

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

SPECIAL MEETING

APRIL 28, 2008

MINUTES

**DIRECTORS
PRESENT:**

Tracy Towner, Chair, Safety Employee Member
William W. Wilson, Vice Chair, Public Member
Lawrence L. Matheney, Treasurer, Ex-officio Member
Peter C. Foy, Public Member
Joseph Henderson, Public Member
Albert G. Harris, Public Member
Karen Becker, General Employee Member
Arthur E. Goulet, Retiree Member
Chris Johnston, Alternate Employee Member
Will Hoag, Alternate Retiree Member

**DIRECTORS
ABSENT:**

Robert Hansen, General Employee Member

**STAFF
PRESENT:**

Tim Thonis, Retirement Administrator
Lori Nemiroff, Assistant County Counsel
Walter Lauzon, Chief Financial Officer

PLACE:

Ventura County Employees' Retirement Association
Second Floor Boardroom
1190 South Victoria Avenue
Ventura, CA 93003

TIME:

9:00 a.m.

ITEM:

I. INTRODUCTION OF MEETING

Chairman Towner called the Special Meeting of April 28, 2008, to order at 9:00 a.m.

II. APPROVAL OF AGENDA

Mr. Harris moved, seconded by Mr. Matheney, to approve the agenda.

Motion passed.

III. OLD BUSINESS

- A. Checklist and Memorandum for Application of Cancer Presumption to Establish Service-Connection in Disability Retirement Matters Pursuant to Government Code Section 31720.6.

Ms. Nemiroff reviewed the checklist and memorandum prepared to assist the Board in an upcoming disability case involving the application of the cancer presumption pursuant to Government Code Section 31720.6.

In reviewing the checklist, Ms. Nemiroff focused her remarks on item #3, requiring a finding that the applicant developed cancer. Ms. Nemiroff stated the Board has two options available for application of this requirement. First, the Board could either determine that the cancer must develop or manifest while the member is in service or second, require that the cancer must develop during service or within the time frame extended under GC 31720.6(c). Staff's comments on the subject at the April 7, 2008 meeting, interpreting the statute as requiring evidence of manifestation of cancer in service, were based upon the '37 Act Disability Resource Manual according to Ms. Nemiroff.

Ms. Nemiroff noted that since our earlier meeting, she had conducted additional research and surveyed several '37 Act attorneys on the subject. Ms. Nemiroff learned that although there were no cases specific to the cancer presumption, there were applicable heart presumption cases. The heart presumption cases illustrated that members may not be aware of the medical condition while in service and disabilities were subsequently granted based upon symptoms that manifested after retirement. Ms. Nemiroff also cited workers compensation cases that applied presumption statutes to situations where the illness or injury occurred after separation from service, but within the time period allowed by the statute. Ms. Nemiroff also found that other '37 Act retirement systems would allow up to 5 years for the symptoms to manifest in accordance with the law and not require the symptoms to manifest while the member was in service.

In conclusion, and based on this additional research and investigation, Ms. Nemiroff advised that it would be more reasonable to apply the statute in

III. OLD BUSINESS (continued)

- A. Checklist and Memorandum for Application of Cancer Presumption to Establish Service-Connection in Disability Retirement Matters Pursuant to Government Code Section 31720.6. (continued)

cases where there is evidence that the cancer developed either while the member was in service or within the extended time frame allowed by Section 31720.6 (c).

Ms. Nemiroff noted that she would be making suggestions to the authors of the disability manual regarding this subject based upon the heart presumption case law under the '37 Act and the cancer presumption case law under the workers' compensation statute.

Mr. Goulet stated he was not concerned with the granting of the extended time frame, but would struggle with the concept that a member could retire for service and, assuming the later development of cancer, have the Board be required to find that the member was incapacitated from doing their job.

Ms. Nemiroff responded that the Board would be extending the time frame for the member to show incapacity.

Mr. Goulet reiterated his concern based upon the fact the member could perform the job for their entire career and it would be difficult to find incapacity after the member is no longer working.

Ms. Nemiroff noted that the extension must apply to proving incapacity because the law already contains provisions regarding the extension of the time for filing an application for disability retirement.

Mr. Matheney indicated he was comfortable with this more reasonable interpretation.

Ms. Nemiroff stated that at the April disability meeting Risk Management had interpreted the statute to mean manifestation of the disease within the extended time period.

Mr. Foy questioned whether the Board was required to grant a disability five years after the member left service.

Ms. Nemiroff noted that the legislature placed into law the language extending the presumption for up to 60 months after employment ends.

III. OLD BUSINESS (continued)

- A. Checklist and Memorandum for Application of Cancer Presumption to Establish Service-Connection in Disability Retirement Matters Pursuant to Government Code Section 31720.6. (continued)

Mr. Foy questioned the tax reporting of service-connected disability retirements, and Ms. Nemiroff explained that the benefits would be nontaxable only in instances where a primary site of the cancer cannot be determined, in which the presumption is not rebuttable.

Mr. Johnston stated that the unknown factor regarding manifestation was the primary reason the law was passed. Mr. Johnston indicated that he worked with the legislature on the passage of the cancer presumption law.

Ms. Nemiroff noted the legislature's attempt to balance the interests of the taxpayers with the need to recognize the dangers inherent in public safety work by limiting the presumption to public safety members, by extending the presumption based upon the member's years of service and by providing for the ability to rebut the presumption if the primary site was identified.

Mr. Matheney moved, seconded by Mr. Harris, to receive and file the checklist and memorandum for application of the cancer presumption.

Motion Passed.

- B. Final Recommendation for Approval of STAR COLA Benefit for the Period April 1, 2008 through September 30, 2010.
1. Letter from Staff.
 2. Proposed Resolution.
 3. Member Correspondence.

Staff provided a summary of the work accomplished by the Board in considering the renewal of the STAR COLA benefit including the consultation with VCERA's fiduciary counsel, the plan actuary and the County of Ventura. Staff also summarized the Board's intentions expressed in January to transfer \$4.7 million from funds reserved to pay the \$27.50 benefit, to renew the STAR COLA benefit through September 2010, to limit the eligibility of STAR COLA to those members currently eligible to receive the benefit, to replenish the transferred funds and to explore ways to vest or permanently fund the \$27.50 supplemental benefit.

III. OLD BUSINESS (continued)

- B. Final Recommendation for Approval of STAR COLA Benefit for the Period April 1, 2008 through September 30, 2010. (continued)

Staff recommended, based upon the work accomplished by the Board over the past 9 months, that the Board transfer \$4.7 million from the \$27.50 monthly supplemental benefit reserve to the STAR COLA reserve, adopt the proposed STAR COLA resolution authorizing payment of the benefit from April 1, 2008 through September 30, 2010, continue the practice of analyzing STAR COLA funding requirements with the plan's actuary annually, assign a priority to replenish the \$27.50 reserve and study the available alternatives to permanently fund the \$27.50 monthly supplemental benefit.

Mr. Matheney questioned the timing of the actuary's annual review of the STAR COLA benefit.

Mr. Goulet noted the Retired Employees Association of Ventura County's (REAVC's) support of the recommended action for extending the STAR COLA benefit. Mr. Goulet also reiterated that he and his wife receive the \$27.50 monthly supplemental benefit and that Mr. Goulet believed he does not have a conflict in voting on the STAR COLA item.

Mr. Foy noted that in his opinion, the STAR COLA benefit was very discriminatory given the relative few members who are eligible to receive the benefit. Also, Mr. Foy stated that removing funding from the plan to pay relatively few members places the funding for all other members at risk. Mr. Foy reemphasized his concerns with the fourth recommendation in staff's letter because it advocated the removal of funding to pay the vested benefits of the plan. Mr. Foy further stated that the Board should not grant new benefits, as the employment contract governs the benefits to be received, but he expressed support of action to enable continuance of the STAR COLA, without taking concurrent action on the fourth recommendation, because the Board has put people into a position of dependence on the benefit.

Mr. Foy moved, seconded by Mr. Matheney, to adopt the resolution dated April 28, 2008 to authorize the payment of STAR COLA benefits through September 30, 2010, transfer \$4.7 million from the reserve established for the \$27.50 monthly supplemental benefit to the STAR COLA reserve and to continue to analyzing the adequacy of the funding STAR COLA reserve on an annual basis.

III. OLD BUSINESS (continued)

B. Final Recommendation for Approval of STAR COLA Benefit for the Period April 1, 2008 through September 30, 2010. (continued)

Mr. Matheney noted the Board could consider the replenishment of the \$27.50 supplemental benefit at a future date, as the proposed STAR COLA resolution does not address the replenishment issue.

Mr. Harris emphasized that the Board needed to commit to resolving the \$27.50 benefit by working with the Board of Supervisors. Mr. Harris stated, in his opinion, the \$27.50 needs to be a permanently funded supplemental benefit.

Motion Passed. Ms. Becker opposed.

Mr. Goulet moved, seconded by Mr. Harris, to calendar the discussion on item #4 to that time when the Board considers the annual actuarial valuation.

Mr. Johnston suggested that perhaps the \$27.50 monthly supplemental benefit be provided only to those members who are not eligible to receive cost-of-living adjustments.

Motion Passed.

IV. PUBLIC COMMENT

Mr. Ron Janes spoke on behalf of REAVC and requested the Board revisit the history of the \$27.50 benefit given its creation was the result of the settlement of a lawsuit.

Mr. Keith Garretson discussed the impact of STAR COLA on his monthly benefit and stated it should be allowed to continue.

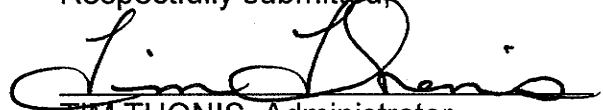
V. BOARD MEMBER COMMENT

None.

VI. ADJOURNMENT

There being no further items of business before the Board, Chairman Towner adjourned the meeting at 9:50 a.m. upon the motion of Mr. Matheney, seconded by Mr. Harris.

Respectfully submitted,


TIM THONIS, Administrator

Approved,


TRACY TOWNER, Chairman