

BOARD OF TRUSTEES
Emergency Meeting
Wednesday, May 7, 2003, 3:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. CALL TO ORDER

The Retirement Fund Board of Trustees emergency meeting was called to order at 3:35 p.m. Wednesday, May 7, 2003, in the Retirement Fund Conference Room. Chairman Francisco B. Salas officiated.

Board of Trustees Present:

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

Staff Present:

Wilfred G. Aflague, Director
Paula M. Bamba, Administrative Services Officer
Dana Gutierrez-Reyes, Legal Counsel
Pete Tajalle, Controller
Peter Duenas, Acting Benefits Program Administrator
Cindy Cabe, Board Secretary

Public Present:

Odilia Bautista, Retiree
Phil Torres
Rita Franquez, Retiree

At this time Chairman Francisco Salas presented a brief statement. The Chairman called this emergency meeting as a result of the recent events, which had an impact on the primary functions, responsibilities and daily operations of the Retirement Fund. More specifically, it has been brought to the Board of Trustees attention that the recent passage of Public Law 27-19 wherein the Governor of Guam has been authorized by the 27th Guam Legislature to issue government of Guam bonds and bond anticipation notes to the tune in excess of \$200 Million. The proceeds of the bond will go towards income tax refunds, utility payments and to the Retirement Fund specifically earmarked for supplemental annuities and delinquent contributions for line agencies and the Department of Education. The government of Guam bonds has been down graded by the Standard and Poor's Rating Agency (S&P) to B rating which is the second to the last rating on any rated bond. This action has made many of the community ask how is this going to impact the market ability of our funds. The Board of Trustees is now addressing the potential impact of the government of possibly not being able to realize the full issuance and proceeds of such bonds. The Chairman reminded the Board of Trustees of the inherent responsibility to act prudently and without prejudice or influence for the sole benefit of its members and its beneficiaries. The Chairman asked the Director to provide a brief overview of some significant events that have transpired over the past year resulting in the summary judgment that was handed down by the court by Judge Lamorena.

II. MEMBERS SEEKING TO RETIRE

- A. Board Resolution: 2003-002 as amended by 2003-03**
- B. Summary Judgment dated February 18, 2003**
- C. Legal Opinions**

Director Aflague stated that he was briefed on past Board actions and events, which led up to this court action. The Director stated that Fiscal Year 1999, 2000 and 2001, the Retirement Fund funded supplemental benefits and COLA payments with the understanding that the Legislature raise the contribution rate for government of Guam employees to 26%. The Actuary Rate by the consultant was 32%. For three fiscal years, the Retirement Fund paid supplemental annuities and COLA. For Fiscal Year 2002, the Retirement Fund was taken to court to cease such action and in line of the Legislature reducing the contribution rate, the Retirement Fund no longer funds those supplemental annuities and COLA. Dana Gutierrez-Reyes, Legal Counsel, stated that at the time the Retirement Fund was brought to court, the three years that the supplemental benefits and COLA was funded, it was funded at a rate that had covered what was needed to be covered. On the fourth year, the Retirement Fund was brought to court because it was not funded at the actuarial rate that was recommended. At that time Odilia Bautista sued the Retirement Fund. Both parties filed summary judgment motions. As a result of the filing of the summary judgment motion, Judge Lamorena issued in the Retirement Fund's favor for prayers that was requested to an extend. Judge Lamorena issued four rulings. Legal Counsel stated that a copy of Judge Lamorena's ruling was provided to the Board of Trustees. Legal Counsel stated that the Retirement Fund initially requested for alternative order that the Retirement Fund may take steps to implement the Defined Benefit (DB) Plan in a matter that will not severely or adversely impair the government's ability to provide retirement disability and survivor annuities to DB members and beneficiaries. The February 18, 2003 ruling ordered four particular actions: that 1) the Board of Trustees was ordered to reduce the payment of benefit to unfunded or underfunded pursuant to actuarial standards; 2) to challenge legislation amending the DB Plan that would increase benefit levels, expand minimum eligibility requirements; 3) reduce or delay funding of contributions otherwise impair the ability of the government to provide retirement disability and survivors benefits to members and beneficiaries; 4) determine the priority of payments to benefit among the various classes of beneficiaries under circumstances of unfunded or underfunded employee contributions and decline processing retirement disability or survivor benefit applications related to employment at agencies which have not made employer contributions at the statutory contribution rate.

Legal Counsel stated that there was another case that was filed by Odilia Bautista, which had to do with payment of supplemental benefits for this current fiscal year. This case is still pending in court. Ms. Bautista has filed a motion to recapture the supplement benefits and COLA. A decision should be received sometime in May 2003 on the motion to recapture the supplemental benefits and COLA.

Director Aflague stated that in line of the cash shortage of the General Fund, the implementation of the 32-hour workweek for non-essential employees and the issuance of the furlough notices, inquiries have been made to the Retirement by employees with 20 years or more who would like to retire. Chairman Salas asked if the agencies are current in their contributions. Mr. Aflague stated that agencies under the General Fund are not current in their payment. Chairman Salas stated that we must follow the mandate of the law as handed down by the court. Chairman Salas reiterated Judge Lamorena's ruling.

Mrs. Rolenda Faasuamalie acknowledged the efforts of the Legislators to write in the bond bill to pay certain line agencies and DOE contributions to date. Mrs. Faasuamalie pointed out that in the board resolution that was passed in October 2002 of which she was a signator, which was prompted by the failure of government of Guam agencies to remit on a timely basis as required by Guam Code Annotated Section 8137, ten working days. The reports had indicated that several agencies were seriously delinquent. The losses in revenue to the Retirement Fund had to be seriously considered. Therefore, the Board Resolution was passed to disallow the previous practices of acknowledging the current status of an individual account rather than the whole agency. This was prior to the Summary Judgement.

Chairman Salas suggested that the Director intensify our efforts to meet with the agencies that are delinquent. Chairman Salas also suggested considering entertaining a collection agency to pursue the collection of delinquent accounts.

Director Aflague suggested that the Board of Trustees consider for Legal Counsel to file a motion for clarification on Judge Lamorena's Order No. 4 to allow members on an individual basis provided that the employer/employee contributions including interest and penalty which have been made current for individual member. Mrs. Faasuamalie commented that we should exhaust our measures with the agencies and should the agencies be willing to enter into some sort or arrangement would be a great thing to have. Mr. Aflague stated that he had discussions with the Director of Administration, Ms. Lou Perez, and that an arrangement has been made to have DOA's Controller and the Retirement Fund Controller meet on the delinquent account issues.

Chairman Salas stated that for the purpose of trying to run and establish a viable retirement system, we rely on those contributions. Unfortunately, these have been behaviors and decisions that have been made in the past that have adversely affected the position where the Retirement Fund is in today. The mandate from the court is that it has put notice to the department heads that these funds are supposed to be remitted. It is their responsibility that these funds are remitted. Controller Pete Tajalle inquired if the Board of Trustees would like to specify acceptable terms with regards to a prepayment plan. Chairman Salas stated that the mandate is to submit what is due to the Retirement Fund in full. Ms. Katherine Taitano asked Mr. Tajalle how many agencies has he spoken to. Mr. Tajalle stated that he spoke to the Port Authority and GTA. The major agencies that are delinquent are the General Fund, DOE and GMHA.

III. OPEN DISCUSSION

None

IV. ANNOUNCEMENTS

Director Aflague reported to the Board of Trustees that on the week of May 19, our actuary consultant Jay Lingo from Minnesota, our Legal Counsel Joanne Grimes from Hawaii, and Mr. Rich, our Guam investment consultant would be on island.

Chairman Salas stated that on behalf of the Board he welcomes the individuals coming in on May 19.

At this time Ms. Rita Franquez asked the Chairman if it was appropriate for her to ask questions. Chairman Salas requested for Ms. Franquez to limit her questions and that if we will have to entertain it at committee meeting level we will make directions from there.

Ms. Franquez stated that her basis concern is that there's no money. Ms. Franquez asked how much of the bond money is earmarked for the Retirement Fund. Mr. Aflague stated approximately \$25 Million. Ms. Franquez stated that that is not enough to fund what is needed. Ms. Franquez inquired about a press release on April 23, 2003 that the Retirement Fund forgave GTA on an \$11.8 Million debt. Mr. Aflague stated that the Controller would answer that question. Mr. Tajalle stated that the Public Auditor had stated that there was an \$11.8 Million debt. GTA was in the privatization process. The debt was actually transferred to the government of Guam. The debt still exists and it's in the books. Ms. Franquez asked if the Retirement Fund lost \$250 Million. Ms. Franquez asked if the Retirement Fund going to be audited. Chairman Salas stated that as this point as a Board we are not in the position to fairly and accurately answer every single question that you brought up. These are concerns and we will be posing those types of questions in our subcommittee meetings and they are very sensitive issues. The Chairman thanked Ms. Franquez for her comments.

Mr. Phil Torres stated that he prepared a written statement for the Board of Trustees. Mr. Torres stated that at the last paragraph of the statement is a resolution. There is a summary judgement in court. We could probably settle the case. Mr. Torres stated that the previous board did not want to make a decision. The Chairman thanked Mr. Torres for his comments.

V. ADJOURNMENT

Motion by Mrs. Rolenda Faasumalie, seconded by Vice Chairman Gerard Cruz to adjourn the meeting. Motion was unanimously approved. Motion carried.

Being that there is no further business before the Board, the Chairman adjourned the meeting at 5:30 p.m.

Respectfully submitted,

Jackie Blas
Board Secretary