

BOARD OF TRUSTEES
Special Board Meeting
Tuesday, October 10, 2006, 10:30 A.M.
Retirement Fund Conference Room

MINUTES

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Special Meeting was called to order at 10:30 a.m. Tuesday, October 10, 2006, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

Joe T. San Agustin, Chairman
Gerard A. Cruz, Treasurer
Katherine T.E. Taitano, Trustee
Anthony C. Blaz, Trustee

Board of Trustees Absent:

Wilfred P. Leon Guerrero, Vice-Chairman
(Off-Island Conference)
George A. Santos, Trustee
(Off-Island Conference)
James J. Taylor, Secretary *(Excused)*

Staff Present:

Diana T. Bernardo, Acting Director
Jackie Blas, Recording Secretary

Legal Counsel Present:

David Dooley, Attorney of Record, Case No. SP206-93 *(10:45 a.m.)*

Public Present:

Joe Bradley
John Davis, Pacific News Center
Lon Bottcher, Vicente S.N. Ibanez, Jose S. Borja, John Manibusan, Antonio A. Quidachay, Roy S. Mendiola, Priscilla S. Mendiola, Jose Nauta, Rosario B. Espinoza, Vicente U. Garrido and Teresita B. Santos, Retirees

Chairman San Agustin stated that the Board of Trustees present at today's Special Board meeting have signed the Declaration of Emergency and the Waiver of Notice of a special meeting of the Board.

II. OLD BUSINESS

A. Candelaria Taitano Rios, Individually and on behalf of all those similarly situated, Superior Court of Guam Special Proceedings Case No. SP206-93

Chairman San Agustin, for the record, read the email he received dated October 9, 2006 from Secretary James Taylor advising him that he would not be able to attend today's meeting: "I'm sorry but I won't be able to make the meeting. I met with Joe T. at the SBPA Building at UOG and I told him what I thought about the situation. Basically since we supplied the figures the judge accepted, I don't see any basis on which we could dispute the award. Our lawyer would have to tell us if there is a problem that goes beyond our current participation in the case."

Chairman San Agustin stated that the Board should acknowledge that Attorney David Dooley filed an objection to the Court on the basis that he was not given ample time to review the proposed order. Chairman San Agustin stated that the choice of the word used – "objection" should have not been used. Chairman San Agustin stated that Judge Arthur Barcinas recognized that ample time was not made available to Legal Counsel and the Board of Trustees to meet and evaluate the proposed order. Chairman San Agustin stated that the hearing is scheduled for 3:00 p.m. this afternoon.

Chairman San Agustin stated that the Board's role in the COLA situation is to implement the law and the Court Order given to the Fund. The Board was told to compute on the basis of the law. The Board engaged an economist which is Joe Bradley. Chairman San Agustin stated that Mr. Bradley presented the calculations to Judge Barcinas and according to reports Judge Barcinas accepted the Retirement Fund calculations. Chairman San Agustin stated that the Board, at the last meeting, accepted Mr. Bradley's presentation of the calculations which totaled \$96.7 Million. Chairman San Agustin stated that Judge Barcinas applied an offset of \$32.5 Million.

Mr. Bradley made a clarification on his role in the COLA situation. Mr. Bradley stated that he took on the task adjusting the Consumer Price Index (CPI) to a 1988 base and then provided the annual rates of inflation from 1988 to 1995 for the calculations of the COLA under the statute that was in place at the time. Mr. Bradley stated that his understanding was that the Retirement Fund took those rates of inflation and applied them to the retirees benefit payments in each of those years and determined what the COLA payment should have been following July 1. Chairman San Agustin asked whether there is a difference in the two Writs that were issued by Judge Barcinas. Chairman San Agustin stated that the Board needs to review the proposed Court Order. Mr. Bradley stated that there is no difference from what was issued by Judge Barcinas. Chairman San Agustin stated that the Fund's Legal Counsel drafted a response listing a couple of contradictions. Mr. Bradley stated that Attorney Dooley's primary objection was that he was not informed directly by the Court. Mr. Bradley stated that the number the Court came up with is lower than what the Retirement Fund was looking at three months ago. Chairman San Agustin stated that the Board of Trustees approved Mr. Bradley's presentation on August 11, 2006. Mr. Bradley agreed with Chairman San Agustin's statement.

Mr. Bradley stated that the first contradiction is that the Court did not accept using different rates of inflation depending upon when a person retired from the government. Mr. Bradley stated that the indication is that if a person retires in 1994 then your COLA in 1995 would be based upon inflation from 1988 through 1994. Mr. Bradley stated that if the Court had used the full rates of inflation from 1988 forward for every retiree, the amount calculated would increase. Chairman San Agustin asked whether this is a valid contradiction which Judge Barcinas should consider that would affect the

computation. Mr. Bradley stated that it would seem that if the full period inflation were not used, the total COLA amount would decrease. Chairman San Agustin suggested asking Judge Barcinas what methodology was used in the computations. Mr. Bradley stated that Judge Barcinas subtracted out the statutory COLA payments that were made during the period outside of the law in question.

Chairman San Agustin recognized Attorney Dooley at this time. Chairman San Agustin asked Attorney Dooley whether Mr. Bradley's methodology different from what Judge Barcinas appears to be saying we should compute. Attorney Dooley replied "yes." Attorney Dooley stated that Judge Barcinas rejected the Governor's assertion that inflation would vary depending upon when a person retired. Attorney Dooley stated that Judge Barcinas' logic is that if a person retires in 1992 he would get the total based on inflation back to 1988. Attorney Dooley stated that there are options by which the Fund could go back and say that this was incorrect. Attorney Dooley stated that the Governor could file an appeal. Trustee Anthony Blaz stated that the Governor has announced that he will not appeal. Attorney Dooley stated that the Governor had assumed that the amount was \$63 Million. The current estimate is now significantly higher. Chairman San Agustin asked whether the computation used by Mr. Bradley are different. Attorney Dooley replied, "yes." Attorney Dooley stated that Judge Barcinas did not follow the Fund's computation. The proposed response shows the contradiction. Attorney Dooley stated that the Court Order states that the Court has accepted the Retirement Fund's numbers, but within the decision, the Court rejected the Governor's attempt use the different rates of inflation depending upon when a person retires. Attorney Dooley stated that Mr. Bradley's numbers were based on the different rates of inflation depending upon when a person retires. Attorney Dooley stated that Judge Barcinas rejected the Retirement Fund's methodology when he rejected Mr. Bradley's floating rate of inflation. Attorney Dooley stated that, based on that decision, Mr. Bradley had to recalculate using the 1988 base year rate of inflation which caused a huge increase in expected payments.

Treasurer Gerard Cruz stated that the math Judge Barcinas wants the Fund to use will result in a calculation that would total \$130 Million. Attorney Dooley stated the math, based on the assumption Mr. Bradley used, is \$96 Million but Judge Barcinas rejected some of Mr. Bradley's assumptions. The rejection caused a huge change in the numbers. Attorney Dooley stated that Attorney Mike Phillips used language that sounded that he agreed with all of the Retirement Fund's numbers but he did not agree with the methodology on how to apply the rate of inflation. Chairman San Agustin stated that he assumes that Judge Barcinas accepted Attorney Phillips' calculation. Attorney Dooley stated that they all agreed on the rate of inflation. The disagreement was on how to use the rate of inflation when calculating the COLA. Chairman San Agustin asked which formula Judge Barcinas accepted. Attorney Dooley stated that Judge Barcinas said to use the 1988 rate of inflation for each retiree, no matter when they retired. Chairman San Agustin asked whether the 1988 rate of inflation would be used for those individuals who retired in 1990. Attorney Dooley replied, "yes, that is what the Court is saying."

Chairman San Agustin asked whether Attorney Dooley could ask Judge Barcinas to clarify that matter. And, if clarification is made, what would be the new calculation. Attorney Dooley stated that it would take time to do the recalculation. Attorney Dooley stated that, back in May 2006, Director Paula Blas ran some rough numbers for him. Chairman San Agustin stated that the Board never reviewed or entertained the figures. Attorney Dooley stated that Director Blas came up with different numbers, under various assumptions. Attorney Dooley stated that they went through the various assumptions with Mr. Bradley and they came up with \$125 Million they used the Court's methodology of incorporating the 1988 rate of inflation for each retiree notwithstanding when they retired. Attorney Dooley stated that Judge Barcinas did not accept the numbers from the Retirement Fund. Trustee Katherine Taitano

asked whether Judge Barcinas rejected the Retirement Fund's methodology. Chairman San Agustin stated that the Board's position is not to object to the Court Order, but to seek clarification from Judge Barcinas. Chairman San Agustin stated that the use of the word "objection" may have caused some problem thinking that the Board took a position on this matter. Attorney Dooley stated that the word "objection" is a legal term used. Chairman San Agustin requested to emphasize the fact that the Board is not objecting to the proposed Order.

Chairman San Agustin stated that all Judge Barcinas has to do is clarify what he wants the Board to do to implement the law. Does Judge Barcinas want the Board to implement the \$96 Million base or the \$155 Million base? Attorney Dooley stated that a request for clarification is stated in the proposed response. Chairman San Agustin stated that the Board has no objection to filing a response.

Chairman San Agustin inquired about the 8% interest indicated in the Order. Attorney Dooley stated that the 8% is the inflation from 1988. Chairman San Agustin stated that that he wants be sure that no interest is charged. Attorney Dooley stated that you can't get interest against the government. Chairman San Agustin asked whether legal counsel's payment of 10% would be deducted. Attorney Dooley stated that it would be deducted. Chairman San Agustin asked how it is going to be prorated. Attorney Dooley stated that it is incorporated in the proposed Order.

Trustee Anthony Blaz, seconded by Treasurer Gerard Cruz, moved to approve the filing of a response by the Retirement Fund to the Judgment, the Order Directing Issuance of Peremptory Writ of Mandate, and the Peremptory Writ of Mandate, which was issued by the Superior Court of Guam on October 6, 2006 and received by the Retirement Fund on October 9, 2006, which is due by 3:00 p.m. today, October 10, 2006. Without objection, the motion passed.

III. ADJOURNMENT

There being no further business before the Board of Trustees, on motion of Treasurer Gerard Cruz, seconded by Trustee Katherine Taitano, and without objection, the Special Board Meeting was adjourned at 11:10 a.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of October 10, 2006 Special Board Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on March 9, 2007.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas