

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

BUSINESS MEETING

MAY 22, 2023

MINUTES

**TRUSTEES
PRESENT:**

Mike Sedell, Chair, Public Member
Arthur E. Goulet, Vice-Chair, Retired Member
Sue Horgan, Treasurer-Tax Collector
Jordan Roberts, General Employee Member
Cecilia Hernandez-Garcia, General Employee Member
Aaron Grass, Safety Employee Member
Kelly Long, Public Member
Tommie E. Joe, Public Member
Will Hoag, Alternate Retired Member
Robert Ashby, Alternate Safety Employee Member

**TRUSTEES
ABSENT:**

**STAFF
PRESENT:**

Linda Webb, Retirement Administrator
Amy Herron, Chief Operations Officer
Lori Nemiroff, General Counsel
Dan Gallagher, Chief Investment Officer
La Valda Marshall, Chief Financial Officer
Leah Oliver, Chief Technology Officer
Josiah Vencel, Retirement Benefits Manager
Brian Owen, Sr. Information Technology Specialist
Michael Sanchez, Sr. Information Technology Specialist
Jess Angeles, Communications Officer
Chris Ayala, Program Assistant

PLACE:

Ventura County Employees' Retirement Association
Second Floor, Boardroom
1190 S. Victoria Avenue, Suite 200
Ventura, CA 93003

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

A. Roll Call.

Chair Sedell called the Business Meeting of May 22, 2023, to order at 9:00 a.m.

Roll Call:

Trustees Present: Robert Ashby, Aaron Grass, Art Goulet, Cecilia Hernandez-Garcia, Will Hoag, Sue Horgan, Tommie Joe, Kelly Long, Jordan Roberts, Will Hoag, Mike Sedell

Trustees Absent: -

II. APPROVAL OF AGENDA

Chair Sedell recommended the following changes to the agenda: move item VII.A. so that it followed immediately after item III., "Consent Agenda." If there were a request by any trustees to have a "Closed Session" meeting, they would enter that meeting after hearing arguments and public comments on agenda item VII.A. Additionally, if there were any questions or concerns by the Board about item, III.C., "Approve Disability & Business Meeting Minutes of April 17, 2023," they could pull that item and bring it back at the next meeting.

MOTION: Approve as Amended.

Moved by Long, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

III. CONSENT AGENDA

A. Approve Regular and Deferred Retirements and Survivors Continuances for the Month of April 2023.

B. Receive and File Report of Checks Disbursed in April 2023.

C. Approve Disability & Business Meeting Minutes of April 17, 2023.

Ms. Webb noted corrections to the minutes were submitted to staff by Trustee Goulet. She noted that on page 7 of the minutes, second to last paragraph, instead of saying, "affected many of the Retirement Systems," it should read, "all public Retirement Systems in California." At the top of page 8, it was suggested to change the word "said" to "provided" when referring to what the Alameda Decision stated. On page 9, there was the insertion of the word "had" in the fourth line at the top of the paragraph and the insertion of the phrase "thereby creating a window period." Staff did not believe these corrections to be substantive, but simply provided clarification, so staff recommended approval of the minutes, as amended.

Trustee Roberts noted an additional correction, as the word “contributions” at the bottom of page 9 was misspelled.

MOTION: Approve Consent Agenda, with the Adoption of the Disability & Business Meeting Minutes of April 17, 2023, as Amended.

Moved by Long, seconded by Goulet

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

After the vote on this agenda item, the Board advanced to item, VII.A., "Hearing on Administrative Appeal Filed by VCPFA re Denial of Claim for Change in VCERA Membership Date for Fire Control Workers (FCWs) Hired by County as Seasonal/Intermittent Employees and Consideration of Hearing Officer Report and Recommended Decision."

IV. INVESTMENT MANAGER PRESENTATIONS

- A. Receive Annual Investment Presentation from Bridgewater: Clark Thiemann and Melissa Saphier.

Clark Thiemann and Melissa Saphier reviewed Bridgewater’s organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

Trustee Grass left the meeting at 11:22 a.m.

Trustee Grass returned to the meeting at 11:24 a.m.

- B. Receive Annual Investment Presentation from PIMCO: Neal Reiner, Andy Mark, Kevin Gray, and Catherine Roddy.

Neal Reiner, Andy Mark, Kevin Gray, and Catherine Roddy reviewed PIMCO’s organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

Trustee Hoag left the meeting at 11:32 a.m.

Trustee Hoag returned to the meeting at 11:36 a.m.

Trustee Ashby left the meeting at 11:42 a.m.

Trustee Ashby returned to the meeting at 11:45 a.m.

Trustee Joe left the meeting at 11:51 a.m.

Trustee Joe returned to the meeting at 11:54 a.m.

V. **INVESTMENT INFORMATION**

VCERA – Dan Gallagher, Chief Investment Officer.
NEPC – Allan Martin.

A. \$50 Million Commitment to Abbott Secondary Opportunities Fund III, LP.
RECOMMENDED ACTION: Approve.

1. Staff Letter by Chief Investment Officer.
2. Joint Fund Recommendation Report from NEPC.
3. Abbott Secondary Opportunities Fund III Presentation: Meredith Rerisi and Young Lee.

Mr. Gallagher recounted that the Board committed \$25 million to Abbott Secondary Opportunities (ASO) I in 2017 which is registering top quartile performance. In 2021 the Board committed \$40 million to ASO II, and while still early days, the fund is showing a 102.8% net-internal rate of return, and a TVPI multiple of 1.4x. The current recommendation is for a \$50 million commitment to ASO III. Both he and NEPC viewed ASO III as adding value to VCERA's private equity secondaries program from both investment performance and diversification.

MOTION: Approve a Commitment of \$50 Million to Abbott's Secondary Opportunities Fund III, and Direct Staff and Legal Counsel to Prepare the Necessary Legal Documents; and, Authorize the Board Chair or the Retirement Administrator, or in the Absence of the Board Chair and Retirement Administrator the Chief Investment Officer, to Approve and Execute the Required Documentation.

Moved by Long, seconded by Grass

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

B. Quarterly Investment Performance Report for Period Ending March 31, 2023.
RECOMMENDED ACTION: Receive and File.

Mr. Martin presented the Quarterly Investment Performance Report for Period Ending March 31, 2023.

MOTION: Receive and File.

Moved by Goulet, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

C. Monthly Performance Report Month Ending April 30, 2023.
RECOMMENDED ACTION: Receive and File.

Mr. Martin presented the Monthly Performance Report the Period Ending April 30, 2023.

MOTION: Receive and File.

Moved by Roberts, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

VI. OLD BUSINESS

A. Alameda Implementation Status Report.

1. VPAC Status Report dated May 22, 2023

Ms. Herron said the status report was to update the Board on the implementation of the Alameda Decision. The report was also available publicly online as part of VCERA's published meeting materials, and she offered to answer any questions.

Chair Sedell complimented the work staff had done on the implementation and report, and he appreciated all the work staff had done.

B. (1) Approval of the Attached Request for Proposal (RFP) for Actuarial Auditing Services; (2) Direct Staff to Issue the RFP to the List of Candidates; and (3) Direct Staff to Review the Responses to the RFP and Develop a Recommendation to the Board Regarding the Firm that Should be Selected for the Engagement.

RECOMMENDED ACTION: Approve.

1. Staff Letter from Chief Financial Officer.

2. Actuarial Auditing Services RFP (Redline).

3. Actuarial Auditing Services RFP (Clean).

Ms. Marshall provided updates on the Actuarial Auditing Services RFP from the Finance Committee meeting on May 15. The staff letter for the RFP also had a few changes for clarity.

Ms. Webb added that even though the staff letter listed three vendors who would receive the RFP, staff would also be posting it publicly so that other firms could submit proposals as well.

Trustee Goulet remarked that as far as he knew, these were the only three firms that practiced this type of work in California and had the knowledge of CERL to do it, but if some other firm could show that they were qualified, they could potentially be awarded the contract.

MOTION: Approve All of the Items, as Amended.

Moved by Goulet, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

After the vote on this agenda item, the Board advanced to item VII.B, "Recommendation to Approve Payment for Waiver of Recourse Fiduciary Liability Insurance, FY 2023-2024."

VII. NEW BUSINESS

- A. Hearing on Administrative Appeal Filed by VCPFA re Denial of Claim for Change in VCERA Membership Date for Fire Control Workers (FCWs) Hired by County as Seasonal/Intermittent Employees and Consideration of Hearing Officer Report and Recommended Decision.
1. Staff Letter from Retirement Administrator.
 2. Proposed Findings of Fact, Conclusions of Law, and Recommended Decision, submitted by Hearing Officer Irene P. Ayala, dated April 14, 2023.
 3. Amended Index of the Administrative Record.
 1. VCPFA/FCW's Opening Statement Re Appeal of VCERA's Administrative Determination Denying Statutorily Protected Retirement Rights to Ventura County Fire Control Workers.
 - a. VCPFA Appeal Exhibit A, VCERA's Administrative Denial of Appellants' Claim.
 - b. VCPFA Appeal Exhibit B, VCPFA Letter to VCERA Board, February 3, 2021.
 - c. VCPFA Appeal Exhibit C, VCPFA Letter to Lori Nemiroff, June 10, 2021.
 - d. VCPFA Appeal Exhibit D, County Letter from Mike Curnow to VCPFA, April 16, 2020.
 - e. VCPFA Appeal Exhibit E, Declaration of Michael Trabbie.
 - f. VCPFA Appeal Exhibit F, Declaration of Kevin Aguayo.
 - g. VCPFA Appeal Exhibit G, Declaration of David Proett.
 2. VCERA's Response Statement Re VCPFA Demand for Claim in VCERA Membership Date for Fire Control Workers Hired by the County of Ventura as Seasonal/Intermittent Employees.
 - a. VCERA Response Attachment 1, Declaration of Shalini Nunna in Support of Respondent Ventura County Employees' Retirement Association Reply Statement.
 - b. VCERA Response Attachment 2, Ventura County Employees' Retirement Association Board of Retirement Bylaws and Regulations.

- c. VCERA Response Attachment 3, The County of Ventura Safe Harbor Retirement Plan Summary Plan Description, March 2018.
 - d. VCERA Response Attachment 4, A Resolution of the Board of Supervisors which describes the Personnel Rules and Regulations for the County of the Employees of the County of Ventura.
 - e. VCERA Response Attachment 5, VCPFA Claim for Correction of Membership Dates Based on Alleged Pre-Membership Misclassification of Members as Seasonal/Intermittent Employees.
 - f. VCERA Response Attachment 6, The County of Ventura Supplemental Retirement Plan.
3. VCPFA/FCW's Reply to VCERA's Response re Denial of Statutorily Protected Pension Rights of Certain Ventura County Fire Control Workers.
 - a. VCPFA/FCW's Reply Exhibit A, Paystubs for Appellant Kevin Aguayo.
 4. VCPFA/FCW's Letter Regarding Correcting the Improper Exclusion of Certain Ventura County Fire Control Workers from Participation in the Ventura County Employees' Retirement Association, dated March 2, 2020.
 - a. Attachment: Analysis of Service Provided to the County of Ventura by Fire Control Workers Improperly Classified as Intermittent Employees.

Ms. Nemiroff said that the Board would first provide the appellants, Ventura County Professional Firefighters Association (VCPFA), with 10 minutes to make an opening statement and to allow any parties the opportunity to make statements to the Board. The respondent, Ventura County Employees' Retirement Association (VCERA), would then have 10 minutes to respond. Then each party would have 5 minutes for rebuttal, which may be changed according to the discretion of the Chair, depending on how much information was needed. If any trustee wished to confer with counsel in Closed Session, that was also an option.

Chair Sedell then requested that the parties state their appearances.

Mr. Ian Bondsmith, Attorney at Law, and Kevin Aguayo, President of VCPFA, were appearing on behalf of VCPFA.

Ms. Ashley Dunning, Attorney at Law, of Nossaman, LLC, was appearing on behalf of VCERA.

Mr. Bondsmith thanked the Board, Ms. Nemiroff and Ms. Dunning, and the appointed referee, Irene Ayala, for her time and effort in working on the critical issues in the case. However, he pointed out what he believed to be two critical errors in Ms. Ayala's recommended decision, which, if adopted by the Board, would have the absurd result of granting authority to the County to make VCERA membership determinations. First, the proposed decision stated that VCERA membership was entirely dependent on the County bestowing a regular employment status on its employees; second, the decision concluded that the County's "intermittent" designation was synonymous with the intermittent exclusion under the California Employees Retirement Law (CERL). Both decisions were in direct opposition to the California Constitution and CERL, which bestowed on the Board of Retirement, not the County, the sole authority to administer the retirement system, including the authority to make membership determinations. The Board in turn must make these determinations

under the rules set forth in CERL, not the County rules, and in keeping with the Board's duty to provide the appellants with their lawfully earned pension benefits. It was undisputed that the CERL, together with consistent regulations adopted by the Board, controlled membership determinations in VCERA. The CERL made no reference, however, to a regular County employment status as being a condition for membership. Instead, it mandated that all employees must be enrolled, unless they are subject to an express exclusion in the CERL that was adopted by the Board in its regulations. So, there were only two steps to determine if a person was eligible for VCERA membership. First, did they meet the definition of an employee under CERL? And second, if they did, were they subject to a permissible exclusion? The CERL had two different definitions of employees: one for persons employed by the County and another for persons employed by a district within the County. The definition of a County employee under CERL was any person who: 1) was an employee of that County; 2) had their compensation fixed by the Board of Supervisors; and 3) was paid directly by funds controlled by the County. This was the "control of funds" test; this was the home rule authority that VCERA had mentioned in its briefing. A District employee, on the other hand, was defined simply as any person in the employ of any District within the county and there was no control of funds requirement. The appellants in this case were employed by the Ventura County Fire Protection District, so there was no requirement that their funds or compensation be paid or controlled by the County Board of Supervisors and by the County. These definitions do not require that a County or District employee be designated as a regular employee under the County Civil Service designations, so that definition under those rules was irrelevant. The proposed decision does correctly point out that VCERA's Bylaws did reference regular employment as a condition for membership, but this requirement was inapplicable to appellants and arguably unenforceable, as any regulation in the bylaws had to be consistent with CERL. Regarding membership in VCERA, Article 3 of the bylaws states that non-safety employees must be regular employees, but the section clearly excluded any requirement of regular employment for Safety employees. Therefore, even if it were true that the word "regular" in the bylaws can be interpreted as regular employment under the Civil Service rules, that regulation was inapplicable to appellants in this case, who are undeniably Safety members.

So, given that it was clear that the appellants were eligible employees under both CERL and the bylaws, the next step was for the Board to examine the positions the appellants were appointed to and determine if the work being performed under those positions met the definition of "intermittent employment" under CERL, which defined intermittent employment as persons whose tenure was intermittent; the bylaws defined an intermittent employee as persons who were employed for intermittent or temporary work. These definitions provided that an otherwise eligible employee can be excluded as intermittent only if the nature of the work they were hired to perform was intermittent under the usual and ordinary meaning of that term. In other words, they must be employed to perform work that was needed on a fluctuating and periodic basis throughout the year as opposed to work that was required on a year-round basis. The facts in this case were that the district hired a group of Fire Control Workers each year and told them they were being appointed to intermittent positions to fill a seasonal workload, but each year that was not true for a number of the Fire Control Worker positions, because the district and the County knew there was a need for additional year-round positions; they recruited appellants with this knowledge and appointed them to fill these year-round positions. The Declaration of David Pruitt, who supervised Fire Control Workers for more than 28 years, made it abundantly clear that the district and the County had a pattern and practice of filling year-round positions with erroneously labeled intermittent employees. The proposed decision claimed that appellants were hired into intermittent positions because the district waited until the end of each appellant's initial fire season with the district to tell them that they would be working year-round, but the district and the County knew these positions would be year-round from the beginning, and these appellants were selected to fill these positions.

The proposed decision also attempted to blame the appellants, saying they knew that they were labeled by the County as intermittent and therefore the Board was precluded from giving them

membership. But the appellants' knowledge of their County Civil Service status was irrelevant because it was CERL and the bylaws, not the County labels, that determined membership in VCERA. There was no waiver of membership, as the proposed decision seemed to suggest, and appellants were not barred by any applicable statute of limitations or related equitable defenses. Again, it was undisputed that the Board, not the County, had the sole and exclusive constitutional authority to make membership determinations. Mr. Bondsmith submitted that VCERA should examine the true nature of the positions an employee was hired to fill as known by the County at the time they were hiring for those positions. Here, some of those Fire Control Worker positions were intermittent and some were not. Accepting the County's characterization of all of these positions as being intermittent without an independent assessment by VCERA opened the door for manipulation by the County, which had and would continue to deny people of their lawfully earned pension rights. The facts showed the County, and the district knowingly appointed them to year-round positions while labeling them intermittent and failing to inform VCERA that they were not working in an intermittent capacity. This was precisely the kind of mischief that the constitution of this State, which favored enrollment in pension systems, was designed to avoid.

Kevin Aguayo, President of the Ventura County Professional Firefighters' Association (VCPFA), provided public comment. He noted that the workers were asking the Board to determine their membership in VCERA. The County took advantage of them by labeling them as intermittent. In 1997, when he was first employed as a Fire Control Worker, his employment continued until 1999, when he was hired as a regular employee. That was the 1664-hour rule the County chose to ignore, which they mentioned in their statements. They were asking the Board to exercise its authority and discretion to go against the recommendation and make them whole by giving them the service credits that they were due. They were wronged by the County.

Ms. Dunning replied on behalf of VCERA. She said the California Constitution did not require nor permit the Retirement Board to grant membership to individuals who were not entitled to membership under the CERL, as applied by the Board through its regulations. The Hearing Officer went through a very comprehensive analysis of the facts and applicable law and stayed as clear as she could without reference to them, the basis for the recommended decision. This was not a case about righting wrongs in terms of service credit; it was a request for the Board to unwind appointments or decisions relating to the hiring of individuals for intermittent work 10 or more years ago by the County. As the declaration identified and as Mr. Bondsmith conceded, the appellants were aware that they were appointed as intermittent employees when they were appointed. If there was a dispute about membership entitlement to VCERA at that point, that was when to approach the County and VCERA to claim that they were entitled to membership enrollment. To wait 10 to 30 years to try to unwind, that membership determination was completely disfavored in the law, as one cannot revisit all of those employment determinations to assess membership entitlement effectively. That was why VCERA engaged in a significant effort to assist appellants in their request for reclassification to the County regarding whether they should have been appointed as regular employees when they were first hired. The County disagreed with their assertions and refused, but VCERA then went through further analysis to assess whether there was a legal basis to change their membership date and determined that there was not, and in fact, they also went through an additional process and concluded that because these members had been in a supplemental Safe Harbor benefit plan when they were employed as intermittent employees, they were precluded by law from having been VCERA members during that earlier time period. Therefore, the Board did not have the authority by law to move their membership date. VCERA's General Counsel had also concluded that if these individuals were to terminate employment, defer retirement and roll over contributions made into the Safe Harbor plan, they could then purchase that earlier service credit as prior non-membership service, and then they would have more service credit in VCERA, though doing so would not move an individual's membership date, which was when they were first hired as regular

permanent employees in a position eligible for membership under the Board's regulations. The findings of fact identified the dates in question, the individuals in question, the representations that were made, and the concession that appellants understood that their Fire Control worker positions beyond the fire season were ones where they were hired on an intermittent basis. The Hearing Officer recognized correctly that VCERA was a separate legal entity from the County and that the Board's obligation was to provide lifetime benefits to individuals who were properly enrolled in the plan, but the Board had no independent knowledge or oversight into the hiring decisions of the County or the various districts. As intermittent employees under the Board's bylaws, which had been approved by the County, appellants were precluded from enrollment in VCERA, until they were appointed to permanent regular positions as it was noted in the Hearing Officer's findings of fact. Appellants may roll over the funds from the Safe Harbor benefit plan if they choose to do so, such that the CERL would no longer preclude them from purchasing the earlier service credit. But to move a membership date for these individuals was inappropriate, unauthorized, and not consistent with the Board's fiduciary obligations to only pay the benefits that were due under the plan and only to enroll in membership those who were permitted to be enrolled under their bylaws. So, there was no fiduciary duty or legal basis upon which to change the County's initial and continuing classification of these individuals as intermittent employees during their first periods of work for the Fire District and for the County. Therefore, staff respectfully requested that the Board approve the findings of fact and adopt the recommended decision of the Hearing Officer.

Chair Sedell said that the Board would now allow 5 minutes of rebuttal from each party.

Mr. Bondsmith stated that what was just presented to the Board by Ms. Dunning was that the Board was precluded from enrolling these appellants because they were not made regular or permanent employees, but that was not what the bylaws said. For safety members, there was no regular employment requirement under the bylaws and even if there were, there was no such requirement under CERL. So, any inconsistent regulation would not be enforceable, but all that mattered was that the appellants were safety members, so, there were no regular or permanent requirements. Second, the statute of limitations that was brought up simply was inapplicable. If the Board were to decide to enroll these members, it would be an administrative determination, which was not considered a civil action subject to a standard three-year civil statute limitation. Also, the appellants had a right to a correct calculation of every retirement check they would receive once they retired. The Continuous Accrual Doctrine (CAD) made it clear that the Board had the right to correct each payment and that a new statute of limitations would apply as each payment was made, and in this case, all of the appellants were still active, except for one who retired within a three-year period of them bringing the issue before the Board. So, a continuous accrual would essentially make the statute of limitations point moot. As to "Laches", and other equitable defenses that may preclude the Board from making a decision, the facts were clear, they had declarations from the appellants. The Board had a declaration from David Pruitt, who supervised these people for 28 years and showed clearly that the County and the district had a pattern of practice of inappropriately calling people intermittent when they were really working in full-time year-round positions. So, the Board had all of the information needed to make a proper decision in the case. As far as Safe Harbor precluding the Board from rejecting the proposed decision, he did not quite understand where this came from because Safe Harbor itself said that members were not eligible for Safe Harbor membership if their services were eligible for VCERA membership. So, it was not hard to roll back that membership. Therefore, they were not involved in two publicly funded plans at the same time. Finally, Ms. Dunning had said the appellants were in intermittent service because the County called them intermittent and the proposed decision made it clear that it was based on the County's rules, and the County's decisions. The recommendation from the Hearing Officer said the County and only the County had the responsibility and authority for hiring and classification, and it also stated that VCERA has no input, knowledge,

oversight, or control over the County's hiring decisions or the classifications of its employees. Again, the Constitution and the CERL give the Board the discretion, authority, and duty to make sure that employees were not excluded as intermittent employees if they were not really working in intermittent positions. This was exactly the kind of mischief that the legislature sought to avoid when they made retirement laws in the first place, and when they created Boards like this one to oversee the County, to make sure that people were getting the pension rights to which they were entitled. Pension rights in this state for public employees was considered a very important right, an earned right, and it was the Board that had the authority to make sure people received the rights that they lawfully deserved and earned through their service to the County and the district.

Ms. Dunning explained the Hearing Officer was correct in that VCERA had no Authority under the Constitution, CERL, or otherwise to look into the specifics of why its participating employers were being hired for particular jobs or not being hired for particular jobs, and while there may have been a time of where the Board had the authority to audit an employer if there was a concern about people not being enrolled who should be. That was not the circumstance here, here we have a circumstance of people having been enrolled decades ago in the retirement plan, sitting on their purported rights, and coming to the Board at the last minute to try to request an undoing of determinations that were made decades ago about their entitlement rights. There was not a continuous accrual right here, because there was a point-in-time determination of membership eligibility years ago, and *Luke vs Sonoma County* was right on point on this issue, that involved a determination made by a Retirement Board and by a County at a point in time relating coincidentally, or in that case, to the enhancement of retirement benefits. The court concluded that there could be no unwinding of enhanced retirement benefits although the plaintiff, in that case, alleged that they should be permitted to be unwound because of CAD, and the court rejected that and said if you had a right that you wish to pursue you had to do that within three years of that right allegedly being violated. Here there was nothing in the record to suggest that rights were violated, and in fact, the Board's regulations specifically exclude from membership intermittent employees such as the individuals before you were during the periods in question.

Trustee Hernandez-Garcia asked how many appellants were in the case and if there was anything being done to avoid these types of concerns going forward.

Mr. Bondsmith replied that there were 16 appellants in the case who had been affected by the issue. In talking to people who were involved with the Wildland Fire Program, some very strict changes had been made, and they were adhering very strictly to the 1664-hour limit on intermittent employment. They contended that the changes were a direct result of this issue because they understood the practice that they were engaging in by keeping people on year-round and calling them intermittent was inappropriate under CERL. So, yes, he believed that for the most part, this practice had been corrected, but it did not change the fact that appellants in this case were harmed and would continue to be harmed throughout their retirement when they receive a reduced pension allowance.

Ms. Dunning added that the individuals in the case would not receive a reduced pension allowance if they did what staff had advised them that they could do, which was to roll over the funds in their Safe Harbor plan and purchase the service credit in VCERA. They would then have the same service credit as they would have had, had they been enrolled originally and there were only 16 appellants in the case.

Mr. Bondsmith then said, that while Ms. Dunning was correct that there may be an avenue to purchase this service, that avenue would not make the appellants whole in this case. It was membership service that would make the appellants whole in this case, because prior membership

service would not apply to a number of them, in particular the 30-year cancellation right, where membership service would apply to that right.

Ms. Dunning stated that the lifetime benefit would be the same if they had the service credit. The fact that they may not have to pay for some additional contributions having reached 30 years of service was another topic, but again it illustrated the staleness of these claims. If there were appropriate claims, they needed to have been brought when people were first hired. So, they should have made these claims at that point, because at this point these claims were stale and none of these appointments should be revisited.

Trustee Goulet said that he was a little confused by the appellants' comments where they seemed to use the District separation when it was advantageous, and then the County rules when it was again advantageous to them. For example, they referred to the County Civil Service rules, however, if they were not County Employees how do they come under the County Civil Service rules? Also, they mentioned financial control, but were the salaries not established by the Board of Supervisors and included in the County's Salary Schedule? He did not think that any action was taken separately, and he also had that same confusion when he was working, where he had several districts under his jurisdiction, and they were indistinguishable from County employees. He was also troubled by the statute of limitations because this was something that should have been dealt with many years ago, and one of the main objectives here was to gain 30-year status, so that not only do they not have to make further contributions to the retirement system, but their salaries would be increased, because the County would then contribute as salary the contribution the employer would have contributed to the retirement system.

Mr. Bondsmith addressed Trustee Goulet's confusion as to how sometimes they relied on the County rules and sometimes they relied on CERL as well as the bylaws. He said the County rules were inapplicable to membership determinations, which was clear in the CERL. So, they were not relying on the County rules and sometimes on the CERL. It was their position that the CERL controlled any consistent regulations in the bylaws, so in terms of membership, the CERL did not require a regular County employment status. That may be where the confusion lay because they brought up the regular employment status, but they were bringing that up to say that the CERL did not require it, so it was irrelevant. Concerning the statute of limitations, he understood his concern and Ms. Dunning had cited a case, which was *Luke vs. Sonoma County*, but in that case, the issue was that a taxpayer had filed a writ to enjoin the retirement association from increasing pension benefits, but they argued that the County had a requirement to procure and make public an actuarial study of what it would do to the pension system, and ultimately what it would do to taxpayers, who were funding the pension system. But the Court in that case made it clear that it was a one-time obligation to do a study, and they distinguished that from membership enrollment or membership determinations in a retirement system that affected pensioners' ongoing retirement allowance in retirement. The City of Oakland case said the same thing, that the CAD did not apply because retirement associations, counties, and public agencies all had a continuing duty to their members under the California Constitution to ensure that they receive the proper pension rights. Now, Ms. Dunning kept mentioning that the Board had no authority under the California Constitution, but that was just not the case, particularly as it pertained to the appellants here, where there was no control of funds test under CERL or the bylaws. Their compensation did not have to be fixed to be enrolled, but their compensation was fixed. They were paid on the same salary schedule as all Fire Control laborers, which was approved by the Board of Supervisors, so this is not a case like *Holmgren* for example, which was also cited in VCERA's documents. Because *Holmgren* dealt with independent contractors who were saying, no we should have been common law employees and the court said no, look the definition under CERL that said that a County employee had to have their compensation fixed by the County.

Ms. Dunning explained that the County rules were absolutely applicable to how CERL operated. CERL operated within the context of assessing whether the County and the districts had employed individuals and appointed people to positions that made them eligible for membership or not, so they were not necessarily intertwined with one another. Secondly, there was confusion here on the CAD, because if these individuals were still not enrolled in membership and they were claiming some foul play, you would be able to go back three years to make that determination and, on a go-forward basis, correct it. But that was not what was being requested here. What was being requested here was to have a membership date that occurred 10 to 30 years ago, be moved backward from that time. That was a point in time determination, and there was a three-year accrual period for those types of claims.

Trustee Roberts requested that the Board go into Closed Session to discuss the case with their attorney.

Chair Sedell said that the Board would then go into Closed Session at 9:56 a.m.

Chair Sedell called the Board meeting back to order at 10:42 a.m.

Ms. Nemiroff stated for the record that the Closed Session meeting was for the Board to confer with her as the General Counsel, and that Retirement Administrator, Linda Webb did not attend the closed session meeting, because she was a party in the case. So, none of the parties in the case had attended the closed session meeting. Also, on this issue, Trustee Ashby, as the Alternate Safety Member, would be voting in place of the regular Safety Member, Trustee Grass, because under Govt. Code 31520.1(b), the Alternate Safety Member votes in place of a regular member if a member of the same service was before the Board for determination of his or her retirement benefits. Therefore, Trustee Ashby as a member of the Firefighters would vote on the issue.

Trustee Long asked if the Board were to approve the Hearing Officer's recommendation to deny the case, what other options did the appellants have.

Ms. Nemiroff said that the appellants were aware, and VCERA staff would also remind them, that they were still able to purchase service credit for their intermittent time, that was pre-membership excluded, upon separation service with the County. So, if they deferred retirement for about a month, they could roll their funds over from the Safe Harbor Plan into the supplemental 457 plan, and then purchase service credit with VCERA for that excluded intermittent time. So, they could restore all of that service credit by doing this, and all those who were interested could be provided with cost estimates.

Trustee Ashby said that the issue before the Board today was something that had been going on for the last 7 or 8 years, and as a Safety member representative on the Board of Retirement, it was a difficult position to be in. The appellants had worked hard as Fire Control Workers and they were told that it was an intermittent position, but he felt the County took advantage of their generosity, in the sense that the County kept them on longer than they said they would, and so they were used as regular employees in a way. In their line of work, they could not predict when disasters were going to happen. So, it was an unfortunate position that these employees had been put in and if the County was going to continue the practice of hiring intermittent employees, knowing that they would be utilizing them in a full-time capacity, then there should be some changes to that practice.

Trustee Long stated that as a County appointee on the Board of Retirement, she appreciated both parties coming to the table to deal with the issue, and advocating for the employees was very important. She also appreciated General Counsel's explanation of the options afforded to the appellants, if the case was denied by the Board, so that VCERA could try to take care of these members as best they could.

Trustee Hernandez-Garcia thanked the appellants for bringing the issue to the Board, and for their service. She also thanked General Counsel and Fiduciary Counsel, Ashley Dunning for their work and comments to the Board, regarding the options available to the appellants in the event their case was denied, because there was only so much the Board could do under the circumstances.

MOTION: Approve and Adopt the Findings of Fact and Recommended Decision of the Hearing Officer.

Moved by Horgan, seconded by Joe

Vote: Motion carried

Yes: Goulet, Hernandez-Garcia, Horgan, Joe, Long, Sedell

No: Roberts, Ashby

Absent: -

Abstain: -

After the vote on this agenda item, the Board advanced to item, X., "Public Comments".

B. Recommendation to Approve Payment for Waiver of Recourse, Fiduciary Liability Insurance, FY 2023/24.

RECOMMENDED ACTION: Approve.

1. Staff Letter from Chief Financial Officer.
2. Binder of Insurance.

Ms. Marshall noted that staff was recommending that the Board approve the payment for the Waiver of Recourse and the Fiduciary Liability Insurance Premium for the fiscal year 2023-24. The premium had increased by 10%, however, the \$100 payment for the Waiver of Recourse remained the same.

Ms. Webb said she wanted to remind the Board that the \$10 payment could not be paid out of VCERA's funds. It would have to be paid by the individual trustees, to cover them from personal liability.

MOTION: Approve.

Moved by Roberts, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

- C. Review and Approve the Annual Administrative Budget Policy (1) Name Change to Annual Budget Policy and (2) Other Proposed Updates.

RECOMMENDED ACTION: Approve.

Ms. Marshall presented the Annual Administrative Budget Policy to the Board for them to review. She noted that one of the recommended changes was to change the name of the policy to the Annual Budget Policy.

MOTION: Approve.

Moved by Goulet, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

- D. Review and Approve Finance Committee Charter – Proposed Update.

RECOMMENDED ACTION: Approve.

Ms. Marshall presented recommended changes to the Finance Committee Charter to the Board.

Chair Sedell said that he just wanted to note that he believed in a separation between the scope of a Finance Committee and an Audit Committee because of best practices. However, because of the vacant seats on the Board, it would be difficult to have a separate Audit Committee at this time, though he believed that it was important that the Board should at some point. He hoped that the Board would discuss the issue again next year, and hopefully by then, all of the vacant seats on the Board would be filled.

MOTION: Approve.

Moved by Roberts, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Joe, Long, Roberts, Sedell

No: -

Absent: -

Abstain: -

After the vote on this agenda item, the Board advanced to item, IX. "Informational".

VIII. CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) of Section 54956.9: One (1) Case.

The Board then entered Closed Session at 9:56 a.m.

The Board then returned from Closed Session at 10:42 a.m., and returned to agenda item VII.A., "Hearing on Administrative Appeal Filed by VCPFA re Denial of Claim for Change in VCERA

Membership Date for Fire Control Workers (FCWs) Hired by County as Seasonal/Intermittent Employees and Consideration of Hearing Officer Report and Recommended Decision”.

IX. INFORMATIONAL

A. SACRS Legislative Update – April 2023.

B. SACRS UC Berkeley Public Pension Investment Management Program 2023 Notice.

Chair Sedell commented that the SACRS UC Berkeley Public Pension Investment Management Program was a very good program, and that for those Trustees who had not taken the course yet, he would highly recommend it.

The Board then advanced to agenda item XI., “Staff Comment”.

X. PUBLIC COMMENT

Roberta Griego, Vice-President of the Ventura County Retired Employees Association (REAVC) said she was present on behalf of Reddy Pakala, President of REAVC, who would like to have his letter read into the record. “The Retired Employees Association of Ventura County Inc., (REAVC) represents 7,000 retirees. We have 16 Board members. On April 17, 2023, at the VCERA Board meeting four REAVC Board members along with twenty other County retirees provided testimony supporting a revised resolution concerning Flex Benefits, except for the effective date, and opposing the resolution regarding vacation buydown, also requesting a change in effective date. We requested an effective date of April 17, 2023, or the date of your last decision related to the Alameda Decision, since retirees had received no notice of these decisions, and because of the delays caused by ongoing litigation and other factors that were not controlled by County retirees.

We appreciate that your Board has made the Flexible Benefit partial exclusion effective only for those who retired on or after July 30, 2020. At the same time, we were extremely disappointed by your decision related to the vacation buydown. We do appreciate your Board's decision not to require repayment of extra benefits from January 1, 2013, through August 31, 2020.

We recommend your Board consider the following and revise the effective date for both resolutions to April 17, 2023:

1. Notice was NOT provided to County retirees before your Board's ongoing actions on this matter before the first Alameda action in October 2020. Only one notice was mailed to affected retirees on April 10, 2023, one week before April 17, 2023 Board decisions. None of the retirees who received the notice understood what it meant to them. Even today, none of us know how each retiree is impacted by the decisions your Board made.
2. VCERA made promises to retirees in their estimated retirement benefits before they retired, and VCERA has been paying these retirees based on those representations for more than a decade.
3. All County retirees appropriately relied on the information provided to them when they retired. Reducing their retirement benefits retroactively is punitive and life-changing for all retirees.

4. The number of calculations VCERA staff would have to make for more than 4,000 affected retirees, the questions to be answered from frustrated/frightened retirees for the next one or two years or more, and the loss of confidence in VCERA and the County of Ventura, will be very damaging.

Based on the above, we are requesting your Board change the effective date to April 17, 2023, for the compelling cause shown above that retirees did not cause the delay in the Board's implementation of the PEPPA resolution and would be unduly burdened by retroactive implementation”.

Gerhardt Hubner, retired VCERA member, provided public comment. He noted that he had provided comments to the Board on this subject at the April 17, 2023, Board meeting. He was also providing the Board with a copy of their letter dated May 18, 2023, entitled, “Board action taken April 17, 2023”. As he requested at the previous Board meeting, both he and the other retirees present were asking the Board to read their letter and reconsider the Board’s decision from the April meeting and re-agendize the item for discussion at their June meeting for the reasons provided in the letter.

Tracey Pirie, retired VCERA member, provided public comment. She said that she was present to support the comments made by the other speakers and request reconsideration regarding the implementation date of items that VCERA believed should be excluded due to the Public Employees’ Pension Reform Act (PEPPA) and the Alameda Decision, to be effective, April 17, 2023. The change would be both beneficial to existing retirees, but also VCERA staff by eliminating the need for recalculations of more than 4,000 retirees' benefits. The impact of the Board's decision to apply these changes retroactively would be devastating to thousands that paid contributions for these items to be included as part of their final average compensation and counted on it being included in their retirement benefit calculation.

Chair Sedell thanked the speakers for their comments and said that because the issue was not on the agenda, the Board was not able to discuss the issue at today's meeting. However, the Board would consider it and also discuss it with staff.

After receiving Public Comment, the Board returned to agenda item IV.A., “Receive Annual Investment Presentation from Bridgewater: Clark Thiemann and Melissa Saphier”.

XI. STAFF COMMENT

Ms. Webb said that if the Trustees received questions from members regarding the Alameda Implementation, to please refer them to staff. As the Board knew some retirees provided public comments today regarding the Alameda Implementation. These retirees had addressed the Board several times as well as submitting several letters to the Board on the issue. They also met with the Board of Supervisors and provided remarks on the issue at one of their recent meetings. Staff had not heard any new points that had not been raised previously, however, given their level of concern, she would be putting together a written response that may be helpful to both Boards as well as the retirees. Lastly, she wanted to correct something she had previously said regarding the Alameda Implementation Updates from staff. Staff would be providing updates to the Board at every future Business meeting or combined meeting, but if Board members had questions, they were always welcome to reach out.

XII. BOARD MEMBER COMMENT

Trustee Joe asked for the status of the hiring of the additional position for the Chief Investment Officer.

Ms. Webb replied that staff had the job duties from the CIO and would be setting up a meeting with Mr. Gallagher to discuss the recruitment. She envisioned a recruitment similar to the recruitment held for the COO position, which included a brochure. The CIO would have the final approval on the formal document.

Chair Sedell asked for a timeframe on the item.

Ms. Webb said that she hoped that staff would be able to get the recruitment out in June.

Trustee Hernandez-Garcia said that she wanted to thank Ms. Webb, Ms. Nemiroff, Ms. Marshall, and Ms. Herron for all of the work that they were doing on the Alameda Implementation. Some of the Board members had been receiving negative feedback regarding the implementation, and she wished the Board would have had more options, but they did as much as they could while taking some positive steps to minimize the impact to the members.

Trustee Long noted that some of the retired employees attended a Board of Supervisors meeting last week to provide some comments on the issue. She then asked the Board of Supervisors for approval for her to work with the County's CEO and Ms. Webb to put together a presentation for the Board of Supervisors regarding the Alameda Implementation, so they could understand the issue better and so they could provide information to the County's current employees on their retirement benefits.

XIII. ADJOURNMENT

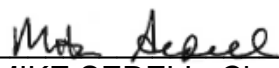
The Chair adjourned the meeting at 12:56 p.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



MIKE SEDELL, Chair