr. Yonce for ten (10) years of service on the pension board and to Mr. Brock for two (2) years of service. Discussion continued to Old Business, Item 2. b.

PRESENTATION AT 9:30 A.M.:

1. **Mr. Gregory R. Miller, Esq., The firms of Beggs & Lane, LLP; Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A.; and Ledbetter & Associates, P.A. and Mr. Stephen H. Cypen, Cypen & Cypen-Damage & Liability Presentation Regarding Merrill Lynch, Pierce, Fenner & Smith, Inc. and Michael Callaway-**Mr. Miller and Mr. Cypen, Board Attorney, telephoned at 9:30 a.m. Mr. Cypen said this item pertains to the former relationship with Merrill Lynch and the Securities & Exchange Commission's (SEC) investigation. He said Mr. Miller is part of a consortium that is going after Merrill Lynch for breach of fiduciary duties. If the board chooses to pursue the fees will be out of the recovery with no fees to the board/fund. Mr. Cypen will share in any fees paid to Mr. Miller. Mr. Miller said the firm has been around since the 1800's and represented Mr. Flagler in his railroad in the 1800's. The firm is primarily a Pensacola firm representing large companies. He has served as counsel to the Pensacola Firefighter's Pension Fund. They have two lead attorneys, Mr. David McGee, who has been with the firm since the 1990's. Mr. Miller was a U.S. attorney appointed by the President. The Levin firm has been a premier plaintiff firm. The University of Florida Law School is named after Mr. Levin. On January 30, 2009 the SEC issued its findings imposing sanctions and Merrill Lynch was ordered to pay one million dollars (\$1 Million) to the U.S. Treasury. Merrill Lynch ceased pension fund consulting operations in Florida. On March 24, 2009 the U.S. Government Accounting Office released a report of its analysis nationwide regarding inadequate disclosure and the impact on returns of soft dollar arrangements. They felt there was a lower rate of return where consultants failed to disclose conflicts. The underperformance ranged from one and one-quarter to one and one-third percent (1.25-1.33%). Mr. Miller's consortium did a free analysis for multiple funds and a few funds broke even or had a modest positive return. For Palm Bay they reviewed the quarterly statements and a lot of background material. There have three (3) suits filed in federal court; seventeen and seventeen (17) in state court. One matter was filed in arbitration and another matter arbitration is being considered. Fort Walton General Employee Fund has asked to move forward. The consortium is trying to work out a litigation strategy with Merrill Lynch attorneys. They are finding the discovery process to be costing in the millions. They are trying to work out something so there is not a great expense to the fund and apply it uniformly. Merrill Lynch may have used the wrong target index in some cases. He reviewed Tab 15 of his booklet presentation reflecting a preliminary analysis for the Palm Bay Police & Firefighters' Pension Fund. The investigation of Merrill Lynch began in 2005 and they changed their behavior when they started paying 12b-1 fees, etc. to boards across the state, so there

are positive numbers in 2007. He said the fund would get the benefit of the over performance and still have the claim for the underperformance. Before the consortium could commit, they would need the soft dollar arrangement documents. The question is what the extent of the damage is. He said the fund had Jeff Swanson and Mike Callaway and they were the only two who were sanctioned by the SEC. Mr. Callaway was censured and fined. His contingency would be the standard personal injury rates which are on a sliding scale, thirty-three and one-third percent (33 1/3%) up to one million dollars (\$1 Million), thirty percent (30%) of any portion of the recovery between one million dollars (\$1 Million) and two million dollars (\$2 Million), twenty percent (20%) exceeding two million dollars (\$2 Million). This is a complex case. They do cost-sharing provisions too. If recovery is made after filing it is thirty-five percent (35%) on the first one million dollars (\$1 Million), thirty percent (30%) of any portion of the recovery between one million dollars (\$1 Million) and two million dollars (\$2 Million), twenty percent (20%) exceeding two million dollars (\$2 Million). They may have to advance millions of dollars before litigation. The goal is to come to some sense of damages and uniformly apply it to all funds. Mr. Zonka and Mr. Adams asked further questions. Bank of America bought Merrill Lynch and they would be responsible as they are the new owner and would have a deeper pocket. Mr. Adams asked about the jurisdiction. Mr. Miller said the case would be filed locally. Mr. Zonka asked how many clients have engaged in the consortium and Mr. Miller replied there are 25-26 now that are actively involved. The telephone call with Mr. Cypen & Mr. Miller ended at 10:18 a.m. Motion by Mr. Zonka, seconded by Mr. Smith to engage the consortium on a contingent fee basis to pursue damages against Merrill Lynch. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea. The discussion continued with Item 2. a. Actuarial Services & Projects: Foster & Foster, Inc.

OLD BUSINESS:

1. **Mr. Stephen H. Cypen, Board Counsel**
 - a. **Proposed Policy for Disclosure of Placement Agent Fees**-As discussed at the last meeting, Mr. Cole would be following up with the board at a later meeting.
 - b. **Amendments to the Pension Protection Act of 2006, the Heroes Earnings Assistance and Tax Relief Act of 2008 and Internal Revenue Service Notice 2008-98**-Pending further updates on this legislation and review of documents forwarded to Mr. Cypen and Mr. Friedman.
 - c. **Mr. Robert J. Friedman, Esq., The firm of Holland & Knight, LLP-IRS Letter of Determination of Compliance**-Pending further review by the IRS.
2. **Actuarial Services & Projects: Foster & Foster, Inc.**
 - a. **Palm Bay Professional Firefighters, IAFF, Local 2446-Pension Re-Opener and Ongoing Issues:**
 1. **Share Plan Using Chapter 175 Funding-Notification of Impasse**-Mr. Ginsburg, President, IAFF, Local 2446 said they were still at impasse.
 2. **Request for use of Board Actuary during Negotiation Meetings**-Mr. Ginsburg said he sent a memo to the board about having the board's actuary attend an upcoming negotiation meeting. Mr. Adams discussed keeping the cost to a minimum because the city pays the cost. Mr. Lancaster asked if it was Mr. Ginsburg or Mr. Feldman, Palm Bay City Manager that was asking for Mr. Heinrichs to be at the meeting. Mr. Mazziotti asked about the fees and if the IAFF could pay for it. Mr. Yonce talked about past discussions of

negotiations stating it helped to have both parties together. Motion by Mr. Zonka, seconded by Mr. Smith to approve the expenses of the Board's Actuary, Mr. Heinrich, to attend the meeting and any preparation for that meeting; but if either side had any actuarial costs for "What if scenarios" that was to be paid by the parties involved, as long as both parties have a signed request sent to the board. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea. Mr. Zonka said this would cover an open end meeting between the city and the firefighters for negotiations so it would cover Mr. Heinrich's attendance if this was not resolved in one session. The discussion continued with Item 2. c.

b. General Employee Transfers to Police Officer & Firefighter Status Prior to 1991-Mr. Kiszkiel said he was hired by the City as a mechanic in 1991, his funds were moved to the Fire Fund. In the 2003-2006 firefighters' bargaining agreement Mr. Kiszkiel said prior Palm Bay employment could be bought back. He said at that time he asked one of the board of trustees if he had to buy back the time and was told no. He said the two years in question is not counting toward the multiplier. There was further discussion about members not making contributions until their one year anniversary and such impact on Mr. Kiszkiel's service time. Motion to by Mr. Smith, seconded by Mr. Lancaster to allow Mr. Kiszkiel's general employee time to count towards eligibility and the multiplier in the Fire Fund and that the approval is an individual case and not precedent setting because he made contributions in the General Fund. Mr. Zonka asked about the definition stating he had no problem with it but wanted to know what the actuary's opinion was on the issue. Motion carried with members voting as follows:

| | |
|---------------|-----|
| Mr. Lancaster | Yea |
| Mr. Smith | Yea |
| Mr. Mazziotti | Yea |
| Mr. Zonka | Nay |
| Mr. Adams | Yea |

Mr. Kiszkiel left the meeting and did not return. The meeting continued with Mr. Miller's presentation above.

c. Florida Premium Tax Distribution-Police Overtime Benefit Draft Ordinance-Mr. Lancaster said the ordinance has been at city hall since January. It increases the amount of overtime to be included in the definition of pension base as part of the state minimum. He said Mr. Combs wants it on the council agenda.

d. Update on Correspondence between the Pension and City Actuaries-Impact Study to Freeze the Plan-Mr. Zonka said he has a copy of Mr. Tierney's report and he will send a copy to the office.

3. Pension Website-www.pbpf.org-Mr. Adams addressed a League of Cities magazine article on the city's financial transparency. Mr. Yonce and Mr. Ginsburg left the meeting and did not return. Mr. Adams said he added the budget to the website. Mr. Zonka said he would get the pension fund's website linked on the city's site.

4. Office and Laptop Computers-Mr. Zonka and Mr. Mazziotti said they did not need the laptops issued to Mr. Brock and Mr. Yonce. The board recommended keeping the two newer laptops as back-ups and donating the two existing Dell's that were being kept as backups to the Police Athletic League (PAL).

5. Update on Ronald C. Giordano, Jr.-Disability Application-Ms. Adams advised the board that Mr. Giordano canceled his appointment with Dr. Brooks. Since notification was received only a couple of days prior to the appointment, the two-thousand dollars (\$2,000.00) initial fee could have been forfeited; however, Dr. Brooks agree to waive it. The funds are still "on deposit" with Dr. Brooks. Mr. Giordano wants to use an Illinois physician as he could not travel. Attorney Hammond sent Mr. Giordano's attorneys a letter and is pending a response.

6. Payout Expense Account-Transfer of Funds from the Police Fund-Motion by Mr. Zonka, seconded by Mr. Lancaster to approve the transfer of Four Hundred Twenty-Five Thousand Dollars (\$425,000.00) from the Police Fund to the Payout Expense Account. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea.

NEW BUSINESS:

***1. Consideration of Warrants for Payment**

***a) Timothy W. Lancaster-\$149.97-Replenish Petty Cash-**Considered under Consent Agenda and approved as presented.

***b) FPPTA-\$100.00-2010 CPPT Re-Certification Fee for Timothy W. Lancaster (Covers Three Year Period) -**Considered under Consent Agenda and approved as presented.

***2. New Plan Member Application, Member Beneficiary Changes, Pre-Retirement Death Benefit Option Selection and Retirement Beneficiary Forms-**There were no new applications or changes.

3 Long Range Planning Items-Ms. Adams said the old phones were taken to Lowe's; however, they would not accept them, they only take batteries and plastic so they were taken to the County recycling center and they would not accept them. They referred us to another recycling site and they wanted to charge a minimum of \$100. They were eventually disposed. Ms. Adams said approximately thirty-eight applications for the part-time position had been received. Each trustee needed to come into the office and select their top five (5) candidates so interviews could be scheduled during a special or regular board meeting. Mr. Mazziotti said he would go with whatever choice we made; however, he was advised the selection process was to be done by the trustees.

***4. Review of Correspondence:**

a) Monthly Bank Statement-STI, 02/28/2010-The market value of the SunTrust Funds at 02/28/2010 was \$106,696,339.80. The market value of the International Funds, which are part of the SunTrust portfolio, is \$13,902,343.72. The Grand Total of all the Funds at 02/28/2010 was \$113,598,336.80. This item was considered under Consent Agenda and approved as presented.

b) Monthly Statement-JPMorgan Strategic Property Fund, 02/28/2010-The market value for the JPMorgan Strategic Property Fund at 02/28/2010 was \$6,901,997.00. This item was considered under Consent Agenda and approved as presented.

c) Memo from Ms. Passmore, City Clerk-Ordinance 2010-07, City Councilmembers to Sit as Ex-Officio Members on Designated Boards-The memo stated that pursuant to Ordinance 2010-07 providing for councilmembers to sit as ex officio members on designed boards and that Councilmembers John Mazziotti and Milo Zonka are to sit as ex officio members of the Pension Plan, Board of Trustees.

5. Board Business-Motion by Mr. Lancaster, seconded by Mr. Zonka to have the office rekeyed. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea. Ms. Adams discussed the use of Iron Mountain for document storage. This item had been discussed previously; however, the office was running out of space. The quote was a monthly minimum of \$131 or forty-five cents (\$0.45) per cubic feet per month which included up to 291 cubic feet or 242, 1.2 cubic foot boxes. Mr. Zonka asked about storage by the city. Ms. Adams said there had been an issue of timeliness and the inability to produce documents, especially during disability application processing. Iron Mountain had a secure site and would provide delivery services. The board was looking into other options through their computer program provider and other groups. Motion by Mr. Lancaster, seconded by Mr. Smith to approve entering a contact with Iron Mountain for storage of documents. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea. New trustee manuals were being prepared for the two new trustees. Mr. Lancaster asked that new manuals be made for all the trustees at the same time. Ms. Adams said the fund received an overpayment of \$33.99 from Arthur J. Gallagher Risk Management Services, Inc. Ms. Adams said the board received notification that First Comp for employee workers' compensation coverage with Delos Insurance Company would be expiring and would not be renewed as that company is no longer offering such coverage. The new quote will be through Southern Insurance Company under separate cover. It is an A- Rated company. The service and coverage will remain consistent through Southern Insurance and FirstComp Underwriters Group, Inc., the current managing general agency. Ms. Adams said the motion as last month's meeting for firefighter invoicing from Foster & Foster for \$576.00 was reduced to \$451.00 because of a fee error for Firefighter LaPlante's recalculation.

6. Upcoming Events-Educational Opportunities-Ms. Adams gave Mr. Zonka and Mr. Mazziotti information on the Division of Retirement School and the FPPTA Conference. Mr. Zonka said he would attend the upcoming Division of Retirement School. Mr. Mazziotti said he would attend, but we needed to check his schedule with the Legislative office. No one was interested in the J.P. Morgan Real Estate Conference; the NCPERS Washington Legislative Update; the Stars & Stripes Conference; or the NCPERS Program for Advanced Trustee Studies.

***7. Acknowledgement of Buyback Purchase on Firefighter Brad Pickard and Buyback Request on Firefighter Robert Bratsch**-This item was considered under Consent Agenda and approved as presented.

***8 Application for Disability-Firefighter Robbie R. Plante**-Firefighter Plante filed an application for a line of duty disability. Under consideration was approval to move forward in processing the application. This item was considered under Consent Agenda and approved as presented.

9. Consideration to Change the Following 2010 Meeting Dates: From July 7th to July 14th; From December 1st to December 15th.-Motion by Mr. Smith, seconded by Mr. Lancaster to reschedule the July 7th meeting to July 14th and the December 1st meeting to December 15th. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Smith, Yea; Mr. Mazziotti, Yea; Mr. Zonka, Yea; and Mr. Adams, Yea.


INPUT FROM ACTIVE AND RETIRED PLAN MEMBERS:

There was no input from any active or retired plan members.

PBP&F Pension Fund
Regular Meeting 10-05
April 7, 2010

ADJOURNMENT:

There being no further business, the meeting was adjourned at 11:32 a.m.


Richard B. Adams, Chairperson

ATTEST:


Timothy W. Lancaster, Secretary