

BOARD OF TRUSTEES
Regular Meeting
Friday, October 08, 2004, 12:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. CALL TO ORDER

The Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan was called to order at 12:05 p.m. Friday, October 8, 2004, 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
James J. Taylor, Secretary
Katherine T.E. Taitano, Treasurer
Gerard A. Cruz, Trustee
George A. Santos, Trustee

Board of Trustees Absent:

Anthony C. Blaz, Trustee

Staff Present:

Wilfred G. Aflague, Director
Paula M. Bamba, Administrative Services Officer
Pedro Tajalle, Jr., Controller
Kenneth L. Dunstan, Acting Benefit Program Administrator
Vince Camacho, Great West Retirement Services
Meredith Sayre, Legal Counsel
Vivian D. Mantanona, Recording Secretary

Public Present:

Mark Heath, CFA, CPA
Vince Leon Guerrero, DOE Special Education – DB Member
Chris Lizama, Office of Senator Toni Sanford
Glenna Woodruff

II. REVIEW AND APPROVAL OF BOARD MINUTES

Trustee Santos moved to approve the meeting minutes of August 13, September 10, and September 17, 2004, subject to correction of typographical errors, seconded by Vice-Chairman Leon Guerrero, motion carried.

With Board's consensus, as Board Secretary, Trustee Taylor's signature suffices to attest the approval of minutes.

III. CORRESPONDENCE

A. OLIVER SKANSE

Mr. Skanse was informed by Department of Education (DOE) Personnel in 1987 that he was ineligible for membership in the Defined Benefit Plan. He is seeking the Board's consideration to allow him to buy into the Plan.

Mr. Skanse's petition was forwarded to the Members & Benefits Committee for review and disposition.

B. ATTORNEY GENERAL'S OPINION NO. RF04-0958 – DOUBLE DIPPING

The Early Retirement Incentive Program (ERIP) establishing act did not prohibit participants of the program from re-entering active government services. In 2001, Public Law 26-19 was passed but cited sections that did not exist in the ERIP statute. Attorney General John Tarantino issued his opinion, asserting that retirees may return to government service and not have to suspend their annuity or become a member of the DC plan. The Board at that time took a position to treat the government retirement plans as separate plans. As such, those who retired in the DB plan did not have to suspend their annuities but had to contribute to the DC plan or Social Security. Attorney General Douglas Moylan revisited memorandums and opinions of previous Attorneys General and is issuing his opinion ascertaining "that employees are either active members of the Retirement Fund (any plan) or retired, but not both." Therefore, retirees who re-enter active service must suspend their annuity but not contribute to the plan.

Director Aflague mentioned Governor Felix Camacho's executive order requiring executive branch employees who have previously retired to suspend their annuities. However, the Fund is aware retirees have returned to active employment and have not done so. Chairman San Agustin directed management to seek clarification from the Attorney General, whether the opinion authorizes the Fund to suspend re-employed retirees' annuities.

Trustee Cruz pointed out if the Board is going to proceed based on an opinion, the Fund runs the risk of having to make the same decision when the individual holding office changes. For this reason he suggested attaining something more substantive in nature, such as a declaratory ruling or judgment. Attorney Sayre advised the Board to exercise caution. She noted ambiguity in the opinion and recommended the Fund seek clarification from the Attorney General's office or have legal counsel examine it, offer suggestions on how to proceed, or if necessary go to court and ask the court to interpret it. She noted now the background of where this came from and there was a problem with disgruntled staffers leaving because the office was rehiring people who were getting retirement and would get salaries.

Trustee Cruz suggested the Board decide how to proceed going forward and get the ambiguity cleared up in the form of legislation. Chairman San Agustin, with no objection from the Board, directed legal counsel to draft correspondence and legislation to clear up ambiguities and that we should go forward with prospective members with the most current Attorney General's opinion.

IV. DIRECTOR'S REPORT – EXECUTIVE SUMMARY

ISSUES OF CONCERN WITHIN THE AGENCY

Investment Management Search

Contracts for services are expected to be in place before the end of November 2004.

Actuarial Contract

The actuarial contract between the Fund and Milliman was submitted to the Attorney General for review and signature.

Request for Proposals- Defined Contributions Plan Administrator

Secretary Taylor was assigned by the Investment Committee to oversee the RFP evaluation process.

FINANCIAL REPORT

Contributions

All agencies are current with the exception of the Guam Memorial Hospital for pay period ending September 18, 2004. Delinquency notice has been issued. Management has not had to go beyond a second notice before payment is remitted.

Financial Statements

The Fund is in the process of closing the month of September 2004. Financial statement will be provided upon completion.

FY 2003 Supplemental

Supplemental payments were made to General Fund funded retirees for the pay period ended January 15, 2003. Remaining pay periods for fiscal year 2003 is still pending. All agencies are current with fiscal year 2004 supplemental payments, except the Guam Waterworks Authority.

FY 2005 Government Contribution Rate

Government contribution rate for fiscal year 2005 is set at 20.81% per Public Law 27-106.

FY 2005 Premium Rates for Survivor Death & Disability Insurance (DC Plan Members)

The Death and Disability premium rate for fiscal year 2005 increased from \$4.77 to \$7.24. This increase is allowable per Public Law 27-106. The increase will be effective on the first full pay period ending in October, which is October 16, 2004.

2003 FINANCIAL AUDIT

The audit for fiscal year ended September 30, 2003 is in progress. Draft completion was on September 3, 2004. Finalization target date is October 31, 2004.

BILL 353 – SALE OF GUAM TELEPHONE AUTHORITY

Secretary Taylor inquired about the status on the sale of the Guam Telephone Authority (GTA). A hearing date has not been schedule.

Chairman San Agustin received correspondences from Senator Rory Respicio who believes the penalty clause for optional retirement should be waived for GTA employees, the cost of which will be paid out of the proceeds from the sale. Chairman San Agustin explained to him that this will not only open a Pandora's Box, but discrimination issues may be at stake.

V. TREASURER'S REPORT OF FINANCIAL STATUS

Management and staff are closing out the fiscal year and expect to wrap up by late October or early November. During the reconciling and closing out process, staff will have a clearer picture of the outstanding receivables on a line item per line item basis, as requested by Secretary Taylor.

The Fund has launched its recruitment for Benefit Program Administrator, Payroll Supervisor, Accountant III, Accountant I, Payroll Technician, Accounting Technician, and Benefit Specialist I. In line with this effort, Treasurer Taitano sought the Board's consideration to revert the Members and Benefits Sections back to separate sections since they are effectively different operations. Each section was originally administered by its own administrator. The rationale for merging was the expected decline in DB membership. However, the Fund has been without a permanent Benefit Program Administrator since the last one retired. Separating the sections will allow for the better flow of the work. She also noted management has attempted to recruit but has not been successful. Management has been in communication with Civil Service Commission (CSC) to get them to the salary level they should be. The CSC is performing a position audit. One of the elements they look at in terms of the position description is the complexity of the tasks that are assigned to it. Management foresees reverting to one Administrator in the future.

On motion by Trustee Taitano to amend the Fund's fiscal year 2005 budget to allow the hiring of an additional Benefit Program Administrator for the purpose of separating the Members' Services and Benefits Sections, seconded by Secretary Taylor, with no objections, motion carried.

VI. STANDING COMMITTEE REPORTS

A. MEMBERS' & BENEFITS COMMITTEE

In September, the Committee reviewed forty-eight cases and acted on thirty-four. The Committee's findings and recommendations were presented in the End of Month Report.

Trustee Santos moved to approve the Committee's recommendations noted on pages 4 to 11 of the September End of Month Report, seconded by Trustee Cruz, with no objections, motion carried.

Trustee Santos moved to approve the Committee's recommendations noted on pages 12 to 14 regarding correspondences, seconded by Treasurer Taitano, with no objections, motion carried.

Trustee Santos advised the Board correspondences referred to the Committee will be addressed as new business, and then presented for ratification by the Board. Chairman San Agustin questioned, as a matter of record, if computations are certified to be verified and correct. Management noted the annuity worksheets are reviewed, verified, and approved, as attested by signatures of the appropriate personnel.

Regarding disability retirement applications, Attorney Sayre suggested assigning case numbers to the applicants and referring to case numbers rather than specific individuals during discussion of disability cases. In relation to the AMA guidelines, Ms. Bamba explained that the guidelines assign a range of percentages to each ailment. Those percentages are placed on a grid, which provides a whole-person impairment rating. Trustee Santos reported that the Committee is in the process of working on a resolution relative to the adoption of the AMA guidelines. The resolution and a list of retirees on estimated annuities will be presented at the next Board meeting.

B. INVESTMENT COMMITTEE

1. ACTION ITEMS

a. Adoption of Investment Committee Policies and Procedures

On motion by Vice-Chairman Leon Guerrero to adopt the Investment Committee Policies and Procedures as presented, seconded by Trustee Santos, with no objections, motion carried.

b. Adoption of Revised Investment Policy Statement

Chairman San Agustin proposed the following changes to the Revised Investment Policy Statement:

1. Page 1, first paragraph, second sentence, should read "Both allocations are *in compliance*..." in lieu of "Both allocations are consistent ..."
2. Page 2, first sentence, should read "The Investment Policy Statement is prepared in *compliance*..." in lieu of "The Investment Policy Statement is prepared in accordance..."
3. Page 4; delete the fifth bullet point in its entirety.
4. Delete Performance Expectations

Chairman San Agustin argued that this section provides a formula for failure and asked why accept a rate of return they agree is not realistic or feasible. Trustee Cruz expressed reluctance to remove this section from the IPS because it is necessary to specify what the portfolio is expected to do. He went on to explain that each manager has a specific benchmark to hit as part of their mandate. If each manager hits his benchmark then it will drive a rate of return equal to 7.5% or what ever is the required rate of return. The 7.5% is a reflection of the entire portfolio, and not individual managers. After much debate, the Board agreed to leave the section in.

5. Page 5, paragraph 2, *Re-balancing of Strategic Allocation and Maintenance of Adequate Liquidity*. Chairman San Agustin was concerned that this section allows staff to liquidate principal assets to fund benefit payment shortages, rather than rely on the investment flow of income. Trustee Cruz reasoned that management has to determine which avenue provides the best return. Utilizing cash in the bank versus having to liquidate an asset in the market that may be doing better. Chairman San Agustin contended they can approach the Legislature and ask for a benefit shortage appropriation. After a brief debate, Vice-Chairman Leon Guerrero moved that the section be taken out and requested management to write a memorandum directly to the Chairman of the Board asking for a policy from the Board.
6. Page 5, “**Securities Guidelines** (Prepared in “*compliance...*”), in lieu of “**Securities Guidelines** (Prepared in accordance...)”.
7. Page 9, under Selection of Investment Managers, questioned if the Investment Advisors Act of 1940 is a law and if so, indicate investment managers must comply with this act and not simply conform to the definitions set forth. Controller Tajalle pointed out that Appendix D, Fiduciary Acknowledgement of Investment Manager, provides the means to ensure each manager, by affixing his signature “acknowledges and agrees to its fiduciary status and will fully comply with the entire Investment Policy Statement set forth herein and all applicable laws, rules, and regulations as it pertains to fiduciary duties and responsibilities.” Chairman San Agustin contends the section just accepts the definition of the Investment Advisors Act, but does not require the managers to comply. The Board agreed to accept Secretary Taylor’s recommendation to add a fourth bullet point asserting “whoever is chosen shall be in compliance with all federal and local laws”.

Questions:

8. Page 12, first paragraph, last sentence - How were the negotiated equity rate of \$.02, and 45% of fixed income commission, rates arrived at? Controller Tajalle offered to get clarification on that. Chairman San Agustin further asked for a list of brokerage fees.
9. Investment Managers performance evaluations – Who is going to do the evaluations? Should an independent investment evaluation firm be considered? Mercer will provide assistance, but the Board will be doing the actual evaluation. All agree a third party evaluator is something to consider.

On motion by Vice-Chairman Leon Guerrero to adopt the revised Investment Policy Statement with the aforementioned amendments, seconded by Trustee Cruz, with no objection, motion carried.

- c. *Appointment of Trustee Gerard Cruz to represent Retirement Fund Board of Trustees as a member of the Asia Pacific Association for Fiduciary Studies*

Vice Chairman Leon Guerrero moved to appoint Trustee Cruz to represent the Retirement Fund Board as a member of the Asia Pacific Association for Fiduciary Studies, seconded by Trustee Santos, with no objection, motion carried.

- d. *Authorization for Director to Sign Power of Attorney to take advantage of Japanese ADR Foreign Tax Exemption*

Notification was received from the Custodian Bank that the Fund could avail itself of tax rebates on some foreign ADR's held in its possession. To do so, management was required to certify ownership and provide Power of Attorney allowing them to represent the Fund. Absent any formal authorization from the Board of Trustees for the Director to act on situations of this nature, it was brought to the Investment Committee's attention because of time constraints. Chairman San Agustin contends this is standard. Trustee Cruz asked if a corporate resolution is needed.

On motion by Trustee Santos to prepare and adopt a resolution delegating the Director as the signing authority for the Fund, seconded by Trustee Cruz, Motion carried.

- e. *Proposed Resolution Relating to the Review and Update of Investment Guidelines Set Forth in 4GCA §8142 through §8159*

On motion by Vice-Chairman Leon Guerrero to adopt the resolution relating to the Review and Update of Investment Guidelines Set Forth in 4GCA §8142 through §8159, seconded by Trustee Cruz, with no objection, motion carried.

2. INFORMATIONAL ITEMS

- a. *Draft Audit Report – Internal Control Report Findings*

The internal control report findings relate to the use of Defined Benefit funds to initially bankroll the Defined Contribution Plan. The reimbursement of those funds was intended but not specifically stated in the statute.

When a Defined Contribution member leaves government service and does not return within five years, the government share associated with that individual becomes forfeited. The Fund has received a substantial amount of forfeitures, which are held on the DB side. The statute mandates the application of forfeitures 1) to pay for administrative costs associated with DC plan administration, and 2) to offset government contributions for the DC Plan membership required by each agency, giving them a discount for that particular year. Absent language in the statute to allocate forfeiture funds to reimburse the DB plan for DC start up costs, those costs remain unpaid. Management is seeking the Board's determination on whether legislation is necessary or if a Board resolution would suffice.

Management is working with Treasurer Taitano on an indirect cost allocation methodology to figure costs associated with the Fund as a whole and allocating the cost between what is related to DB operations and what is DC.

b. Mercer Global Investment Forum

Mercer extended an invitation to Board members and Staff of the Fund for the Mercer Global Investment Forum conference in Tokyo, Japan on December 9, 2004. Chairman San Agustin expressed interest in attending and asked Controller Tajalle would be joining him. He further spoke of the need to raise the quality of staff.

c. Custodial Bank Request For Proposals

Staff contends they are capable and willing to devise the Custodial Bank Request for Proposal. As such, the Investment Committee directed management to decline Mercer's offer to provide services relating to the RFP and to thank them for their interest.

d. INVESTMENT MANAGERS' PERFORMANCE REVIEW

Due diligence meetings are scheduled for November 29 through December 2, 2004.

e. Merrill Lynch Invitation

Merrill Lynch representatives are enroute to Saipan and expressed interest to meet with the Board. Trustees declined the invitation to avoid any appearance of impropriety since they are one of the offerors for the DC Third Party Administrator RFP.

C. AUDIT COMMITTEE

Tabled due to the absence of Committee Chairman Blaz.

D. GOVERNMENTAL LIAISON

1. Trustee Cruz will work with legal counsel on Attorney General's opinion no. RF04-0958.
2. Congresswoman Bordallo will meet with the Board on October 22, 2004. John Whitt from her office has been tasked to perform preliminary research on the Trust Agreement issue.
3. Trustee Cruz was tasked to look into the adoption of the AMA guidelines for disability determination.

VII. LEGAL COUNSEL REPORT

Tabled. Attorney Sayre asked to be excused due to a time conflict.

VIII. OLD BUSINESS

A. DIRECTORS & OFFICERS LIABILITY INSURANCE

At the last Board meeting Secretary Taylor asked management to look into increasing the level of D & O insurance coverage. Currently coverage is at one million dollars aggregate for errors and omissions, at a premium of sixty-seven thousand dollars. Management inquired locally, but of seven firms who provide liability insurance no one was interested in providing the coverage. Director Aflague initiated communication with National Association of State Retirement Administrators (NASRA) and the International Foundation of Employee Benefit Plans (IFEFP).

B. EARLY RETIREMENT INCENTIVE PROGRAM

Presented for Board information were ERIP receivable (government share) listing by agency as of September 30, 2003; ERIP note balance (employee share) as of September 30, 2004; ERIP note listing for annuitants that became deceased prior to note payment; and ERIP note listing as of September 30, 2004 for annuitants with issues surrounding the repayment of their respective notes.

Statute allows for a portion of the government contribution rate to be directed toward the pay-down of the government share. Originally, the government share was mandated to be paid within a three year period. Subsequent statutes extended the time, with payments to be based on a percentage of the government contribution rate over the life of the amortization period. That percent at this time is 1.2% of the 20.81% government contribution rate.

Total note balance for annuitants who died prior to full note repayment as of September 30, 2004 is approximately \$319,056.16. Survivor benefits continue because the law stipulates suspension on nonpayment except in the death of the annuitant. The Fund was authorized to purchase credit life insurance, and would be responsible for paying a premium equivalent to a group rate currently being paid by the Government of Guam for retirees for the life insurance which is about \$6.35 a pay period. Any difference in premium was to be shouldered by the annuitant. The auditor suggested the Fund write-off the amount, take it as an expense.

There are close to eight hundred note-holders. According to Ms. Bamba, one of the reasons the Board took the position to go self insurance was because of the cost. By opting for self insurance, an amount equal to what the Fund would have had to pay toward premiums should be placed in a reserve account. Ms. Bamba sought premium rates from three companies for outstanding balance insurance. She will have some rates by the next Board meeting. The Board opted to adopt a write off resolution and to establish the reserve account.

Trustee Cruz moved to write-off the amount of \$319,056.16 which represents the remaining balance on deceased ERIP note-holders, seconded by Trustee Santos, with no objection, motion carried.

IX. NEW BUSINESS

A. PUBLIC LAW 27-106 & 07: FY 2005 BUDGET ACT – PROVISIONS AFFECTING THE FUND

Section 13 Retirement Option for Government of Guam Employees Upon the Complete Remittance of Individual Retirement Fund Contributions.

The previous Board directed management to abide by the law. The court order required the Fund to fight any legislation that was detrimental to the Fund. The justification for the Board's position of allowing it last time was based on the fact that it was not going to be detrimental to the Fund because the delinquent agencies were going to be charged the actuarial interest rate, and contribution remittances had to remain current, all of these things were taken into consideration. Management contends this part of the law has positively impacted the remittance of current contributions.

Chairman San Agustin argued the Board can not unilaterally violate the court agreement. He insisted on seeking the Court's determination whether carrying out this section of the law would violate the court order. He asked the Legislature to incorporate "notwithstanding any other provision of the law or court order" when they were drafting this part of the legislation but they did not do it.

On motion by Trustee Santos for Legal Counsel to go back to court to obtain a declaration as to whether or not this provision violates the court order, seconded by Vice-Chairman Leon Guerrero, with no objection, motion carried.

Appropriation to the Fund for the Judges Pension

The mandate transferred administration of the Judges' Pension to the Fund. Funding was appropriated for payment of annuities, but unfunded in terms of administrative costs. The Fund was not involved with this section of the law; it was between the Court and the Legislature.

Increments

The Budget law allows for no less than one step immediate increment. According to John Calvo of the Civil Service Commission (CSC), everyone agrees one step will be given to all employees. But CSC's attorney read the language "no less than one step" allows employees to be brought up to the step they should effectively be at. The matter of retroactive payment is still under consideration.

On motion by Trustee Santos to bring employees to their appropriate pay level as of October 1, 2004, seconded by Vice-Chairman Leon Guerrero, with no objection, motion carried.

X. OPEN DISCUSSION / GENERAL PUBLIC INPUT

A. INQUIRY – VINCE LEON GUERRERO

Mr. Vince Leon Guerrero, a DOE employee and 2005 prospective retiree, expressed comfort with the Board's work. He raised three questions, 1) what is the plan, if any, to ensure the Fund's viability, 2) has an impact analysis been done of the Guam Telephone Authority sale on the Fund,

and 3) if the Retirement Fund Defined Benefit Plan is not solvent and can not pay the benefits, is the Government of Guam liable?

Director Aflague explained long term reformation via mandate would involve legislation and entails three possibilities or a combination thereof, 1) a bond if viable, 2) benefit changes, and 3) with the expected sale of GTA there will be a change in the DB membership, the Board will fight any legislation that would be detrimental to the Fund. Mr. Leon Guerrero stated he learned members could support the Board's efforts through lobbying. Director Aflague agreed, but encouraged him and other DOE and GMH employees as well, to demand the remittance of outstanding contributions because employees will not be allowed to retire until full payment is made. Mr. Leon Guerrero felt that he, as an individual or even with a group of employees, will be sent running around. The Superintendent or the (DOE) Board will say it is because DOA did not provide the funds. DOA will claim the legislature did not fund it. The Legislature will state the Governor had transfer authority. Director Aflague acknowledged the predicament but asserted DOE and GMH members need to get together in mass and do something. Their contributions were deducted but were not remitted. That affects the cash draw down as opposed to asset allocation. If the \$30 million dollars owed collectively between DOE and GMH were to come in, the Fund's cash draw down would be cut by almost half this year. That would leave more to be left in investments for future retirees. Treasurer Taitano added that because the contributions were deducted and are still being held by the agency, it is the members who have to drive the recovery and remittance to the Fund. For this reason notices are attached to statements informing members their contributions for certain pay periods are not being remitted. Chairman San Agustin likened the situation to other payroll deductions. If the deduction taken was for a mortgage loan and the government does not send that payment to the bank, the bank would go after the homeowner. He understood the difficulty in getting members involved because they do not think about the Fund until their twilight years as evidenced by the Board election. Of twelve thousand active members, approximately eight hundred turned out. The retiree turn out was a little better at eighteen hundred out of four thousand.

An impact analysis of the GTA sale on the Fund has not been done. The contract between the Fund and its actuary is still being routed for signature. Director Aflague suggested Mr. Leon Guerrero obtain a copy of Bill 353 introduced by Senator Respicio, which proposes to allow GTA employees who are eligible to retire under optional retirement to be entitled to full retirement annuity. His premise is for GTA employees not to be adversely impacted by the sale. The Fund holds the position it is favorable legislation for GTA employees that would add to the unfunded liability.

Regarding the liability of the government upon the insolvency of the Fund, the answer was a resounding yes. Although it is not stated, the liability lies in the fact that the Fund is a creation of the government.

B. Vice-Chairman Leon Guerrero's Request

Vice-Chairman Leon Guerrero requested the following for the next Board meeting 1) By-laws; 2) Director's goals and objectives, 3) Administration of Supplemental Payment. He understood the Fund profited from administering the supplemental in fiscal year 2004. If necessary, he suggested seeking modification of the Court Order to continue. Chairman San Agustin explained legal counsel was supposed to address that at this meeting.

XI. ANNOUNCEMENTS

XII. ADJOURNMENT

There being no further business before the Board, meeting was adjourned at 4:00 p.m.

I hereby certify that the foregoing is a full, true, and correct copy of the Minutes of October 8, 2004 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on November 12, 2004.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Vivian D. Mantanona