VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY & BUSINESS MEETING

JUNE 26, 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
Robert Ashby, Alternate Safety Employee Member

TRUSTEES ABSENT: Tommie E. Joe, Public Member
Kelly Long, Public Member
Will Hoag, Alternate Retired Member

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, Retirement Benefits Specialist
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 Disability & Business Meeting of June 26, 2023, to order at 9:04 a.m.

Roll Call:

Trustees Present: Aaron Grass, Art Goulet, Cecilia Hernandez-Garcia, Sue Horgan, Jordan Roberts, Will Hoag, Mike Sedell

Trustees Absent: Tommie Joe, Kelly Long, Robert Ashby

II. APPROVAL OF AGENDA

Chair Sedell recommended the Board hear a Public Comment request after agenda item III., Consent Agenda, and also move agenda item, VII.A so that it would be heard immediately after Public Comment, as it was listed as "time certain" for 9:05 a.m., followed by agenda item VIII.B. Chair Sedell also noted that Consent Agenda item III had not been completed and thus would be removed.

III. CONSENT AGENDA

Notice: Any item appearing on the Consent Agenda may be moved to the Regular Agenda at the request of any Trustee who would like to propose changes to or have discussion on the item. Note that approval of meeting minutes are now part of the Consent Agenda.

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

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

C. Receive and File Pending Disability Application Status Report.

D. Approve Disability Meeting Minutes of May 1, 2023.
To be Provided.

E. Receive and File Fiscal Year 2022-23 Quarterly Financial Statements and Budget Summaries.

1. Staff Letter from Chief Financial Officer.

2. Financial Statements.

3. Budget Summaries.

MOTION: Approve.

Moved by Goulet, seconded by Roberts

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -

Absent: Joe, Long
Abstain: -

After the vote on the agenda item, the Board advanced to item, XI., "Public Comment".

IV. APPLICATIONS FOR DISABILITY RETIREMENT

A. Application for Service-connected Disability Retirement—Henderson, Michael; Case No. 19-029.

1. Staff Memo regarding Dismissal of Application, dated May 18, 2023.

2. Hearing Notice, dated May 22, 2023.

Mr. Vencel said the applicant had applied for a Disability Retirement in 2019, and the County had challenged the application. The case was then sent to a Hearing, but the applicant unexpectedly passed away in February 2023, before his case went to hearing. Staff had searched for a family member to decide whether he or she wanted to continue the application, and finally in May 2023 staff located Mr. Henderson's only known relative, who was an uncle on the East Coast; however, this gentleman said he did not wish to continue the application, which he stated in writing. Therefore, staff was asking the Board to dismiss without prejudice Mr. Henderson's disability application.

Trustee Grass noted the applicant's Disability Retirement Application was not included in the agenda materials, and although it would not have made a difference in the case, he believed there was little information on the disability retirement.

Mr. Vencel apologized for not including the disability retirement application and provided some brief background information on the applicant.

MOTION: Dismiss without Prejudice Michael Henderson's Application for Disability Retirement.

Moved by Roberts, seconded by Grass

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

B. Application for Service-connected Disability Retirement—Wiggins, Jeffrey; Case No. 21-030.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated May 17, 2023.

2. County of Ventura-Risk Management's Response to VCERA's Preliminary Recommendation, dated March 20, 2023.

3. Supporting Documentation for Staff Recommendation.

4. Application for Service-connected Disability Retirement, filed by Applicant's Attorney, Thomas Wicke, dated September 20, 2021.

5. Hearing Notice, dated May 31, 2023.

Josiah Vencel was present on behalf of VCERA. Thomas Wicke, Attorney at Law, was present on behalf of applicant, Jeffrey Wiggins, who was not present.

Mr. Vencel provided a brief summary statement.

Mr. Wicke also provided a brief summary statement.

MOTION: Approve the Application of Service-connected Disability Retirement, Effective July 30, 2020.

Moved by Goulet, seconded by Grass

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

C. Application for Service-connected Disability Retirement—Steele, John; Case No. 21-037.

1. Staff Recommendation to Grant the Application for Service-connected Disability Retirement, dated May 31, 2023.

2. Supporting Documentation for Staff Recommendation.

3. Application for Service-connected Disability Retirement, filed by Applicant's Attorney, Thomas Wicke, dated December 2, 2021.

4. Hearing Notice, dated June 1, 2023.

Josiah Vencel was present on behalf of VCERA. Thomas Wicke, Attorney at Law, was present on behalf of applicant, John Steele, who was not present.

Mr. Vencel provided a brief summary statement.

Mr. Wicke also provided a brief summary statement.

MOTION: Adopt Staff's Recommendation to Approve the Service-connected Disability Retirement, Effective December 6, 2021.

Moved by Grass, seconded by Roberts

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

After the vote on the agenda item, the Board advanced to item, VIII.B., "County Of Ventura's Request for Board of Retirement Review and Revision of New Model Disability Process, to Require an

Additional Step of Board Approval Prior to VCERA Directing Application to Evidentiary Hearing in Cases when County Disagrees with VCERA Staff Final Recommendation for Denial".

V. INVESTMENT MANAGER PRESENTATIONS

A. Receive Annual Investment Presentation from Parametric: Dan Ryan, and Joe Zeck.

Dan Ryan and Joe Zeck reviewed Parametric's organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

MOTION: Receive and File.

Moved by Roberts, seconded by Horgan

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

After the vote on the agenda item, the Board advanced to VII.B., Alameda Implementation Status Report".

VI. INVESTMENT INFORMATION

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

A. $25 Million Commitment to Crayhill Principal Strategies Fund III.
RECOMMENDED ACTION: Approve.

1. Staff Letter from Chief Investment Officer.

2. Joint Fund Recommendation Report from NEPC.

3. Crayhill Principal Strategies Fund III: Shamafa Khan, Carlos Mendez.

Mr. Gallagher said he and NEPC were jointly recommending a $25 million Private Credit fund commitment to the Crayhill Principal Strategies Fund III.

MOTION: Approve a $25 Million Commitment to Crayhill Principal Strategies Fund III and a $25 Million Commitment to Crescent Cove Capital Fund IV, L.P.

Moved by Goulet, seconded by Grass

Vote: Motion carried
Yes: Grass, Goulet, Horgan, Sedell
No: Roberts
Absent: Hernandez-Garcia, Joe, Long
Abstain: -

Trustee Roberts noted that he voted no on the agenda item because he had wanted to hear the investment presentation for the Crescent Cove Capital Fund IV, L.P., before he voted on it.

After the vote on the agenda item, the Board advanced to item VIII.A., " Review and Adoption of Proposed Budget for Fiscal Year 2023-2024 Budget".

B. $25 Million Commitment to Crescent Cove Capital Fund IV, L.P.
RECOMMENDED ACTION: Approve.

1. Staff Letter from Chief Investment Officer.

2. Joint Fund Recommendation Report from NEPC.

3. Crescent Cove Capital Fund IV, Presentation: Jun Hong Heng.

C. Report of On-Site Due Diligence Visit to Walter Scott and Partners Limited.
RECOMMENDED ACTION: Receive and File.

1. Staff Letter from Chief Investment Officer.

Mr. Gallagher reported that he had conducted an on-site Due Diligence visit on May 8th and then attended Walter Scott's 2023 Research Conference.

MOTION: Receive and File.

Moved by Horgan, seconded by Roberts

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

After the vote on the agenda item, the Board returned to item, V.A., "Receive Annual Investment Presentation from Parametric: Dan Ryan, and Joe Zeck".

D. Monthly Performance Report Month Ending May 31, 2023.
RECOMMENDED ACTION: Receive and File.

Mr. Martin presented the Monthly Performance Report Month Ending May 31, 2023.

MOTION: Receive and File.

Moved by Goulet, seconded by Roberts

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

After the vote on this agenda item, the Board returned to item, VI.C., "Report of On-Site Due Diligence Visit to Walter Scott and Partners Limited".

VII. OLD BUSINESS

A. Hearing on Administrative Appeal Filed by VCPFA and Individual Members re Standby Pay.
Time Certain at: 9:05 a.m.

1. Amended Summary of Evidence, Proposed Findings of Fact and Conclusions of Law, and Recommended Decision, submitted by Hearing Officer, Deborah Z. Wissley.

2. Opening Statement re Exclusion of Standby Pay for Ventura County Firefighters.

   a. VCPFA Appeal Exhibit A, Letter from President of VCPFA to County of Ventura, Auditor Controller Regarding Payroll Codes.

   b. VCPFA Appeal Exhibit B, Work Schedule for VCPFA, May 2021 to April 2022.

   c. VCPFA Appeal Exhibit C, Ventura County Fire Department, Standing Order for Wildland Fire Season.

   d. Declaration of Kevin Aguayo in Support of Ventura County Professional Firefighters' Association Alameda Appeal.

3. Reply Statement re Exclusion from Compensation Earnable of Standby Pay, Received by Ventura County Firefighters on and after January 1, 2013.

   a. VCERA Response Exhibit A, VCERA Resolution Regarding Pensionable Compensation Determinations.

   b. VCERA Response Exhibit B, VCERA Resolution Regarding Alameda Implementation to Compensation Earnable and Pensionable Compensation.

   c. VCERA Response Exhibit C, VCERA Resolution to Implement the Decision of the CA Supreme Court Regarding "Compensation Earnable and Pensionable Compensation".

   d. VCERA Response Exhibit D, VCERA Retirement Administrator Letter Regarding the Ratification of Pay Codes Impacted by the October 12, 2020, Board Resolution Regarding Alameda Implementation.

   e. VCERA Response Exhibit E, VCERA Business Meeting Minutes for May 24, 2021.

   f. VCERA Response Exhibit F, VCERA Resolution, Appeals Process for Benefit Determinations Arising Out of the Alameda Supreme Court Decision ("Alameda Appeals") to Reply Statement by VCERA.

   g. VCERA Response Exhibit G, MOA Between VCFPD and the VCPFA, August 1, 2021 – July 31, 2024.

   h. VCERA Response Exhibit H, MOA Between VCFPD and the VCPFA, July 31, 2018 – July 31, 2021.

i. VCERA Response Exhibit I, Example of Standby Pay Earned for 2013 to 2022.

j. VCERA Response Exhibit J, Letter from D. Mastagni, Esq., Appeal of Exclusion of Standby Pay for Ventura County Firefighters, Dated February 28, 2022.

k. VCERA Response Exhibit K, Letter from VCERA Retirement Administrator to D. Mastagni, Esq., Appeal of Exclusion of Standby Pay for Certain Members of the VCPFA., Dated March 25, 2022.

l. VCERA Response Exhibit L, County of Ventura, Job Code & Salary Listing by Title, for Pay Period 2022-14.

4. Augmentation of Record with Documents Submitted by VCPFA and VCERA.

    1. VCPFA's Request for the Board to Augment the Administrative Record Regarding the Standby Pay Appeal.

        a. VCPFA 's Exhibit A, Amendment to the Memorandum of Agreement (MOA) between the Ventura County Fire Protection District ("District") and the Ventura County Professional Firefighters Association ("VCPFA")

    2. VCERA's Response to the Request to Augment the Record and for Reconsideration.

        a. VCERA's Reply Tab 1, Recommendation to Commence a Public Hearing Regarding Adoption of the Amendment and Waiver of Second Public Hearing.

            i. Exhibit 1: VCPFA 's Amendment to the Memorandum of Agreement (MOA) between the Ventura County Fire Protection District ("District") and the Ventura County Professional Firefighters Association ("VCPFA").

        b. VCERA's Reply Tab 2, Email between VCERA's Administrator, Linda Webb and Labor Relations Manager, Mick Curnow.

Ms. Webb noted that each party would have 10 minutes to make their initial arguments and then 5 minutes for rebuttal unless the Chair decided to allow more time. The Board would then allow for public or non-party comments, if applicable. The VCPFA would make their initial arguments first.

Mr. Mastagni said that he was appearing on behalf of the appellants who were members of the VCPFA. He thanked the trustees for their consideration of his clients' appeal and asked the Trustees to carefully consider the actual claims raised in the appeal and to disregard the outside recommendation, as it failed to properly address and consider the actual claims raised. The recommendation was predicated on a fundamental misunderstanding of the nature of their appeal. This was reflected on page 12 of their statement, where the recommendation misstated, "*appellants argue that the mandatory nature*" of the standby pay rendered them normal working hours. The analysis then just restated the holding of the Alameda Decision (*Alameda*) and the California Employees Retirement Law (CERL), which they did not dispute and have never disputed, which was that even mandatory standby, if performed outside the normal working hours, was excludable. So, the way that the issue was framed, the recommendation merely restated the law without looking to

the actual facts and claims raised, and thus the analysis then should be disregarded because it did not assist the Trustees in addressing these considerations.

Mr. Mastagni continued that the appeal did not ask the Board to include all standby pay in pension calculations. To the contrary, the five members (2 aviation managers and 3 heavy equipment operators) who were appealing were seeking inclusion of only the pay for standby hours that were part of their normal working hours, and they did not contest the exclusion of other ad-hoc hours outside the regularly scheduled standby hours, regardless of whether they were mandatory or voluntary standby hours. That was something that permeated all of the briefing and was a misrepresentation that their case was about mandatory or voluntary standby hour; rather, it had always been about whether they were regularly-scheduled hours. The Aviation Managers worked regularly-scheduled standby hours consisting of 8 hours worked contiguously with their regularly-scheduled shifts. It was part of their regular schedule; they had their on-duty time and then immediately they went into standby pay, that was regularly scheduled for all of the regular scheduled shifts. As for the Heavy Equipment Operators, they worked seven 24-hour standby shifts, every 3 weeks, which were part of their regular schedule, so these employees worked additional standby that was either volunteered or they were ordered to do it when needed. They acknowledged that this was excludable, and not part of their appeal.

The recommendation cited variations in the amount of standby earned by the appellants as a justification for its holding, but that fact was irrelevant, and it was to be expected. Prior to *Alameda*, all standby pay was includable, including the amounts that were regularly scheduled, including both regularly-scheduled and ad-hoc time. So, they were comingled as there was no reason to segregate them given they were all being included, and so the inclusion of the regularly scheduled standby and the ad hoc standby did result in irregular variations in the amount of standby pay earned; but, there were easy solutions to the problem. VCERA could minimally implement a prospective fix by adopting a separate pay code, which the union had already requested for regularly-scheduled standby. This would allow the exclusion of all of the ad-hoc standby pay. Since only one appellant had retired, it would solve most of the issues for the appellants in the case. For the member who did retire, the Board could simply cap the amount of includable standby pay at the number of hours regularly scheduled during the final compensation period, which would be easy to calculate based on the labor agreements.

The recommendation also cited the *Stevenson* case, which they also advocate for because it supported their appeal because it held that normal hours mean regularly scheduled. That was the case here, as reflected by the side letters, which defined the regularly-scheduled standby pay as part of the regular work schedule. The hours at issue were more than just pre-scheduled as described by the recommendation; they were a negotiated portion of appellants' working hours, which were paid at a lower rate because the Fair Labor Standards Act (FLSA) did not require standby to be paid at the on-duty rate or at an overtime rate. The Association recognized VCERA's concern that normally-scheduled standby hours needed to be distinguished from other generic standby hours, which was excludable and needed to be clarified in the Memorandum of Understanding (MOU). Thus, the union requested a new pay code for scheduled standby to allow VCERA to exclude all standby that was not part of normal working hours. They also amended the labor agreements to clarify this distinction and properly set forth the existing practices separately in the labor agreements.

The Association was very disappointed that after doing everything that it believed it was asked to do, they were now being told that there was a per se exclusion of all standby pay. However, *Alameda* never prohibited the exclusion of all standby pay as advocated in the respondent's brief. If the Supreme Court had wanted to do so, it would have set forth a per se exclusion expressly in *Alameda.* The position being advocated violated *Alameda* and the CERL, which required the inclusion of pay for standby that was part of the normal working hours, as segregated from the other ad-hoc standby

payments. Finally, the recommendation also focused on the MOU definition of on-duty hours, but this placed form over substance. He concurred with Ms. Dunning's letter brief where she stated that courts did not look to form over substance. This was the flaw in this part of the analysis: CERL looked to the actual hours normally worked, not artificial definitions in an MOU. On-duty hours and standby hours were both normal hours that were set forth in different sections because they were paid at different rates for different types of work. In the case of *City of Sacramento vs. PERS,* a case that involved 10 hours of regularly scheduled overtime that firefighters worked, the Court said that those hours had to be included. Just like in that case because these normal hours were labeled standby and paid at a different rate of pay, that did not change the fact that they were regularly scheduled standby hours and that they were part of the firefighters' normal working hours. He noted that in the Sacramento case, their firefighters received 10 hours of overtime premium for working the regularly scheduled 192 hours in a 24-day cycle because the FLSA overtime threshold was 182 hours. Sacramento wanted to exclude the 10 hours of half pay or premium pay, and Sacramento placed form over substance in the very same manner as advocated here by seeking to exclude these hours claiming they were not paid at the normal work rate. The Court there held that the FLSA premium pay must be reported as non-overtime compensation, for PERS purposes, if the overtime was earned within the normal work week. The CERL effectively adopted the same definition as PERS for normal working hours, thus the scheduled standby presented the same type of issue because the standby that they were appealing was regularly scheduled and reoccurring, that by definition in the labor agreements was, "part of their regular work schedule", which was simply paid at a lower rate than on-duty time. The rate of pay in the FLSA designation of the time was irrelevant to it being includable, just like it was in the Sacramento case. FLSA allowed employers to pay different rates of pay for different types of work and, FLSA did not consider standby pay to be overtime. In conclusion, the entire recommendation was predicated on a misrepresentation of the meaning of scheduled standby, and the respondent's brief simply restated the requirement to only include compensation for normal working hours and misconstrues regularly scheduled standby as payment for services outside normal working hours, without distinguishing between standby that was a part of a member's normal working hours and ad-hoc standby, that they agreed should be excluded. The Association and the individual appellants respectfully ask the Board to adopt the rule segregating regularly scheduled standby that was part of the employees normal work hours and include those standby hours in members' final compensation calculations. He then said that he would yield his remaining time to Kevin Aguayo, President of VCPFA.

Mr. Aguayo stated that he wanted to put everything in context. When they brought forth this case, Ms. Dunning gave them a list of things that made the standby in question non-includable. They went back and renegotiated the contract because the Fire Chief recognized that the MOU was very weak in that area. They clarified what normal working hours were. Part of their argument was that the hours were inconsistent, but these are First Responders who were paid to be on standby and could be recalled in the event of emergency, and they were. When some of the hours were not reported, that made sense for some of their bulldozer operators who were gone for two weeks at a time because they would be earning overtime at that point, and so they were not on standby. So, the hours would not be consistent because they were actually working (i.e., they were being paid to come back to work). Therefore, they had done everything that was asked of them, and had renegotiated the contract, and provided more than enough information in the case that showed why their Operators and the Aviation Unit should have the hours in question included in their pensionable calculation. So, he urged the Board to side with them and the workers.

Ms. Dunning explained that the hearing officer correctly determined, after considering the briefing and evidence presented, that the hours that were being submitted as pensionable were in fact not pensionable, both under subdivision (b)(3) of Government Code, section 31461, which mandatorily excluded all payments for additional services rendered outside normal working hours, whether they were paid in a lump sum or otherwise, and in light of the fact that *Alameda* determined that the

statute was constitutional. The exact language from the hearing officer's proposed decision on page 12, lines 23 to 25, were correct. They did not misstate the issue in the case, and stated, "required or mandatory work hours that are outside of normal hours/normal work shifts and which are not regularly scheduled for employees in the member's grade, group or class were not items includable in compensation earnable". Counsel had tried to make a distinction here between required and mandatory, which he conceded was not the question to be considered with respect to standby, versus what he characterized as regularly scheduled, but she felt that it was the same thing that was being argued. What counsel had argued was that the advanced scheduling of certain standby hours made them pensionable, which was essentially another way of saying, once you have mandated through the advanced scheduling that a particular standby hour be within the schedule of an individual, they have rendered it pensionable, and this was not what the law allowed. Now that the Public Employees' Pension Reform Act (PEPRA) had become the law that applied to VCERA, and in particular the amendments to the compensation earnable definition, there were portions of time where people render additional services, whether it was that they were waiting to be called back to work or they were in fact called back for overtime, that were not pensionable. They received pay for them (at lower rates for standby and at higher rates for overtime), but in neither case were they pensionable. They were actually the flip side of the same coin; under the MOU, it was very clear that one cannot be paid both standby and callback because it was the same time (they were either sitting and waiting to be called back to work or they were called back to work on overtime). In either event, it was not part of their normal shift, and it was not the pay for which you receive your normal pay; it was something additional. That was exactly what the legislature prohibited from being included in compensation earnable with the enactment of PEPRA. The fact that *Alameda* did not specifically detail all of this was not probative of the question of what the plain language of the statute meant. The Supreme Court was addressing whether or not this additional exclusion was constitutional or not. The Supreme Court concluded that it <u>was</u> constitutional because there were constitutional reasons for the legislature to have excluded standby from compensation earnable. The constitutional reason was that it was not consistent with the theory and operation of a successful defined benefit plan to have people receive benefits that were paid based on time that was not part of the normal workday. Thus, overtime was always excluded, and therefore standby, the flip side of the same coin, was also excluded. The Supreme Court said that it was constitutional, and the legislature was not required to provide a compensating additional benefit because that would have undermined the constitutional purpose of excluding these pay items. The hearing officer considered these factors. She addressed the additional information that counsel submitted, supplemented the proposed findings of fact and recommended decision confirming that the advanced scheduling of standby pay does not render it pensionable. Therefore, Ms. Dunning urged the Board to adopt the Findings of Fact and recommended decision, because they reflect an accurate statement of California law on the topic.

Mr. Mastagni said Ms. Dunning said something very extreme, which was that the legislature and the Court banned standby pay from being included, but he would ask her to point out where in the legislation, in the statute, or in the Court decision that there was a per se ban on standby pay. The cheat was that everywhere it was reflected, standby pay in the briefing and in the recommendation was labeled as the definition of excludable. It was referred to as standby pay "outside the normal working hours". The fact that counsel and the recommendation have to add that qualifier reflected the fact that standby pay was not inherently outside the normal working hours. The legislature could have said all standby pay was excluded. He knew the California Supreme Court was very intelligent, because he argued the case on behalf of the Alameda Deputy Sheriff's Association, and they could have said that all standby pay, in any circumstances, was inherently outside the normal working hours and excluded, but they did not. That was why the qualifier was added in all of the briefings by respondents, and the recommendation was labeled as standby pay outside the normal working hours. That label presumes the conclusion that if it was outside the normal working hours, it was excludable. They agreed that standby pay outside the normal working hours was excludable, but there was a definition for normal working hours. The *Stevenson* case set forth that normal working

hours are part of the regularly scheduled time, and it was more than just pre-scheduled because it was duty time, just like the 10 hours of overtime in the Sacramento firefighter case, where that 10 hours of overtime was baked into the regular schedule. PERS, using the same definition, said it was part of their normal hours and it is compensation even though it is defined as overtime under the FLSA it was not for purposes of pension law, it was part of the regularly scheduled hours. Nothing disputed the fact for these pilots and bulldozer operators that this narrow amount of time was built into their schedule, and it was part of their schedule as much as their on duty time. Lastly, he wanted to urge the Board to disregard the discussion on callback time because it was a red herring that had nothing to do with their appeal. When you are on standby pay, you are available to be called back, and there was required scheduled time that were normal working hours, just like a Canine Officer could get paid minimum wage for taking care of their dog and it was paid at a different rate. So, if a firefighter was actually called back to work or any other employee for that matter, then they were actually working overtime, which was excludable. They were called back to work overtime that was not part of their regular normal hours. But if they were receiving standby pay, and it was built into their schedule and it was tied directly to the shifts for these employees, then it was part of their normal hours. Neither opposing counsel nor the recommendation had cited any authority for the sweeping proposition that *Alameda* or PEPRA outlawed all standby pay in every instance or that it was inherently work outside the normal hours. It was just like anything else, it was paid at a different rate of pay, and the small portion that was regularly scheduled was part of the normal working hours and they respectfully submit that it should be included. They also recognized that there was a problem with the comingling, and they wanted to be partners with the Board and the County and come up with a solution that made it easy to calculate the includable portion of these earnings and to exclude the portions that should be excluded under *Alameda* and the changes to the CERL under PEPRA.

Ms. Dunning stated that there was nothing radical about reading the language of the statute for what it said, which was that payments for additional services rendered outside of normal working hours were excluded as a matter of course from compensation earnable. The legislature necessarily does not use terms that were used in MOU's, whether it was standby pay, on-call pay, canine pay, or any other type of pay that was for services rendered outside normal working hours. She mentioned canine pay because the Sacramento Superior Court last month ruled that canine pay for services rendered overnight while taking care of a dog was also mandatorily excluded from compensation earnable, as the VCERA Board concluded when it first adopted its implementation of PEPRA. The City of Sacramento had been mentioned here in argument, but that case did not stand for what it had been asserted it stood for. It did not stand for the proposition that such pay was mandatorily included; rather, it stood for the proposition that prior to PEPRA, the CalPERS board had the discretionary authority to have determined that the fact that something was FLSA pay did not necessarily exclude it from the compensation earnable definition under PERL. However, that was pre-PEPRA case law and it also was a determination that upheld the discretionary authority of the board in that instance, it was not one that was decided post-PEPRA, considering a mandatory exclusion that now bound the Board under CERL.

Trustee Grass commented that Sheriff's Major Crimes was in a similar situation. He was on a 9/80 schedule and required to work two (2) five-day weeks and two (2) weekends a year. He would prefer not to work them due to family and other obligations but those were mandatory work hours. He understood the problem with the way the County did not differentiate between those hours and on-call hours. He personally had not taken any on-call hours that were not mandated. He agreed with Mr. Mastagni, and he could see Ms. Dunning's point also. He did think when it comes to Public Safety that there were additional things that were required of them like being put on call, whether they want to be or not because it was part of the job. If he were to say that he was not going to work on call hours, he probably would not have the assignment he currently had. So, he did think that they were normal hours. He felt that it could be abused; he knew prior to *Alameda*, there were people who took

on huge amounts of on-call hours in order to spike their pension. However, they were talking about these insignificant amounts of time, that in his case was 2 full weeks a year, that he was on call. It was not something he could control, and it was not used to spike his pension. Whether he got called back for overtime, he did feel that they were normal working hours because they were mandated by his position.

Trustee Roberts asked Ms. Dunning if the County were to include these standby hours as part of the job description and outline them as regular hours would they be pensionable.

Ms. Dunning replied that the question would whether they were in fact a part of the shift, and her understanding was that because they were paid at a lower rate, it was hard to imagine context where someone was willing to work for less that their normal rate of pay, for part of their normal shift. So, it did appear that there was an across-the-board exclusion intended by the legislature for the type of services provided in the context of standby pay. So, she did not know if someone could draft an MOU to include standby pay, if they were paying them at a lower rate of pay than normal in their normal working hours, given the unlikelihood of employees being willing to do that.

Trustee Roberts said that he knew the MOU was one thing, but what about the job description.

Ms. Dunning said the answer would be the same, in terms of normal working hours. As Trustee Grass noted, there would be expectations that a certain number of standby hours would be worked by employees in safety positions, which was expected and required, just as there was an expectation and a requirement for overtime, under certain circumstances, such as emergencies. However, in neither of those circumstances were they pensionable, which was what legislature had said. They said that defined benefit payments that were paid for people's lifetimes were supposed to be reflective of what they worked in the normal course of their normal working hours, not what was outside of that. Its intent was not to not pay people for the important work that they did, it was just not supposed to be included in their retirement allowance, regardless of how the MOU was phrased.

Trustee Roberts remarked that he understood the situation because he also works standby hours. When standby hours become a part of a person's schedule, on a yearly basis, it became a gray area for him.

Trustee Grass noted that the fact that the Safety members were being paid less for work being done related to standby hours was unique to Public Safety. So, they chose to be paid less, and it was not negotiable, and the reason people work for less than they were due was because they wanted to serve. So, he felt that it was mandatory because if someone did not report to work during their standby hours, they would be disciplined.

Trustee Roberts asked if other Counties had a way to pay their Safety employees for standby hours that would be pensionable as well, such as assignment premiums.

Mr. Mastagni replied that he knew of a number of ways that it could be done, and one of those ways was by giving the employee a pay incentive for that type of work or position.

Ms. Dunning pointed out that in all of the cases she had litigated, the Court had determined that standby pay was not includable per se. There were assignment and differential pay that, if added to someone's schedule, could potentially be included, subject to the criteria of compensation earnable. However, that was a different type of pay that was negotiated to a different and larger group of employees.

Trustee Roberts then said that this case was another example of an issue where the County had control over the situation by making changes to their job descriptions, and MOUs. However, these cases ended up before the Board of Retirement, when a better place to resolve the issue would be with the County.

Ms. Dunning noted that the examples of standby within their own units was very illustrative of the problem here, which was that a lot of different groups get standby and there were various nuances in terms of what MOUs may or may not say, what was actually required and what was voluntary. These were factual considerations that were far beyond what a Retirement Board should be expected to do in terms of assessing pensionability when there was, as Mr. Mastagni noted, both a ceiling and a floor. The Board was not supposed to have discretion over an assessment about whether a particular individual's pay item was pensionable or not. These were supposed to be determinations made across large groups and classes as the *Stevenson* case noted. Standby and on-call hours were definitionally pay for services rendered outside normal working hours (when some someone was not working, they are waiting to be called back to work, they may not drink alcohol, they have to be within a certain distance from headquarters, etc.). There were responsibilities that come with the job and that also came with the pay associated with it, but it was definitionally an additional pay for services rendered outside normal working hours, as were the types of standby pay that the Trustees had noted in their own units, and all of that supports the conclusion that none of it was pensionable.

Trustee Goulet asked when these employees go on vacation, what they got paid, and whether they were paid their normal pay or instead paid for the standby hours they were not providing.

Ms. Webb noted that it was mentioned in the briefing materials. Traditionally, vacation time was paid at a regular rate, and if someone was not on standby and was on vacation, they were paid at their regular rate.

Trustee Goulet said that standby pay was not really pay for someone’s regular hours, but outside of that. He also thought that the idea that if someone was on standby and they were called back, they did not get paid for standby, which was also indicative of a separate type of pay.

Mr. Mastagni remarked that he did not agree with that, because there were a lot of instances where the leave payments were different than what employees earn when they were working, and pensionability was a different question. For example, it was not uncommon if an employee were off work, even if the regular schedule would have them earning a night shift differential, they would not receive that pay. However, that does not mean that when they were working and receiving a night shift differential, that night shift differential was excludable. What really mattered was in the definition of the CERL, it was whether or not it was part of the employee's normal working hours. There was also a factual component to that, and the Board did have the proper discretion to make a factual determination as to whether the hours at issue in their appeal were part of the normal working hours. That would not be redefining, reinterpreting, or changing the law; it was an actual determination, so that they could apply the law as it was written. He also wanted to point out again that counsel could not point to anywhere where there was a per se exclusion of standby pay; the court could have said that if that was what they meant.

Ms. Dunning said she simply wanted to note again that the Court described standby pay as one of the types of pay for services rendered outside normal working hours that the statute, as amended by PEPRA excluded.

Mr. Aguayo stated that he wanted to provide clarification on something Trustee Goulet asked about when somebody goes on vacation. For instance, if one of the Bulldozer Operators went on vacation, his standby hours had to be covered by somebody. Those positions were mandatorily staffed, so that

somebody would be working in that position for the duration of that time. There were 7(k) exemptions within the FLSA (*Title 29 United States Code § 207(a)). Section 7(k)*) that allowed for the discounting of certain hours and benefits and how the employee was paid, but just for clarification those hours were going to be covered by somebody.

Ms. Dunning said she would reiterate the point Ms. Webb made, which was within the briefing, that it was almost definitional that if someone were not working their normal working hours and went on vacation, they were paid their normal rate of pay. Also, as Mr. Aguayo noted, if someone went on vacation, someone else would have to cover those standby hours to provide services, outside of normal working hours. The distinction that was drawn between night shift differentials and the standby pay was the red herring, because night shift differential was an additional pay item that was negotiated for a special service that was being provided within someone's normal working hours, as opposed to an additional service that was rendered outside somebody's normal working hours, which was why the latter was excluded.

Mr. Mastagni responded by saying that for the 10 hours of scheduled overtime that firefighters work in California, if they do not actually work the time, the FLSA did not require those 10 hours to be paid at a premium rate. So, they were not earning that money and it was not included in their pension when they take vacation, but when they do work it was included in their pension, which was the best on-point example for firefighters. How vacation was paid really had no bearing on whether or not an item of compensation was pensionable.

Ms. Dunning then said that she did not believe the appeal was about the FLSA pay of an additional 10 hours, so will just leave the Board with the comments she had already made.

Chair Sedell noted in his reading of the appeal that there was always a distinction between standby hours and work hours. Standby was not considered normal work hours because they were standing by to be called for work, but they were not working. They were being paid for an inconvenience. Once they get the call, then they are working overtime, not regular hours.

Mr. Mastagni then said that Chair Sedell was correct with how the FLSA treated standby pay. The FLSA considered standby compensation for the scheduled time that the employees worked. The FLSA and the CERL statutory constructions were different, and the legislature had deemed standby to be hours of work. So, that was why it was treated differently, and it did create a natural confusion.

Ms. Dunning stated that Mr. Mastagni was incorrect that CERL had deemed standby to be included. CERL had deemed standby <u>not</u> to be included for exactly the reason that Chair Sedell noted.

<u>MOTION</u>: Accept the Hearing Officer's Recommendation that the Appeal filed by VCPFA Regarding Standby Pay be Denied, Including Findings of Fact and Conclusions of Law.

Moved by Goulet, seconded by Horgan

Vote: Motion carried
Yes: Goulet, Hernandez-Garcia, Horgan, Sedell
No: Grass, Roberts
Absent: Joe, Long
Abstain: -

After the vote on the agenda item, the Board returned to item IV.A., "Application for Service connected Disability Retirement—Henderson, Michael; Case No. 19-029".

B. Alameda Implementation Status Report.
RECOMMENDED ACTION: Receive and File.

Ms. Herron noted some key milestones achieved in the implementation project. Of particular importance, the County had stopped collecting contributions on pay items in excess of normal working hours, for situational pay codes. The County would also be rolling out a change to limit contributions on Flex Credits that week to the maximum cashable amount as defined in the April 17th Board Resolution. This change was accompanied by a change to the Flexible Benefits program structure for most unions, where the Opt-Out Fee would be replaced by an Opt-Out Allowance. Also, regarding communications to the public on the implementation, staff had put together a Glossary of Terms and a list of Frequently Asked Questions on the Alameda Decision that would be posted to VCERA's website soon. Staff had also posted a list of pay codes impacted by Alameda for reference. Staff were still working out some of the details and resources for the implementation plan. At this point, she believed the project would take at least two years to complete, hence the request for the two-year Fixed-Term positions in the administrative budget. Also, staff were evaluating different options for how to build the tools and the system changes needed to process the mass corrections, as well as how to do it within a reasonable timeframe. Calculations to account for the excluded pay items for new retirements were currently being done manually and would continue to be until staff could process the corrections to historical data, because they needed to review employees' past earnings.

Also, she knew that the Board was interested in getting more details about the impacted population was related to the Alameda Implementation, and because the County would have stopped contributions on all excluded pay items by the beginning of the fiscal year, the gate was closing on the population, so staff soon would be able run updated counts to provide better numbers, and they would be providing that information to the Board, as soon as possible. Lastly, she thanked the VCERA team who was working diligently on the project (with herself as the Project Manager): Linda Webb, Lori Nemiroff, La Valda Marshall, Leah Oliver, Shalini Nunna, Rebecca Villalobos, and Josiah Vencel. She thanked the analysts David and Michelle and the Operations Staff (who continue to process estimates, service credit purchases, and retirements). She thanked the County of Ventura for being a partner in implementing the payroll system changes needed to properly account for the Alameda decision and for including VCERA staff in the testing cycles that help verify the accuracy of the calculated retirement contributions.

Trustee Hernandez-Garcia asked if the contributions for the Flex Credit would stop by the end of the next pay period.

Ms. Herron explained that the contributions on non-cashable Flex Credit would stop by the next paycheck date based on the County's upcoming system changes.

Trustee Hernandez-Garcia then asked if there was any sort of communication that would be going to be sent to the members from the County regarding this because members may be surprised if they notice a change in their paycheck, without any advance notice.

Ms. Webb said that she did not believe that the County would be sending any notice out to the members, but VCERA staff would continue to post any updates on VCERA's website, and staff urged all members who were interested in following the Alameda Implementation to sign up to receive notifications.

Trustee Goulet asked Ms. Herron if she had an estimate on the number of members who were going to be impacted by the PEPRA Exclusions, because he believed VCERA had about 4,000 retired

members that retired between January 1, 2013 and today. He had a gut feeling that not every one of those members was going to have their retirement adjusted.

Ms. Herron said that staff did not have that information yet, and they were actually working on that currently. The gate had essentially closed on that, and staff had some numbers, but the numbers were just in different groups, and they haven't looked to see where they may overlap. So, she was not able to provide that number yet.

Ms. Webb clarified that Ms. Herron was talking about active payroll, but staff was mimicking the corrections process for the retired member, because some of them will have had situational pay codes in their retirement calculations. So, not every single retired member who retired after 2013 would see a change in their retirement calculation, it would only affect certain members, for instance those that had leave straddling in their retirement calculation.

Trustee Goulet then said that he just had a gut feeling that there were far fewer people who straddled.

Ms. Webb replied yes, it was most likely related to the Tier I retired members.

Trustee Goulet said that if he remembered correctly, VCERA had started adjusting retirement benefits related to straddling issue back in 2020.

Ms. Webb replied yes.

Trustee Goulet remarked that he did not think the retired members who had come to the Board meetings recently to provide public comment on the April 17th decision fully understood that there had been ongoing adjustments to retirement benefits for three years.

MOTION: Receive and File.

Moved by Goulet, seconded by Horgan

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

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

VIII. NEW BUSINESS

A. Review and Adoption of Proposed Budget for Fiscal Year 2023-2024 Budget.
RECOMMENDED ACTION: Approve.

1. Staff Letter from Retirement Administrator and Chief Financial Officer.

2. Proposed Budget for FY 2023-24.

3. Budget Presentation from Chief Financial Officer.

Trustee Goulet noted that the Finance Committee had spent considerable time reviewing the proposed budget, and they made some suggestions related to clarifications, primarily. He also

believed the meeting was held before Ms. Webb had announced her resignation, and at the last Board meeting, he believed the consensus was that the Board would be hiring an outside recruitment firm. So, he believed the Board should add some funds to the budget to pay for the hiring of a recruitment firm, but other than that, the Finance Committee's recommendation was to approve the budget.

Ms. Marshall then presented the Proposed Budget for Fiscal Year 2023-2024 to the Board.

Chair Sedell said that next year, he would like to be able to look at the previous actual budget before comparing it to the new proposed budget, because currently, the Board had to make comparisons to a budget that doesn't show what was actually spent. So, it would be helpful if the Board had estimated actuals instead of the 2022-23 budget next year.

Ms. Marshall said she believed it was a great idea because staff had recently presented the mid-year budget with estimated projections.

Chair Sedell noted the funds allocated in the budget for due diligence Trips was very minimal. He felt there should be more funds allocated to allow Board members to attend such trips, because it was extremely important for the Board members to get an understanding of how things worked, as well as getting to know VCERA's CIO and to get a feel for the work he did on VCERA's investment portfolio.

Chair Sedell also asked if staff had a total cost amount related to the *VCERA Project for Alameda Corrections (VPAC),* as well as the impact of the 4 staff members that were moved from their normal assignments and assigned to the VPAC project.

Ms. Marshall said staff did not yet have a total cost for the VPAC project, but staff could work on getting that for the Board.

Ms. Webb stated that it was the reason that staff was tracking the amount of effort that staff was spending on the project, so they could see what the impact was, and staff was also asking for 4 new Fixed-Term positions to help with the project.

MOTION: Approve and Adopt Proposed Budget for Fiscal Year 2023-2024, with the Addition of $40,000 for the Retirement Administrator Recruitment.

Moved by Goulet, seconded by Hernandez-Garcia

Vote: Motion carried
Yes: Grass, Goulet, Hernandez-Garcia, Horgan, Roberts, Sedell
No: -
Absent: Joe, Long
Abstain: -

After the vote on the agenda item, the Board took a 10 minute break at 12:22 p.m.

The Board returned from break at 12:34 p.m.

The Board then returned to agenda item, VI.D., Monthly Performance Report Month Ending May 31, 2023".

B. County Of Ventura's Request for Board of Retirement Review and Revision of New Model Disability Process, to Require an Additional Step of Board Approval Prior to VCERA

Directing Application to Evidentiary Hearing in Cases when County Disagrees with VCERA Staff Final Recommendation for Denial.
RECOMMENDED ACTION: DIRECT VCERA STAFF TO ANALYZE COUNTY'S REQUEST, OUTLINE OPTIONS AND MAKE APPROPRIATE RECOMMENDATION.

1. Staff Letter from Retirement Administrator.
   To be Provided.

2. Memorandum from County of Ventura, Dated June 14, 2023.

Ms. Laveau, representing County Risk Management, asked the Board to consider revising one aspect of the New Model disability process that the County believed to be inconsistent, adding that her comments did not relate to any specific case. In situations where VCERA staff recommended denying an application for disability retirement, but the County believed it should be granted, Ms. Laveau wanted the Board to be made aware in real time of parties' differing positions before a case was directed to evidentiary hearing. She noted that this rare scenario did not exist under the Old Model and that this fact pattern occurred in a pending fast-track case. The County believed the widely-publicized case should have been referred for investigation to another CERL system to avoid any perception of a conflict of interest, as done under the Old Model. Ms. Laveau restated that the purpose of her comments was to notify the Board of these areas of inconsistency in the New Model process and possible impact related to a specific case.

Mr. Pettit, representing the County Executive Office, cited the County's memo to the Board in bringing to the Board's attention an issue with the New Model process that it would not have otherwise known. He said a consistent approach would be if the Board of Retirement heard cases where VCERA staff's recommendation was to deny, but the County's position was to grant. He suggested using the cited case as a "test case" for applying this more consistent approach.

Ms. Webb stated staff's recommendation today was for the Board to direct staff to analyze the County's request, outline options for the Board and make an appropriate recommendation. She summarized the fast-track process and noted that the decades-long practice had been for a case to go to hearing that was challenged or recommended for denial by the investigating party. Referring to the County's memo, Ms. Webb agreed that it was too late to direct the previously-cited case to another CERL system for investigation. She noted the criteria for such a referral would not be the applicant's status as a County officer, but rather potential bias. Ms. Webb also stated that the applicant was given the opportunity to expedite the process by waiving the 30-day waiting period, but the applicant elected not to do so. The applicant also declined to complete paperwork to receive death benefits. Ms. Webb noted that if the Board chose to hear the case itself, this action would be an unprecedented deviation from past practice in which the Board relied on hearing officers to review all facts. She stated that a case being directed to hearing was not based on disagreement among parties, but on the investigating party's recommendation to deny. She added that an independent review by a hearing officer provided the best due process for the member.

Trustee Horgan asked if staff recommended denial in this case.

Ms. Webb replied yes, and then summarized the process when staff recommends denial.

Chair Sedell asked if the County was given the opportunity to comment on staff's recommendation to deny.

Ms. Webb replied yes, as was true in every New Model case.

Trustee Horgan asked if the issue was about a particular case or the process.

Ms. Webb said she was also stuck on that point because the County's urgency on the agenda item suggested that it was about a particular case.

Mr. Pettit said that the case brought the process inconsistency to light. He noted that if the Board revised the process, it would benefit the particular case in question.

Trustee Horgan asked about the reasons for staff's denial of the case.

Ms. Nemiroff said that staff and the Board could not discuss the particulars of the case because it was not agendized or properly noticed to the parties.

Ms. Webb noted the County's request in its memo was for the Board to hear the case at its July 10th meeting. She asked the County to confirm its request.

Mr. Pettit noted that the case was fast-tracked and that the Board would not have a meeting in August. He said the County's request would be the same for any employee with the same circumstances.

Trustee Horgan asked if the County would be happy if the Board heard this case on July 10th.

Mr. Pettit said yes that it would be appreciated for this employee, as the case was fast-tracked.

Trustee Horgan asked if the Board could hear the case on July 10th if it did not revise the process.

Ms. Webb said that under the proposed change in process, the Board could begin conducting evidentiary hearings. The change would affect more than just the one case.

Trustee Horgan asked if an evidentiary hearing could occur before July 10th, so that the Board could hear the case on July 10th.

Ms. Webb replied no. The Board could set aside the current process and thereafter begin hearing evidentiary hearings for all cases in which a party disputed staff's recommendation.

Chair Sedell asked for clarification that the Board could modify the process for one or more cases as an exception.

Ms. Webb replied that the Board could modify the process but cautioned the Board against modifying the process for one case only. Staff requested time to analyze the implications of changing the process. She added that a hearing officer and staff were independent, which offered a layer of protection for the Board.

Trustee Horgan expressed the importance of having the County's input. She said she did not feel able to support changing the process at this time, but she supported an exception to hear the case on July 10th.

Ms. Nemiroff said the applicant's attorney would need to be available to present the case on July 10th, which was only two weeks away. She said a full evidentiary hearing involved reviewing all evidence.

Trustee Roberts noted that the trustees were not professional hearing officers.

Ms. Webb said the applicant's attorney did not waive her 30 days, as she was on vacation.

Trustee Roberts asked if staff's recommendation to deny was for service-connection only.

Ms. Webb replied that it was for service-connection only.

Chair Sedell said that the Board had heard disability cases in the past and that the medical evidence in the case would be limited due to the deceased status of the member.

Ms. Webb said that in her eight-year tenure at VCERA, the Board had never served as a finder of fact. She asked Ms. Nemiroff, who said she was told by a past administrator that the Board tried to do so more than 30 years ago and decided "never again."

Chair Sedell clarified that the Board reviewed evidence after hearing officers produced their reports to decide whether the Board agreed.

Ms. Webb stated that the Disability Hearing Procedures and the New Model Procedures both directed cases to a hearing officer when the investigating party recommended denial. This was a protection for the applicant because of the significance of denying an application.

Trustee Goulet said that fast-track was irrelevant to the matter. In his tenure on the Board, it had never held an evidentiary hearing and the Board did not want to do it. He believed the case should go to an independent hearing officer to determine the facts and conclusions of law, and then the Board could agree or disagree. From the start, he thought the case should go directly to hearing, but staff replied that an investigation was required. Consistent with current policy, he said the case should go to a hearing officer.

Trustee Horgan expressed confusion as to the goal of the matter.

Ms. Webb questioned the urgency of the County's request. In the absence of Board action, she said the case would be automatically directed to hearing before July 10th. The Board would have to not let staff send the case to hearing and to hear it themselves.

Trustee Horgan said she did not want to be a hearing officer and asked for clarity about the Board's choices on July 10th.

Ms. Webb said that the case would go to hearing before July 10th, apart from Board direction to the contrary. She believed changing longstanding precedent under these circumstances to be imprudent.

Ms. Laveau said the County viewed the current process as inconsistent and that its request was for the Board to hear the reasons for the parties' differing opinions at its next meeting, as was done for other New Model cases.

Mr. Pettit added that, under the Old Model, conflicting opinion by VCERA on a case was not brought to the Board's attention and that the New Model sought to address that.

Ms. Webb stated that disagreement among the parties was irrelevant; the referral to a hearing officer was based on the investigating party's recommendation to deny.

Chair Sedell said the Board controlled policy and staff controlled administration. He asked if the Board should revise its policy so that staff brought all cases to the Board before they go to hearing.

Ms. Webb clarified that a case automatically went to hearing upon a recommendation to deny, not when the parties disagree.

Chair Sedell said he saw two issues. The first was whether the Board should revise its policy of bringing cases to the Board, before they go to hearing. The second was whether the case should be impacted by that change in policy.

Trustee Hernandez-Garcia said it would be good to bring back the matter so the Board would have more time to consider the impact. She added that the Board could vote to direct cases to hearing when they came before the Board.

Ms. Webb confirmed that this was true when staff recommended granting an application. But the situation differs when staff recommended denying. She reiterated that it was in the Board's discretion to change the process. She explained that if the Board heard a case, it placed itself in the role of a hearing officer as the finder of fact.

Trustee Hernandez-Garcia asked if it mattered who recommended denying a case.

Ms. Webb replied that the case was directed to a hearing when staff, as the primary investigator, recommended denying. Under the Old Model, when the County recommended denying, the case automatically went to a hearing officer.

Trustee Goulet commented that the current Disability Status Report noted staff's recommendation to deny the particular case, but the report did not state the County's objection. He suggested not making a change to the process that would affect the case going to hearing.

MOTION: Let the Case Continue its Course to a Hearing Officer.

Moved by Goulet, seconded by Roberts

Chair Sedell said there was no need for the motion because the normal process will continue without it.

Trustee Goulet withdrew his motion. Trustee Roberts withdrew his second on the motion.

MOTION: Take No Action Today on the County's Request, and Schedule at a Future Date a Review of the Process that Takes into Account the County and Staff's Concerns.

Moved by Goulet.

The motion failed for lack of a second.

MOTION: Take No Action Today on the County's Request, and Direct Staff to Analyze the County's Request, Outline Options and Make Appropriate Recommendation at a Future Date.

Moved by Goulet, seconded by Hernandez-Garcia.

Trustee Horgan expressed uncertainty as to why the Board needed to change the process and whether anything could be done about the case.

Ms. Webb replied that the Board could instruct staff to change the process, resulting in the Board

conducting evidentiary hearings. Alternatively, the Board could instruct staff to inform them when the County disagreed with staff's recommendation to deny.

Trustee Grass noted that the attorney would not be ready by July 10th. He said he wanted to know when the County disagreed with recommendations in the future. He added that he did not have enough information about the case to hear it on July 10th.

Chair Sedell asked if staff had talked to the applicant to learn whether he could be prepared by July 10th.

Mr. Vencel said he spoke to the applicant's attorney a week and a half ago about the hearing process, and the attorney told him that she was going on vacation and would like additional time to learn about CERL and the case facts. Based on the attorney's comments, Mr. Vencel did not think she would be prepared for a hearing on July 10th.

Ms. Webb noted that the applicant's attorney chose not to waive the 30-day waiting period, which ended on July 6.

Trustee Horgan asked Ms. Laveau if she hoped the case would be heard as an evidentiary hearing.

Ms. Laveau replied no, that she wanted the ability to make comments to the Board when the County supported granting an application for a case that staff recommended to deny, and then for the Board to decide whether to move the case to hearing.

Ms. Nemiroff stated that when staff recommended granting, the Board was given a full analysis and all the facts so that the Board had substantial evidence on which to base its decision to grant. If staff recommended denying and if the Board chose to disregard the supporting analysis and facts, the Board could only grant if it had before it sufficient facts and evidence. She said the County was asking to bring such evidence and arguments to the Board, which would be an abbreviated, but still substantial evidentiary hearing.

Chair Sedell suggested the parties could provide a minimal amount of information outlining the differences in opinion.

Ms. Webb described that option as a preview of an evidentiary hearing in order to decide whether to have a hearing. She believed there could be significant fiduciary risk in holding a short-cut evidentiary hearing because the Board would render a decision based on limited evidence.

Chair Sedell asked if there were a process, not equivalent to an evidentiary hearing, whereby the County could bring its concerns to the Board when staff recommended denying a case.

Ms. Nemiroff said that if a process change was adopted, it would apply to every case in which staff recommended denying. This would involve every party coming to the Board.

Chair Sedell noted that such implications of a process change were what staff would need to analyze.

Trustee Goulet then amended his motion.

Trustee Hernandez-Garcia agreed to the changes in the amended motion.

MOTION: Deny the County's Request to Bring the Specific Case to the July 10th Meeting, and Direct Staff to Analyze the County's Request, Outline Options and Make Appropriate Recommendation.

Moved by Goulet, seconded by Hernandez-Garcia

Trustee Horgan said she did not see the need to bring back the matter. She intended to vote no.

Trustee Goulet suggested a process change could be to add a column to the status report saying the County disagreed.

Chair Sedell said that policy decisions should be discussed and made by the Board.

Vote: Motion failed
Yes: Grass, Goulet, Hernandez-Garcia
No: Horgan, Roberts, Sedell
Absent: Joe, Long
Abstain: -

Motion failed.

Trustee Horgan said she liked adding a new column to the status report, as Trustee Goulet suggested.

Chair Sedell said he preferred a separate memo to the Board, not on the agenda, to ensure the Board was informed about the County's disagreement. This was direction to staff.

After the Board's discussion of the agenda item, the Board returned to item, VI.A., "$25 Million Commitment to Crayhill Principal Strategies Fund III".

IX. 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: Administrative Appeal Filed by VCPFA re Exclusion of Standby Pay.

B. It was the Intention of the Board of Retirement to Meet in Closed Session, Pursuant to Government Code Section 54957(b)(1), to Discuss the Following Item.

   1. Public Employee Appointment.
      Title: Interim Retirement Administrator.

The Board entered into the Closed Session meeting at 1:19 p.m.

X. INFORMATIONAL

A. SACRS Legislative Update – June 2023.

B. Western Asset Company - Fixed-Income Markets and Investment Solutions Client Seminar.

C. CALAPRS Summer 2023 Newsletter.

D. Abbot Capital Management - Q1 2023 Private Equity Market Overview.

No comments.

After reviewing Informational items, the Board advanced to item, XII., "Staff Comment".

XI. PUBLIC COMMENT

Lyn Krieger, retired VCERA member, provided public comment. Ms. Krieger said that she and some of the retirees who had previously made public comments regarding the Alameda Implementation had sent a letter to the Board late Friday afternoon. The letter spoke for itself and their position on the issues had not changed, as they continued to urge the Board to consider either a new effective date for the Alameda Implementation, to reconsider their position on vacation buydowns, and to consider equal protection requirements across labor groups.

After hearing the Public Comment, the Board returned to agenda item, VII.A., "Hearing on Administrative Appeal Filed by VCPFA and Individual Members re Standby Pay".

XII. STAFF COMMENT

Ms. Webb noted that staff had recently sent the Board of Retirement Election Results to the Board.

Mr. Gallagher asked if the Board could confirm that the Board Retreat would be held on September 25th, according to the Investment Presentation Calendar that was approved by the Board in December 2022.

Chair Sedell said that the Board Retreat was still scheduled for the Board meeting on September 25th.

XIII. BOARD MEMBER COMMENT

None.

Chair Sedell then announced that the Board would go into their Closed Session meeting, and they would be adjourning out of Closed Session.

After this announcement by the Chair, the Board returned to agenda item, IX.B., "Closed Session".

XIV. ADJOURNMENT

The Chair stated that the Board would adjourn the meeting at the conclusion of the Closed Session meeting.

Respectfully submitted,

Linda Webb
_____
LINDA WEBB, Retirement Administrator

Approved,

Mike Sedell
_____
MIKE SEDELL, Chair