CIVILIAN PENSION BOARD

The Civilian Pension Board meeting was held on February 14, 2013 at 2:00 p.m. with Chairman Bonar presiding. Members present were Councilman Lynn (departed at 2:59 p.m.), Mr. Blakeman, Mr. Koenig, and Mrs. Mitchell. Mr. Clendaniel and Mrs. Hettinger were absent. Council President Leary was also present.

AGENDA ADDITIONS/DELETIONS

Mr. Blakeman stated that, as a point of order, the agenda was not correct. He read a statement into the record as follows:

The agenda is not correct.

A. Action was taken by the Board to discuss a cost-of-living increase for current retirees and beneficiaries in January of each year. This occurred on January 16, 2008; March 13, 2009; February 9, 2011; and February 8, 2012. The action was taken on January 19, 1988.

> *Mr. Walters moved that the question of retiree increases be an automatic agenda item during the month of January for annual review for consideration of possible increase for retirees of the Civilian Pension Plan. The motion was seconded by Mrs. Marvel and carried with Mr. Hudson voting no (Mr. Levitt absent).*

B. The Chair was provided with a request for agenda items dated January 2, 2013, which was hand delivered to the City Clerk's Office. Three (3) of the four (4) items are present on today's agenda. The fourth item, "Discussion of Cost-of-Living Increase for the 2013/2014 Budget" is not. It is my understanding that a request for agenda items made by a member of the Board is to be honored by the Chair.

For both of these reasons, the agenda is not correct.

It is my opinion that this meeting must be adjourned until such time as a new agenda can be published in accordance with the Freedom of Information Act (FOIA) and a new meeting scheduled as soon as possible thereafter.

Mr. Bonar deferred to Mr. William Pepper, Deputy City Solicitor. Mr. Pepper stated that if an item was not on the agenda, it could not be discussed. He was unsure what the internal process was for having items listed on the agenda; however, he stated that the agenda could not be amended at this point.

Mr. Leary explained that it was customary to add items to the agenda only if there was an emergency.

Addressing Mr. Pepper, Mr. Blakeman inquired, since the Board had taken action to require an item to be placed on the agenda every year and failed to include it on this agenda, if the meeting could proceed without correcting this omission. Responding, Mr. Pepper stated that the meeting could take place because the posted agenda would govern the actions to be taken by the Board at this meeting.

Mr. Blakeman questioned if the previous action of the Board could be violated.

Mr. Pepper stated that the items placed on the agenda are, to some extent, within the control of the chair of the body.

Mr. Blakeman questioned if the vote of the Board was not binding or could be ignored.

Mr. Pepper stated that there may be other remedies for this issue; however, adding this item to the agenda today was not one of them.

Mr. Blakeman believed that, for this reason, the meeting should be adjourned until a new agenda could be created.

Mr. Leary stated that the agenda had been published in advance and opportunity had been provided to review it.

Mr. Blakeman moved that the meeting be adjourned. The motion failed for lack of a second.

Mr. Bonar felt that this item did not constitute an emergency; therefore, he stated that the agenda would be followed as published.

Adoption of Minutes - Civilian Pension Board Meeting of November 8, 2012

Mr. Koenig moved for adoption of the Civilian Pension Board Minutes of November 8, 2012, seconded by Mrs. Mitchell and unanimously carried.

Quarterly Performance Review (Quarter Ending December 31, 2012) (Milliman, Inc.)

Mr. Jeff Marzinsky, Principal and Employee Benefits Consultant, Milliman, Inc., reviewed the Quarterly Investment Monitor Summary Report for the Quarter Ending December 31, 2012. He advised members that assets in the plan totaled approximately $24.61M, with withdrawals for the quarter totaling approximately $870,000 and contributions $184,000. He reminded members that studies of the investment funds were completed during the Summer of 2012 and reallocation of the plan and adjustment of the investments had taken effect during November. He explained that the return for the plan was approximately 1.39% for the quarter versus the index of 1.16%; therefore, the plan had exceeded the index. Referring to Page 9 of the report, Mr. Marzinsky explained that the $0 amounts in the chart reflected new investments that had been added. He stated that Milliman, Inc. would review the allocations when its capital market assumptions are released and may make slight adjustments if needed to hit the target return expectation for the overall plan, but he did not foresee any major changes.

In reviewing the Investment Policy Review - Active Management on Page 10, Mr. Marzinsky noted that investments were ranked against their peers and against the indexes. Information regarding relative risk (standard deviation) and measures of manager effectiveness (Alpha and Sharpe) were also included. He noted some underperformance compared to indexes; however, ranks to peers were strong. He did not see any major concerns in regard to the actively managed investments and no adjustments to fund managers were recommended.

Referring to Page 11, Investment Policy Review - Passive Management, Mr. Marzinsky stated that index funds were performing well. He stated that the goal was for Beta to be approximately 1.0 and Tracking Error to be fairly low.

In regard to the overall performance of the plan reflected on Page 12 of the report (Investment Option Return Summary), Mr. Marzinsky stated that over the last three (3) months, the plan had a better gross and net return than the index. Although the return trailed the index slightly over the last year, he felt that a 9% return for the year was good, noting that this was higher than the actuarial rate of return (6% - 7%). Since the assets grew more than the liabilities of the plan, positive headway was being made in the overall funded status of the plan. Mr. Marzinsky was optimistic about the markets in the future, noting that many good indicators were being seen both nationally and internationally for equity markets. He indicated that as investors pull money out of fixed income to invest in equities, he anticipated some "drag" on the bond investments and this would be monitored.

Noting that the return at the end of the last quarter was approximately $365,000 lower than the balance at the end of the previous quarter (previously $24.9M and currently $24.6), Mr. Blakeman inquired if this was related to the addition of six (6) new funds. Responding, Mr. Marzinsky explained that trust statements from Wells Fargo sometimes reflect activity that occurs after the end of a month or quarter. He noted that there were capital gains and interest payments that were targeted for December 31, 2012 but actually occurred in January, so this could have created some differences in the balances.

Freedom of Information Act (FOIA) Training Session

Deputy City Solicitor William Pepper advised members that anything he said this afternoon was without prejudice to any position that he had heretofore taken on behalf of any client. He reviewed Title 29, Chapter 100. Freedom of Information Act (FOIA), State Code. Mr. Pepper stated that FOIA applies to public bodies and that, as a group of seven (7) members, the Civilian Pension Board was such a body and that a smaller group of Board members may also be a public body. He indicated that included within the definition of public body are groups such as ad hoc committees, special committees, temporary committees, groups, and panels. He informed members that it was unclear how these terms are defined, noting that an ad hoc committee "could mean almost anything" and its definition was a point of contention. Mr. Pepper stated that public business is broadly construed; therefore, if it is "something in your wheelhouse," it is public business. He explained that FOIA defines "meeting" as "a formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business, either in person or by video conferencing;" however, he had been told that meetings are more broadly defined than this. He explained that, 20 years ago, the Attorney General's Office had stated that a series of meetings, held at the home of former Mayor Crawford Carroll with two (2) or three (3) members of Council,

were illegal under FOIA. On another occasion, the Kent County Comprehensive Plan Working Group met with Levy Court Commissioners two (2) or three (3) at a time to educate them on the progress of the project (without the knowledge of the County Attorney) and a FOIA complaint was filed. It was argued that this was not a meeting because there was never a quorum of Commissioners in the room at the same time and information was flowing only one (1) way, with no backflow from the Commissioners. This argument was not litigated because no remedy was imposed. Mr. Pepper stated that in the context of a public body, public business, and public meeting, these incidents illustrate that it may be okay for three (3) members to assemble, but if one (1) of those three (3) talks to a fourth, FOIA has probably been violated. He advised members not to do this or to consult him first. He explained that the FOIA provisions are analagous to a no-contact provision of a bail order. Mr. Pepper informed members that even though the law refers to meetings "in person or by video conferencing," email and telephone calls were probably also included. He explained that such violations adversely affect public relations. He stressed that when he communicates with members of a local government, he may send communications to all members of a committee but he instructs them to never use the "reply all" button and to reply only to him.

In terms of preparing agendas, Mr. Pepper reminded members that meeting notices must be posted seven (7) days prior to a meeting. The agenda is usually posted at the same time and if not, an explanation should be given as to why it was not posted. He stated that he takes the position that agenda items could be added up to six (6) hours prior to the meeting. The only exception would be if an emergency circumstance came up during the meeting, and he could not conceive of an emergency circumstance that would arise for the Civilian Pension Board that would require an addition to the agenda.

Mr. Blakeman inquired if an item could be added to the agenda six (6) hours prior to the meeting if the agenda had already been published. Responding, Mr. Pepper stated that any change to the agenda must be posted at least six (6) hours prior to the meeting. The amended agenda would then be posted and would explain why the item was added.

In regard to open meetings, Mr. Pepper explained that meetings are open to the public unless one (1) of nine (9) exceptions apply. In reviewing these exceptions, he stated that he was not sure that any of them would apply to the function of the Civilian Pension Board, with the unlikely possible exception of a strategy session in the event of a lawsuit, and in this case an executive session could be held only if the attorney were present and only if it would adversely affect the Board's litigation position. Mr. Pepper advised members that there is a specific procedure that must be followed to hold an executive session closed to the public, including making a motion and stating the reason for the executive session. He stated that, as a general rule, Civilian Pension Board meetings should all be open and that legal advice should be sought before attempting to hold a closed session.

Mr. Blakeman stated that he would consult the City Clerk's Office in the future regarding FOIA matters. Responding, Mr. Leary acknowledged that the provisions of FOIA can be difficult and suggested that Mr. Blakeman rely on the City Clerk's Office for guidance in this regard.

Data Request (Received During the Civilian Pension Board Meeting of November 8, 2012)
Members reviewed the Data Request received during the Civilian Pension Board Meeting of November 8, 2012, as follows:

A. List of Each Investment by Name, Type, Numbers of Instruments (Bonds, Stocks, Certificates, Etc.) and the Value of Each at the End of the Reporting Quarter
Mrs. Donna Mitchell, Controller/Treasurer, explained that individual stocks are embedded in mutual funds and it is possible to go online and look up mutual funds; however, it would be too onerous to include this information in an individual report. She noted that the ticker symbols were included in the quarterly performance report provided by Milliman, Inc. Responding, Mr. Blakeman stated that he was completely satisfied in this regard.

B. Cash on Hand at the End of the Reporting Quarter and Who is Holding the Cash and How Much Each is Holding (City of Dover, Wells Fargo, Others)
Mrs. Mitchell stated that, in the past, a quarterly report had been provided; however, since the Finance Department was understaffed, it had been difficult to continue; however, staff had been requested to get this report back on track. Mrs. Mitchell explained that a report had been created but had not yet been sent to members and that the additions, deductions, and the beginning and ending cash balance were included. She cautioned members that the figures provided in this report would not agree with Milliman's figures because the report was prepared on a cost/cash basis as opposed to market value, and there would be accrued dividends at the end of each quarter. She stated that the report would be forwarded to members and suggested that they review the information to see if it was satisfactory and inform staff if additional information was needed. *(Clerk's Office Note: A Schedule of Changes in Pension Trust Fund Net Assets for the Civilian Pension Trust was subsequently provided to members.)*

C. Value of Checks Written Each Quarter (Pensions, Expenses, Pension Refunds, Etc.)
Mrs. Mitchell stated that this information was included in the report discussed under the previous agenda item.

D. Itemized List of General Expenses for Each Quarter
Mrs. Mitchell explained that the total general administration expenses were included in the report to be sent to members (Item #B above); however, an itemized list by vendor was not included. She stated that she could provide information regarding what the expenses consist of, e.g., Milliman fees, Wells Fargo, etc., and Mr. Blakeman expressed his concurrence.

E. List of Each Person Receiving a Pension Check at the End of the Quarter by Name, Amount of Check, and Retirement (Year, Month, Day) Listed in Alphabetical Order by Last Name
Noting that Mr. Pepper had opined that all of this information was not relevant to the Board's duties, Mr. Bonar requested Mr. Pepper to elaborate. Mr. Pepper stated that in examining the list of duties in the Pension Ordinance in Section 2-368 of the Dover Code, he felt that he could "draw a line" between the duties of the Pension Board and who was receiving the pension and the amount; however, he was unsure if the level of detail requested was appropriate. He cautioned members that FOIA does not require the creation of documents,

but once created, they become public record. For this reason, he advises local government clients not to create reports unless there is a need, and specifically, not to create documents pursuant to a request from the public.

Mrs. Mitchell stated that she called the State to determine how such requests are handled and was told that the State Code was changed and the State does not consider this public information and no longer releases information on individual retirement payments. She indicated that this change was made in response to a request from The Wilmington News-Journal for individuals' pension information. She noted that this change did not affect municipalities and applies only to the State Pension Plan. As a side note, Mrs. Mitchell stated that she was told that the State Board of Trustees cannot request or discuss Cost of Living Adjustments (COLAs) because this would be a conflict of interest with their fiduciary responsibility, which was to manage funds and maintain their solvency. She indicated that the State deals with COLAs through the Joint Finance Committee (legislature) during the budget hearings.

To clarify, Mr. Blakeman stated his understanding that a request for a COLA increase would more appropriately be addressed to the administrative committee as opposed to being dealt with by the Pension Board. Responding, Mrs. Mitchell explained that, at the State level, if a group of retirees wish to request a COLA, they go through the Joint Finance Committee process, since that entity controls the budget. If the Joint Finance Committee requires additional information from staff, they would go to staff to determine the impact on the unfunded liabilities, etc., so that data could be gathered.

Mr. Blakeman stated that at one time the City's Pension Board approved COLAs. Mrs. Mitchell stated that the City had done this for a long time; however, her contact at the State indicated that it is not done in this way at the State due to the conflict of interest. Responding to Mr. Blakeman's inquiry about the City's process for approving COLAs, Mrs. Mitchell reminded members that the unfunded liability of the Pension Plan was the City's responsibility.

Mr. Blakeman stated that the elected members of the Civilian Pension Board were elected to represent participants, yet they had no way to find out who these participants were or how to contact them and he felt that this was a severe handicap.

Mrs. Mitchell explained her belief that the role of the Civilian Pension Board was to oversee the management of the funds, not the individual retirees.

Mr. Blakeman stated that four (4) members of the Board are appointed and three (3) are elected; therefore, he felt that the elected board members (the civilians) should represent participants.

Mrs. Mitchell expressed her belief that these individuals were elected to oversee the City's management of the funds.

Mr. Bonar felt that the level of detail being provided was adequate. He stated his agreement with Mrs. Mitchell that the role of the civilian representatives was to oversee the funds and that the Legislative, Finance, and Administration Committee and City Council, in conjunction with labor negotiations, have the overall authority regarding when individuals retire, how much they receive, etc.

Mr. Lynn inquired if Mr. Pepper had ever examined, from a legal perspective, the disparity between Mr. Blakeman's and Mrs. Mitchell's opinions regarding the role of the elected officials on the Civilian Pension Board. Responding, Mr. Pepper stated his belief that the role was to oversee the entire Pension Plan. He did not feel that the three (3) civilian members would represent a particular universe, as City Council members do. He stated he had not reflected on this matter to any great extent.

Mrs. Mitchell advised members that three (3) retirees had requested her not to give out the type of information requested and she was uncomfortable distributing it.

Mr. Blakeman indicated that he was at a loss to contact members of the Pension Plan to keep them informed, although he acknowledged that information could be mailed to members through the City Clerk's Office. He stated that since he was elected to the Board, he should maintain a representational relationship with those in the Plan.

Mrs. Kim Hawkins, Human Resources Director, stated that there were approximately 90 active employees in the plan and felt that these individuals should be focused on as well. *(Clerk's Office Note: The number of active employees participating in the Civilian Pension Plan totaled 138 on this date.)* Mr. Blakeman mentioned that he would like the names of these individuals to be included on the list, if provided.

Mr. Lynn moved to have Mr. Pepper draw up a legal memorandum on that issue to resolve the question one way or the other, seconded by Mr. Blakeman and unanimously carried (Clendaniel and Hettinger absent).

Clarifying the matter to be opined upon, Mr. Pepper stated his understanding that he was being asked to opine to whom the Board members owe a duty, whether it is to the Plan or to the employees and retired participants.

Mr. Bonar concurred.

Mrs. Mitchell stated her understanding that the question was whether the role of the Pension Board members was to support individual plan members or to oversee the financial part of the plan.

Mr. Leary stated his understanding that the issue was whether they were functioning as trustees or as elected representatives.

Mr. Koenig stated his opinion that all of these descriptions were different ways of expressing the same thing.

Mr. Blakeman inquired if it was the duty of a trustee to represent the people in the trust fund.

Mr. Pepper explained that a trustee's fiduciary duty is to the fund, rather than the individual members.

F. List of People Added to the Pension List to Include the Following Information - Full Name, Title, City Code, Service Dates, Total Service Time, Monthly Pension Amount, Effective Date of Retirement, Lump Sump Payment

Mr. Bonar noted that Mr. Pepper had opined that the level of detail did not appear to be relevant to the Board's duties. Mr. Blakeman stated that this information was currently being received every six (6) months from the Human Resources Department and that he included this in the request in order that it would continue to be provided. Responding, Mrs. Mitchell stated that was being provided because it was requested and no legal opinion had been given.

G. List of People Removed from the Pension List with the Effective Date for the End of Pension Payments

Mrs. Mitchell stated that participants are typically removed when staff becomes aware that an individual has passed away through word of mouth, when a call is received, or when an obituary is noticed and staff makes adjustments accordingly. Board Members are not typically informed.

Mr. Blakeman stated that sometimes members know that a participant has passed away and felt that this list could be reviewed by members to determine if staff was unaware that someone had died.

Responding, Mrs. Mitchell requested that the Board Members inform staff if they became aware that a participant had passed.

Mr. Blakeman explained that he receives a list of those going into the Pension Plan but had not received a list of those being removed; therefore, his list became out of date. He felt that if he could get an occasional list of active participants, this would be adequate.

Mrs. Mitchell stated that she did not mind providing information and that it was not staff's desire to hide information but that staff had many priorities.

Mr. Blakeman stated that he would be willing to contact staff occasionally to request information rather than requiring regular provision.

H. Method Used to Remove Pensioners from the Pension Payment List (How Do You Receive Notification of Death)

Mrs. Mitchell stated that this is accomplished when staff is notified through word of mouth, an obituary, or a call from a family member of a participant's passing and that there is no specific policy.

Responding to Mr. Pepper regarding the method used to issue pension payments, Mrs. Mitchell explained that this was accomplished through direct deposit.

Mr. Leary explained that collecting payments made to a deceased individual would constitute fraud.

Mr. Blakeman stated it was his intent to determine if something should be done, perhaps engage an agency, to determine if participants had died.

Mr. Lynn explained that the Social Security Administration maintains a Social Security Death Index.

Mr. Bonar stated his belief that the Social Security Index may not be totally accurate, noting his parents were not on this list, although they had passed away many years ago.

I. Method and Schedule for Verification of Pension List

For clarification, Mr. Leary inquired if it was Mr. Blakeman's intent that the active participant list be cross referenced with the death list. Responding, Mr. Blakeman felt that this was a big hole that should be addressed somehow. Mr. Blakeman requested that a list be provided annually to the Board of all the pension checks going out, without names if necessary.

Mrs. Mitchell stated that names would be required in order to verify the pension list.

J. Audit Schedule and Copy of Last Audit as well as Copies of All Future Audits for the City of Dover General Employees' Pension Plan

Mrs. Mitchell explained that this information is included in the Comprehensive Annual Financial Report (CAFR), which is a public document on the City's website.

Mr. Blakeman stated that the City's annual audit would only include those funds that are transferred from the City to the General Employees' Pension Plan and that funds being managed by other entities are not included.

Mrs. Mitchell explained that the auditors of the City's accounts audit receipts and disbursements in the Pension Plan through the City's records but do not audit mutual funds or funds that go in and out of Wells Fargo, since that would be covered under Wells Fargo's audit. She noted that the fees for a separate audit of the Plan funds would have to be paid from the Civilian Pension Plan fund.

Mr. Blakeman felt that most pension plans are audited and that it might be appropriate for the Civilian Pension Plan funds to be audited once per year or every three (3) years.

Mr. Bonar stated that the Board and pensioners should be made aware that the fees for performing the audit would come from the Civilian Pension Fund.

Mrs. Mitchell stated that Council should also be made aware since this would affect the Plan's unfunded liability.

Mr. Blakeman moved that the cost of performing an annual audit of the General Employees' Pension Fund be examined and reported to the Board, seconded by Mr. Lynn.

Mr. Koenig felt that once per year was too frequent and that this was not a good use of funds.

Mr. Blakeman moved to amend the motion to specify that the cost of performing an audit of the General Employees' Pension Fund every one (1), three (3), and five (5) years be examined and reported to the Board, seconded by Mr. Lynn. The motion carried by a vote of four (4) yes (Bonar, Lynn, Blakeman, and Koenig), one (1) no (Mitchell), and two (2) absent (Clendaniel and Hettinger absent).

Mrs. Mitchell explained that she objected because she felt that it would be cost prohibitive to evaluate all of the mutual funds involved and the manner in which investments are set up.

Financial Activity for the Fiscal Year Ending June 30, 2012 and Results of Actuarial Study

Mrs. Mitchell reviewed information excerpted from a presentation that she provided to Council on January 7, 2013 to update them on the City's unfunded liabilities, including the General Employee Pension Plan. She noted that Page 7 of the Presentation showed that as of June 30, 2012, the Cash and Cash Equivalents were $861,458 and investments in mutual funds totaled $21,187,128, for total assets of $22,048,586. She explained that the cash and cash equivalent figures were a combination of funds at Citizens' Bank and at Wells Fargo. Mrs. Mitchell advised members that the additions and deductions from the Pension Plan showed the benefit payments, general administration costs, and contributions from the City and employees. She pointed out that the general administration cost consists of Wells Fargo fees and Milliman fees for investment advisory services and that actuarial fees are charged to the City's budget rather than the City's pension plans.

Referring to Page 9 of the presentation, Mrs. Mitchell explained that the Annual Required Contribution is determined by the actuarial study.

In reference to the Required Supplementary Information - Schedule of Funding Progress on Page 10, Mrs. Mitchell stated that this reflected the plan assets for the last several years and the Actuarial Accrued Liability, the Unfunded Accrued Liability, and the Funded Ratio, as well as Payroll and the Unfunded Portion as a Percent of Payroll. She explained that all of these charts are required to be included in the Comprehensive Annual Financial Report (CAFR) based on Governmental Accounting Standards Board (GASB) requirements.

Mrs. Mitchell explained that the chart on Page 16 reflected the General Pension, Police Pension, and Other Post-Employment Benefits (OPEB) fund liabilities and assets.

By unanimous consent, the meeting adjourned at 3:03 p.m.

David L. Bonar
Chair

DLB/JS/mk/dd/tm
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