

NEW ORLEANS FIRE FIGHTER'S PENSION AND RELIEF FUND

Martin Gaal
Board President

Tommy F. Meagher, III.
Secretary-Treasurer

SUBJECT:

**Board of Trustees Regular Meeting
Fire Fighter's Pension & Relief Fund**

TIME, DATE AND PLACE:

**9 am, April 2, 2014
3520 General DeGaulle
Suite 3001
New Orleans, Louisiana 70130**

Board President Martin Gaal called the meeting to order. The following members of the Board of Trustees were present: Martin Gaal, Tommy Meagher, Nick Lavene, Tim McConnell, Angelo Marchese, Scott Jacobs, and Norman Foster.

Absent: None

Total as follows: Seven (7) members present, no (0) members absent. A quorum being present, the meeting was called to order at 9:10.

Also present,

**Pam Meyer
Louis Robien, Board attorney
Paul Mitchell
Kenny Prevost, firefighter
Jesse Evans, NOMERS
Richard Hampton, retired firefighter
Terry Hampton, retired firefighter
Nick Felton, firefighter
Derrick Francis, Mayor's office
David Watkins, firefighter
David Petuski, firefighter
Richard Rainey, Times Picayune**

REVIEW AND ACCEPT MINUTES

MOTION: Moved by Foster and seconded by Lavene to approve the minutes for the March 2014 meetings.

Motion passed.

NO OBJECTIONS

COMMUNICATIONS

None

REFUND OF CONTRIBUTIONS

Sean Thomas and Darrell Thomas have placed requests to have their contributions refunded.

MOTION: Moved by Gaal and seconded by Meagher to approve a refund of contributions to Mr. S. Thomas and D. Thomas.

Motion passed.

NO OBJECTIONS

CHANGE OF BENEFICIARY

None

DROP WITHDRAWAL

None

NEW APPLICATIONS

None

DROP APPLICATIONS:

Riney K. Blount- New Fund Fire Operator- Age 50-20 years of service.

MOTION: Moved by Gaal and seconded by Lavene to approve a DROP application for Mr. Blount.

Motion passed.

NO OBJECTIONS

REPORTS OF DEATHS McConnell entered the meeting

Pensioners:

None

Widows:

Bernice B. Palermo: Died at age 90 on March 5, 2014. Benefits began on Jan 1, 2013. 14 months on benefits.

Elaine C. Jochim: Died at age 83 on February 25, 2014. Benefits began on February 1, 2005. 9 years on benefits.

MOTION: Moved by Gaal and seconded by Marchese to remove the above noted deceased members and beneficiaries from the rolls.

Motion passed.

NO OBJECTIONS

WIDOW'S APPLICATIONS

Mrs. Tommy Ashby: Application for a Pre-Retirement Survivor Benefit effective retroactive to July 7, 2013. Application for Child Benefits: Tommy D. Ashby III effective retroactive to July 7, 2013 and Taylor Scott Ashby born September 10, 2013, benefit retroactive to date of birth.

LA revised Statutes 11:3378 provides for payments to widows of firefighters who die while employed by the fire department. Language in the statutes provides different benefit amounts for deaths while not on duty. Section A(1)(c) provides for payments of benefits equal to 50% of member's salary at the time of death as an annuity to widows when firefighter "is killed or dies in any other manner." "Any other manner" has been interpreted in past cases by the Board to include non-duty deaths. Section 2(a) provides for payments to widows of firefighters who die as a result of a non-duty death a fixed benefit totaling \$1,200 per month. Board members felt the language should be clearer. Legal counsel provided support for payment under either section, also raising the issue of contemporaneous construction.

Discussion by Board members continued regarding whether section A(1)(c) could actually override section 2(a) in the statutes. Legal counsel noted that in instances where statutes conflict, the courts have ruled in favor of the beneficiary. Board members felt that it would be appropriate to have legal counsel provide a legal opinion supporting a decision to pay a benefit under section A(1)(c) to Mrs. Ashby. Most members indicated no objection to awarding a widows' benefit under section 2(c). A motion by Mr. Gaal to pay a widow's benefit under section A(1)(c) failed to get a second.

MOTION: Moved by Jacobs and seconded by Foster to provide widow's benefit as allowed under R.S. 11:3378 section 2(a) and notify the widow of her right to apply for a benefit under section A(1)(c). Staff is requested to obtain legal opinion to support benefit payment under section A(1)(c).

Motion passed

Gaal Opposed

MOTION: Moved by Jacobs and seconded by Meagher to approve children's benefits for both Ashby dependents. Tommy Ashby benefits will be effective July 7, 2013 and Taylor Scott Ashby benefits will be effective September 10, 2013.

Motion passed.

NO OBJECTIONS

MOTION: Moved by Gaal and seconded by Marchese to place Mrs. Ashby on a widow's benefit as allowed under R.S. 11:3378 section A(1)(c).

Motion failed.

Gaal only favorable vote

APPLICATIONS PENDING

MOTION: Moved by Jacobs and seconded by Gaal to go into executive session to review medical documentation and reserve privacy rights to members for Service Connected Disability Pension applications.

Motion passed.

NO OBJECTIONS

MOTION: Moved by Lavene and seconded by Jacobs to come out of executive session to review medical documentation and reserve privacy rights to members for Service Connected Disability Pension applications.

Motion passed.

NO OBJECTIONS

Byron Muse: At the February 4, 2014 Board meeting, Mr. Muse was granted a 50% Service Connected Disability and denied the 66 2/3% Disability. Mr. Muse has communicated in writing that he does not wish to appeal the decision denying the 66 2/3% disability. This item will be removed from the agenda.

Lance Smith: The Board's Hearing Committee on Disability appeals met on March 5, 2014 at 1:00 pm to discuss Mr. Lance Smith's appeal for a 66 2/3% disability. A transcript of the hearing was provided to Board members. The recommendation of the Hearing committee was to approve the disability.

MOTION: Moved by Gaal and seconded by Marchese to approve the 66 2/3% disability application for Lance Smith effective to date of application.

Motion passed.

NO OBJECTIONS

Michael Byrne: Michael Byrne application for a 50% disability required additional medical documentation. The Board was provided the additional medical information.

MOTION: Moved by Meagher and seconded by Marchese to approve a 50% service connected disability for Michael Byrne effective April 2, 2014.

Motion passed.

NO OBJECTIONS

OLD BUSINESS:

David Bordes: Mr. Bordes has provided information dropping his request to appeal the Board's denial of his application to change his retirement decision.

NEW BUSINESS:

Presentation by Fund's Actuary: Actuary Michael Conefry was asked to provide the Board with information regarding the administrative process in connection with service transfers into NOFF pursuant to Louisiana R.S. 11:143 governing service transfers between public retirement systems. At issue is the method of applying the benefit multiplier percentages used in the retirement benefit calculations to the total years of credited service used in such benefit calculations. That total number of years of service consists of two distinct components: first, number of years of transferred credited service from the transferring system; and, second, the number of years of credited service within the NOFF System. Also at issue is the order in which each of the foregoing components of service is used and the relevant benefit multiplier percentage applicable to each.

After much discussion and some misunderstandings concerning an earlier memorandum from the actuary on the subject, the board asked that Mr. Conefry, in conjunction with board Attorney Louis Robein, provide a clarifying memorandum to be used as an administrative guide in calculating retirement benefits involving such transfers of service.

Fund Physician: Mr. Mitchell notified the Board that Dr. Incaprera continues to recover favorably from a recent illness but will not be able to continue as the Fund's physician. A

review of potential replacements resulted in Dr. B. Lutz being recommended by staff to replace Dr. Incaprera. Dr. Lutz maintains an office near Baptist Hospital in New Orleans and will meet with candidates at his office. Dr. Lutz agreed to accept the same fees as Dr. Incaprera. Discussion followed on using other doctors from a list of workman's compensation physicians and preparing a request for proposal for physician services.

MOTION: Moved by Meagher and seconded by Gaal to accept the recommendation from staff to hire Dr. Lutz as the Board physician under the same terms as Dr. Incaprera.
Motion passed. Foster and McConnell opposed

Approval of \$500,000 to operating account: Ms. Meyer noted that transfers from New Fund and Old fund accounts are made throughout the year to pay benefits and administrative expenses. Those transfers require Board approval per our auditors.

MOTION: Moved by Foster and seconded by Meagher to approve transfers of \$500,000 from the Old Fund and New Fund account to pay benefits.
Motion passed. NO OBJECTIONS

LEGAL:

Mr. Louis Robein was on hand to provide the Board with an update on various matters being addressed by our legal counsel.

MOTION: Moved by Jacobs and seconded by Gaal to go into executive session for discussion of strategy and negotiations with respect to actual litigation on the following items: Desmoreaux v Lakewood, Mischler et al v Pension Fund, Longevity/annual leave, Mandamus litigation and IRS DROP legislation.
Motion passed. NO OBJECTIONS

MOTION: Moved by Lavene and seconded by Jacobs to come out of executive session entered into to discuss strategy and negotiations with respect to actual litigation and legislation.
Motion passed. NO OBJECTIONS

Mischler et al v. State of Louisiana et al

Over 130 members, who are "vested" with 12 years of service, have filed suit challenging the constitutionality of the 2013 legislation increasing the employee contribution from 6% to 10%. For the 20-year member, previously contributing zero will now contribute 3 1/3% each year for

the next three years until the 10% max is reached in year three and thereafter.

The January trial date (on injunction request) was continued at the plaintiffs' request. The new trial date is April 10, 2014.

Desmoreaux v Lakewood et. al, CDC Orleans:

No action taken. Board provided an update on this litigation.

Longevity/Annual Leave: The City continues to meet with the Trustees (Meagher and Gaal) and Local 632 Union reps (Felton and T. Hampton). The City has tentatively committed to pursuing legislation to authorize tax or other measures to raise a stream of revenue to Fund settlements of the Fund's claims (funding mandamus, actuarially required contribution, and the Longevity/Annual Leave back pay). Mileage extensions have come out of committee in the Legislature.

IRS Determination/DROP: The current version of DROP bill, which if passed, would satisfy the IRS's conditional determination. Representative Arnold is the sponsor. The legislative staffer was very "hands-on" in drafting the bill. Bill is expected to come before the committee on April 10, 2014.

Funding Mandamus: (Norman Foster recused himself) The City has filed a petition with the Louisiana Supreme Court to stay the decision of the Louisiana Court of appeals. City officials have requested a meeting with the bargaining team and the mayor as soon as possible. Board members discussed the necessity of moving forward with legal action against the City for nonpayment of its obligations under the mandamus. Members would delay legal action as long as negotiations were positive. Meetings with City officials are scheduled for the first week of April.

MOTION: Moved by Gaal and seconded by Meagher to direct Fund counsel to file the appropriate motion or motions to enforce the 2012 funding mandamus judgment and amended petition going forward on April 9, 2014 absent an interim resolution of the underlying dispute through settlement or otherwise.

Motion passed.

McConnell and Jacobs abstained

MOTION: Moved by Gaal and seconded by Lavene to pay legal fees incurred in defending Board members during the Reconventional demand litigation.

Motion passed.

NO OBJECTIONS

TIMELY FILING OF APPLICATIONS:

All Members applying for Pension, DROP or PLOP must do so 45 days in advance of the scheduled retirement date. All medical documentation for disability applications must be in the administrative office 45 days prior to the scheduled retirement date. Failure to comply with the Fund's rules will cause a delay in the Board taking action and will probably force an extension beyond the member's desired retirement date.

The administrative office will continue to process all paperwork in a friendly, orderly, and timely fashion. We thank all applying members for their continued cooperation. This will enable the Administrative Office and the Board of Trustees to perform their jobs more efficiently.

Members who have recently changed their address or marital status and have not updated their beneficiary form should do so at this time. Please contact the Pension Office during the hours of 10:00 am to 2:00 pm for beneficiary verifications. Your cooperation is appreciated.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:30 pm. The next regular meeting of the Board of Trustees is May 7, 2014.