

BOARD OF TRUSTEES
Regular Meeting
Wednesday February 25, 2004, 12:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. CALL TO ORDER

After determining a quorum, the Retirement Fund Board of Trustees Regular Meeting was called to order at 12:10 p.m. Wednesday, February 25, 2004, in the Retirement Fund Conference Room. Chairman Francisco B. Salas officiated.

Board of Trustees Present:

Francisco B. Salas, Chairman
Gerard A. Cruz, Vice Chairman
Katherine T.E. Taitano, Trustee
Stephen J. Guerrero, Trustee

Board of Trustees Absent:

Rolenda L. Faasumalie, Trustee

Staff Present:

Wilfred G. Aflague, Director
Paula M. Bamba, Administrative Services Officer
Pete Tajalle, Controller
Ken Dunstan, Acting Benefits Program Administrator
Vince Camacho, Great West Retirement Services
Jackie Blas, Board Secretary
Greg Perez, Benefits Specialist III
Peter Duenas, Benefits Specialist III
Larry Quichocho, General Accounting Supervisor
Rosalie Bordallo, Investment Specialist

Public Present:

Meredith Sayre, Legal Counsel (Carlsmith Ball)
Mark Heath, Metropolitan West Capital Management
Becky Lujan, Office of Senator Toni Sanford
Ken Wetmore, KUAM

Chairman Salas informed the Board of Trustees that the Board Meeting Agenda was amended to include the Members and Benefits Committee Meeting Findings of February 24, 2004.

II. REVIEW AND APPROVAL OF MINUTES

A. February 11, 2004 Regular Meeting

On motion of Ms. Katherine Taitano, seconded by Mr. Stephen Guerrero, and unanimously agreed upon, the Minutes of February 11, 2004 Regular Meeting were approved, subject to corrections. Motion carried.

III. PENSION BENEFITS

A. Members and Benefits Committee Findings of February 24, 2004

Mr. Ken Dunstan, Acting Benefits Program Administrator, stated that based on the Committee's findings during their meeting of February 24, 2004, and due to the severity of the disabilities, the following disability applications are recommended for **APPROVAL** by the Board of Trustees.

- A. DISABILITY APPLICANTS
 - 1. Minda S. Reglos
 - 2. Jesse L. San Nicolas

Mr. Wilfred Aflague, Director, informed the Board of Trustees that Dr. Steele's report stated that these two applicants have both been diagnosed as having terminal cancer. Mr. Aflague stated that Mr. Jesse San Nicolas had been taken to the hospital early this morning. Mr. Stephen Guerrero asked how long have we had Mr. San Nicolas' application for disability before being entertained by the Members and Benefits Committee. Mr. Aflague replied for about a month or two.

On motion of Vice Chairman Gerard Cruz, seconded by Ms. Katherine Taitano, and unanimously agreed upon, the Board of Trustees voted to approve the disability applications of Minda S. Reglos and Jesse L. San Nicolas, as recommended by management. Motion carried.

IV. INVESTMENT COMMITTEE

A. Investment Committee Meetings of November 14, 2003 and January 13, 2004

Vice Chairman Gerard Cruz stated that the minutes of the Investment Committee Meetings of November 14, 2003 and January 13, 2004 are submitted for the Board's approval.

On motion of Vice Chairman Gerard Cruz, seconded by Mr. Stephen Guerrero, and unanimously agreed upon, the Board of Trustees voted to approve the Investment Committee Meeting Minutes of November 14, 2003 and January 13, 2004. Motion carried.

V. EXECUTIVE SUMMARY

Mr. Aflague informed the Board of Trustees that the first two items (Board Elections and the FY2001 Public Auditor Report) in the Executive Summary are under "Old Business."

Mr. Aflague stated that as of January 31, 2004, all agencies are current with their fiscal year 2004 employee and employer contributions.

Mr. Aflague stated that as per our auditor, the 2002 Financial Audit is complete and is in the process of finalization with the Office of the Public Auditor. This is expected to be completed before the end of this month depending upon any additional issues that the Public Auditor wants us to address. Chairman Salas stated that an exit meeting was held last week Friday. The meeting was a very incisive meeting.

VI. OLD BUSINESS

A. Retirement Fund Board of Trustees Election

Chairman Salas stated that Legal Counsel will provide a synopsis of what has been happening over the last month or so. Legal Counsel stated that the election was scheduled for February 14, 2004. On February 11, 2004, a Writ of Prohibition was filed by Mr. Rufo Lujan asking the court to order that the election be cancelled. The basis for the Writ was primarily the noticing of the time and place for the election and the amount of time for candidates to file their candidacy. The court heard all of the party's arguments on whether or not the court should grant a Writ of Prohibition the next day, February 12, 2004.

Legal Counsel stated that the Retirement Fund and the Guam Election Commission were pretty much in alignment on their positions that the problem was that the regulations that we were all trying to follow that were part of that public law that the Legislature had done some fine tuning after it was submitted to the Legislature. The net result was a public law that was internally inconsistent. The law was followed by the Retirement Fund and the Guam Election Commission. The court ordered that the election be cancelled and ordered that the new election date shall be no less than sixty (60) days from the date of the order, but no later than one hundred twenty (120) days from the date of the order, which is February 12, 2004.

Legal Counsel stated that if there are still issues with the public law and the regulations and the Guam Election Commission's method of handling an election, we would like to tidy it up. Legal Counsel stated that the very first problem that we have already is that the most ideal venue for the election, the University of Guam Fieldhouse, is available only beyond the 120 days. Legal Counsel stated that she will be recommending to the Board of Trustees that we prepare an agreement by stipulation that the date be extended from 120 days to 130 days. Mr. Guerrero asked why not get an earlier date. Ms. Paula Bamba stated that the Guam Election Commission is saying that they have already stretched out the 120 days. Ms. Bamba stated that we are looking at alternate venues such as schools and that if we go for a private location then we would need an RFP. Ms. Katherine Taitano stated that it would be better to get the schools with full ADA compliance and not delay the process with an RFP for a private location.

Vice Chairman Cruz asked if the UOG Fieldhouse is available on June 19, 2004. Legal Counsel replied yes. Chairman Salas stated that earlier dates are not available due to upcoming graduations which are scheduled within the month of May. Mr. Stephen Guerrero asked why the Guam Election Commission published the notice before the stipulation with the parties involved. Ms. Bamba stated that the notice was published out of the pre-conference with Mr. Lujan's counsel and the Guam Election Commission's counsel with the understanding that the one week stipulation would be okay. Vice Chairman Cruz inquired about the date outside of the court order. Legal Counsel stated that she spoke to Attorney Caesar Cabot and that if we don't have a stipulation by Thursday, February 26, 2004, then we will be going to court by Friday. Chairman Salas stated that we should have some kind of time frame or compliance by next week. Chairman Salas stated that there is an issue on whether or not we would be able to meet one of the requirements which is to inform everyone in writing. Ms. Bamba stated that the problem with the inactive members is their current contact addresses.

Chairman Salas stated that he would like to recommend Legal Counsel to make sure that when we do have that opportunity to meet with the Judge and the other counsels that we take into consideration all these challenges and other issues that we are going to actually do something for an election for an agency that's not mandated by law to run an election. We need the leniency of the court to understand that these concerns are going to be something that we need to work hand in hand with the Guam Election Commission.

Chairman Salas also stated that the Retirement Fund's next newsletter should include the notice of the election. Vice Chairman Cruz stated that the main concern here is that we are almost setting ourselves up for another possible lawsuit if not everyone is informed of the election. Chairman Salas stated that this is why we need the leniency of the court or clear the record on what would satisfy a notice and if the last known address would be acceptable. Chairman Salas stated that whatever concerns needs to be addressed rather than just speculation. Legal Counsel stated that these issues had been addressed, but then there was a sense of urgency by the Legislature to get this legislation passed. Chairman Salas recommended for Mr. Vince Camacho and Ms. Bamba to get the information out on the newsletter and for Mr. Aflague to get the information out through the media. Ms. Taitano suggested that we put the information in the website. Mr. Aflague stated that it is in the Retirement Fund's website.

Mr. Stephen Guerrero inquired if there is a finer detail of the election. Do the old candidates still have to go through the whole process again? Ms. Bamba stated that the old candidates would have to go through the whole process. Signatures have to be verified six months prior to the election. We would need to establish a new list for the June 19, 2004 election.

B. Public Auditor's Report

Mr. Pete Tajalle reported to the Board of Trustees that the Office of the Public Auditor has issued OPA Report No. 04-02 on February 2004. Various findings has come to light. There are actions to be taken in light of the Public Auditor's recommendations on Page 11 of the report, in particular, the question on recapture or payback of these balances.

Chairman Salas stated that he would like to initiate his directive on the handling of the audit report. Chairman Salas stated that he would like to create a Special Committee made up of management and the Board of Trustees to look at the OPA findings. We need a formal participation on the Special Committee.

Vice Chairman Cruz inquired about Finding 2000-01: Miscalculation of Retirement Benefits. Mr. Aflague stated that this has been referred to Legal Counsel. Vice Chairman Cruz asked if we have concluded that there was a miscalculation of benefits and if we have, had we done the estimates to reflect what the Retirement Fund believes is the right calculation. Mr. Aflague stated that we have not stopped the annuity nor have we recalculated the estimates. Mr. Aflague stated that there are two approaches: administrative error or fraud. There are two different courses of action to take.

Vice Chairman Cruz inquired about Finding 1999-01. Have we done anything on this to rectify any of these findings? Mr. Aflague stated that Finding 1999-01 rectified itself when the elected official retired from the DC Plan. Vice Chairman Cruz asked if internal controls are in place to avoid this from happening again. Mr. Aflague stated that we have submitted legislation to completely outlaw DB members who come back and become members of the DC Plan.

Vice Chairman Cruz also inquired about Finding 2001-01. Mr. Aflague stated that this is in the hands of Legal Counsel to draft up the collection language for this finding. Vice Chairman Cruz inquired about individuals who have retired and are able to escape a policy or procedure that is already in place. Mr. Aflague stated that has been done except for that one particular case. Mr. Aflague stated that the probability of this happening again was closed except for this one case. Mr. Tajalle stated that we are looking into alternative means to try and identify those individuals who are receiving income from other means and are just not reporting it to the Fund. With the statutes the way there are, we don't have any means of policing disability annuities. We have no means of determining additional income at our level, short of an affidavit from them saying that they are not receiving additional income. We will need to work with the Department of Revenue and Taxation to identify those individuals who do have additional income. There is no third party means for us to establish an outside verification. We are also trying to get assistance from Social Security for those individuals residing off-island. Vice Chairman Cruz stated that we probably should send out affidavits attesting that they do not have any additional income.

Chairman Salas stated that this is why we need to create a Special Committee. Vice Chairman Cruz stated that what he's hearing is that there's nothing to provide us the resource to do anything we can so we're going to accept the fact that this probability will continue. Mr. Aflague stated no, and that the retirees of disability annuitants have signed a form. Ms. Bamba stated that we need to go back to the statutes. If we could just make the statute a little bit more enforceable in terms of teeth. Vice Chairman Cruz stated that we should find ways to make sure this does not happen again. Mr. Aflague stated that we are already taking steps internally.

Mr. Tajalle asked Chairman Salas if he had a particular time frame for closure or recommendation to the Board of Trustees on these findings from the Special Committee? The OPA wants a deadline for action on these items. Chairman Salas stated that the Special Committee should report to the Board of Trustees directly for the purpose of addressing any findings specifically derived from the audit.

Mr. Stephen Guerrero stated that he's concerned and disturbed with the term "miscalculation." Mr. Aflague stated that the word "miscalculation" is the word the OPA uses. Mr. Aflague stated that of the whole audit findings listed here, there's not one employee present here at today's meeting that was involved at all in these findings.

Chairman Salas appointed the following to be members of the Special Committee: Gerard Cruz, Katherine Taitano, Wilfred Aflague, Paula Bamba, Pete Tajalle and Ken Dunstan.

VII. NEW BUSINESS

None

VIII. OPEN DISCUSSION

None

IX. ANNOUNCEMENTS

None

X. ADJOURNMENT

There being no further business before the Board, on motion of Vice Chairman Gerard Cruz, seconded by Ms. Katherine Taitano, and unanimously agreed upon, the meeting was adjourned at 12:59 p.m. Motion carried.

Respectfully submitted,

Jackie Blas
Board Secretary

D E F I N E D CONTRIBUTIONS

I. CALL TO ORDER

After determining a quorum, the Retirement Fund Board of Trustees Regular Meeting was called to order at 12:59 p.m. Wednesday, February 25, 2004, in the Retirement Fund Conference Room. Chairman Francisco B. Salas officiated.

Board of Trustees Present:

Francisco B. Salas, Chairman
Gerard A. Cruz, Vice Chairman
Katherine T.E. Taitano, Trustee
Stephen J. Guerrero, Trustee

Board of Trustees Absent:

Rolenda L. Faasumalie, Trustee

Staff Present:

Wilfred G. Aflague, Director
Paula M. Bamba, Administrative Services Officer
Pete Tajalle, Controller
Ken Dunstan, Acting Benefits Program Administrator
Vince Camacho, Great West Retirement Services
Jackie Blas, Board Secretary
Greg Perez, Benefits Specialist III
Peter Duenas, Benefits Specialist III
Larry Quichocho, General Accounting Supervisor
Rosalie Bordallo, Investment Specialist

Public Present:

Becky Lujan, Office of Senator Toni Sanford

II. REVIEW AND APPROVAL OF MINUTES

A. February 11, 2004 Regular Meeting

On motion of Vice Chairman Gerard Cruz, seconded by Mr. Stephen Guerrero, and unanimously agreed upon, the Minutes of February 11, 2004 Regular Meeting were approved, subject to corrections. Motion carried.

III. OLD BUSINESS

A. Contribution Report as of PPE February 7, 2004

Mr. Vince Camacho, Great West Retirement Services, reported to the Board of Trustees that the following four agencies look like they are behind in their payments for Pay Period Ending February 7, 2004: the General Fund, DOE, Superior Court and GMH. Mr. Camacho stated that he will follow up on this and will update the Board of Trustees on payments from these four agencies. Chairman Salas recommended sending out letters right away. Mr. Camacho stated that he will work with Mr. Tajalle on sending out letter regarding the late payments.

IV. NEW BUSINESS

Mr. Vince Camacho reported to the Board of Trustees that all the investment options will be in effect on Monday, March 1, 2004 for both plans. Vice Chairman Cruz asked if the options available in the 401 Plan are available in the 457 Plan? Mr. Camacho replied that all the investment options are available in both plans.

V. OPEN DISCUSSION

None

VI. ANNOUNCEMENTS

None

VII. ADJOURNMENT

There being no further business before the Board, on motion of Vice Chairman Gerard Cruz, seconded by Ms. Katherine Taitano, and unanimously agreed upon, the meeting was adjourned at 1:02 p.m. Motion carried.

Respectfully submitted,

Jackie Blas
Board Secretary