

BOARD OF TRUSTEES
Reconvened Regular Meeting
Friday, August 1, 2008, 12:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan reconvened at 12:24 p.m. Friday, August 1, 2008, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

Joe T. San Agustin, Chairman
Wilfred P. Leon Guerrero, Vice-Chairman
Gerard A. Cruz, Treasurer
James J. Taylor, Secretary
George A. Santos, Trustee
Katherine T.E. Taitano, Trustee
Antolina S. Leon Guerrero, Trustee

Staff Present:

Paula Blas, Director
Diana Bernardo, Controller
Jackie Blas, Recording Secretary

Legal Counsel Present:

Elyze McDonald, Carlsmith Ball LLP

Chairman San Agustin stated that the Board of Trustees will now reconvene its regular meeting from Friday, July 25, 2008. Chairman San Agustin stated that the Board of Trustees will be entertaining, at today's meeting, the Richard Saville vs. Government of Guam Retirement Fund and the July 15, 2008 letter from Mr. Terry Dennison, Mercer Investment Consulting, Inc. regarding request for increase of the annual retainer fee.

II. NEW BUSINESS

A. Richard Saville vs. Government of Guam Retirement Fund

Chairman San Agustin asked Legal Counsel what prompted this. Legal Counsel Elyze McDonald stated that if the Board is to going to settle the case, she would recommend that the Board go into Execution Session. She stated that if the Board is going through the court process, we could discuss this in an open meeting. Chairman San Agustin stated that the court is going to issue a Writ of Mandate requiring the Board to consider Mr. Saville's application for disability benefits. Chairman San Agustin stated that there is no reason to discuss this since there is no Writ. Chairman San Agustin stated that Legal Counsel's May 6, 2008 letter maintains that the statute "specifically requires the Board to consider and make findings about an applicant's disability" and "it was improper for the Board basically to adopt the findings of the Members and Benefits (M&B) Committee, which consist of only three members of the Board, without more Board participation and deliberation." Chairman San Agustin stated that to add more members to the M&B Committee would constitute a Board quorum. Chairman San Agustin asked what prompted this case to go to court. Legal Counsel McDonald stated to get a Writ. Chairman San Agustin asked what the Writ is for. Legal Counsel McDonald stated that the Retirement Fund approved the authority. Legal Counsel McDonald stated that the court did not have the authority to direct the Retirement Fund. Legal Counsel McDonald stated that an oral ruling denied the Retirement Fund's motion. The ruling is not in writing. Legal Counsel McDonald stated that the court order will say that the Retirement Fund would have to review the cases in question. Chairman San Agustin stated that the court order would say what the Retirement Fund did wrong or direct what the Retirement Fund should do. Legal Counsel McDonald stated that she is informing the Board of options.

Vice-Chairman Wilfred Leon Guerrero stated that the issue is that the court found the process to be deficient. Vice-Chairman Leon Guerrero stated that he would like to know what the deficiency is. Legal Counsel McDonald stated that the language of the statute is that the Board should make the decision. Chairman San Agustin stated that the key issue is that the Board made a decision without discussion. Secretary James Taylor asked whether the actual language of the law is in the letters from Carlsmith Ball to the Retirement Fund. Legal Counsel McDonald stated that the May 6, 2008 letter cites the statute. Vice-Chairman Leon Guerrero stated that the second paragraph on Page two of the May 6, 2008 letter states that "The Fund also found that the Board did not make any findings as required by the statute." Vice-Chairman Leon Guerrero stated that it may be the wording of the motion. Secretary Taylor stated that Legal Counsel should have provided the actual language of the statute. Legal Counsel McDonald stated that the Retirement Fund could draft proposed legislation. Legal Counsel stated that there had been no notification of the Saville case being heard. Vice-Chairman Leon Guerrero stated that Legal Counsel McDonald's colleague had stated that the Board should not disclose names and conditions of disability applicants. Legal Counsel McDonald stated that the Board could discuss names in a public meeting with permission from the applicant.

Trustee Antolina Leon Guerrero mentioned that there are three appeal cases pending. Chairman San Agustin recommended waiting for the court mandate. Trustee Leon Guerrero suggested dealing with the Saville case. Chairman San Agustin stated that all is needed is the physician's recommendation to the Board. Chairman San Agustin asked how are privacy issues to be handled. Trustee Leon Guerrero stated that the individuals are interviewed. Director Paula Blas stated that a case number could be assigned without a name. Legal Counsel McDonald stated that there is no way around the requirements of the court order. Secretary Taylor again noted that the Retirement Fund's Legal Counsel should have provided the actual language of the law rather than just give an opinion in a letter. A report and discussion is needed with the Board. Trustee Leon Guerrero stated that the Board needs to protect the members' privacy. Chairman San Agustin suggested checking with other public pension entities with the same issue. Legal Counsel McDonald stated that she will review the language of the statute. She did not promise to bring the language of the statute to the Board. Chairman San Agustin stated that when a member requests for benefits, the members could waive the privacy act. Trustee Katherine Taitano stated that if the individual knows that it would become public, that individual may turn away from applying. Treasurer Gerard Cruz stated that the mentally ill and HIV applicants may be very sensitive to privacy issues. Chairman San Agustin stated that he is uncomfortable about a vote that did not include full discussion of the case. Chairman San Agustin stated that on the Saville case, the Board should wait for the court order. Chairman San Agustin asked what will be done hence forth. Legal Counsel McDonald stated that there is a need to include the discussions in the report. Vice-Chairman Leon Guerrero asked Legal Counsel McDonald to put in writing what the Board needs to do. Legal Counsel McDonald stated that she will provide written instructions for future cases. Legal Counsel McDonald further stated that she will provide draft language. It will be a major change. Legal Counsel McDonald reiterated that her recommendation is to wait for the court order.

Treasurer Gerard Cruz, seconded by Vice-Chairman Wilfred Leon Guerrero, moved to approve the Board's recommendation to wait for the court order before moving forward with a decision. Without objection, the motion passed.

Legal Counsel Elyze McDonald was excused from the meeting at this time (1:10 p.m.)

B. July 15, 2008 Letter from Mr. Terry Dennison, Mercer Investment Consulting, Inc. (Mercer) Regarding Request for Increase of the Annual Retainer Fee

Chairman San Agustin stated that Mercer Investment Consulting, Inc. (Mercer) is requesting a \$50,000 fee increase. Chairman San Agustin stated that he is concerned of the request for an increase of the annual retainer fee at the same time there is a recommendation for the issuance of a Request for Proposal (RFP). Vice-Chairman Leon Guerrero stated that the issuance of an RFP was discussed at the last Investment Committee meeting. Treasurer Cruz stated that there are some things he is comfortable with and also not comfortable with in working with Mercer. Vice-Chairman Leon Guerrero asked how long the Retirement Fund has had Mercer at its investment consultant. Director Blas replied, "Five Years." Vice-Chairman Leon Guerrero stated that it is time to issue an RFP. Trustee Leon Guerrero stated that we need to evaluate our service from Mercer. Vice-Chairman Leon Guerrero stated that there is a need to revisit all vendors. Treasurer Cruz stated that he has no problem with the fee increase since it has been five years. Chairman San Agustin suggested approving the request for increase and at the same time give notice to Mercer that the Retirement Fund will be issuing an RFP for the Defined Benefit (DB) Plan. Secretary Taylor recommended including the Defined Contribution

(DC) Plan. Vice-Chairman Leon Guerrero stated that he thinks that we need two different investment advisors. Controller Diana Bernardo stated that if Mercer is eliminated for the DB Plan, Mercer will request for an increase in the DC Plan.

Treasurer Gerard Cruz, seconded by Trustee Antolina Leon Guerrero, moved to approve Mercer Investment Consulting, Inc.'s request for an increase of their annual retainer fee in the amount of \$50,000.00 for consultation with regard to the Defined Benefit Plan. Without objection, the motion passed.

Vice-Chairman Wilfred Leon Guerrero, seconded by Treasurer Gerard Cruz, moved to approve to issue a Request for Proposal for the Defined Benefit Plan Investment Consultant as part of the Retirement Fund's due diligence.

Secretary James Taylor, seconded by Trustee George Santos, moved to amend the motion to issue a Request for Proposal for both the Defined Benefit Plan and Defined Contribution Plan. Secretary James Taylor voted yes, Trustee George Santos voted yes, Treasurer Gerard Cruz voted yes, Trustee Antolina Leon Guerrero voted yes, Chairman Joe San Agustin voted yes, Trustee Katherine Taitano voted yes, Vice-Chairman Wilfred Leon Guerrero voted no. With six affirmative votes, the motion passed as amended.

III. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

IV. ANNOUNCEMENTS

None

V. ADJOURNMENT

There being no further business before the Board for the Defined Benefits Plan, on motion of Treasurer Gerard Cruz, seconded by Trustee George Santos, and without objection, the meeting was adjourned at 1:28 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of August 1, 2008 Reconvened Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on October 31, 2008.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas