

MINUTES FROM THE PENSION WORKSHOP OF THE UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, HELD AT 9:00 A.M. ON APRIL 16, 2010 AT THE WILLIAM ARNOLD SERVICE BUILDING LOCATED AT 1001 JAMES STREET, KEY WEST, FLORIDA

The above referenced workshop of the Utility Board of the City of Key West, Florida, convened at 9:00 A.M., on the above date and location and was called to order by Chairman Hernandez.

Utility Board Members Present

Chairman Hernandez
Peter Batty
Charlie Bradford
Mona Clark
Ty Symroski

Staff Present

Lynne Tejeda
Nathan Eden
Edee Delph
Elizabeth Miller
Cindy McVeigh
Kim Free
Peggy Walls

Others Present

Ron Cohen, Pension Attorney
Paul Ryder, Labor Attorney
Larry Wilson, Plan Actuary

Also, in attendance were numerous employees and retirees.

AGENDA ITEM #4 – SET AGENDA

There were no changes to the agenda. The agenda was set.

Chairman Hernandez welcomed all attendees and stated he would like to make some opening remarks.

Chairman Hernandez said the Pension Workshop was set up to provide the Utility Board with information regarding the Pension Plan. He said over the last several months various pension issues have come before the Utility Board, including Union contract negotiations, a resolution for a fixed Cost of Living Adjustment (COLA) for retirees, and this week the actuarial report, which all have raised a variety of questions among the Board.

Chairman Hernandez stated that the purpose of the workshop is to get answers to the questions so the Board can have all necessary information to make good decisions for employees, retirees and ratepayers.

Chairman Hernandez said the agenda is very detailed and he is asking Mrs. Tejada to move through the agenda allowing discussion among Board members and seeking input from the professional panel as needed.

Chairman Hernandez stated since this is a Board workshop, no action will be taken and therefore it is not his intent to have public comment or input. He thanked all in attendance for their willingness to observe and learn.

Chairman Hernandez asked Mrs. Tejada to introduce workshop participants. Mrs. Tejada introduced Ms. Elizabeth Miller, KEYS Accounting/ Financial Analyst; Mrs. Cindy McVeigh, KEYS Accounting/ Analyst Supervisor; Mr. Larry Wilson, Actuary for Pension Board; Mr. Paul Ryder, KEYS Labor Attorney; Mr. Ron Cohen, Pension Board Attorney; Mrs. Peggy Walls, Assistant Director of Finance and Mrs. Kim Free, Pension Administrator.

AGENDA ITEM #5 – GOVERNANCE

Agenda Item #5a – Review Enabling Act Language

Mrs. Tejada informed the Board that Section 14 of the Enabling Act pertains to the Pension Plan, which gives the Utility Board the right to establish, adopt, provide, operate, maintain and assist in the support of a pension plan.

Mrs. Tejada said it also gives the Utility Board the right to delegate authority for the handling of the pension plan to a set of employees or other officials such as trustees.

A copy of the Enabling Act Language for Section 14 pertaining to the pension plan is included in the workshop packet.

Agenda Item #5b – Review Plan Document

Mrs. Tejada informed the Board that the retirement plan document is included in the packet. She said the trustees follow the plan document, review periodically and make recommendations to the Utility Board regarding updates to the document.

Agenda Item #5bi – Summary Plan Document

Mrs. Tejada said the Summary Plan Description is a new document that was approved by the Board of Trustees yesterday, April 15th.

Mrs. Tejada stated that the Summary Plan Document is the laymen's version of the Plan Document. The document was created so any employee or retiree can refer to the document and find an easy to understand answer.

Mrs. Tejada said there were two minor changes made to the document since it was distributed and the Board will receive the updated version of the document.

Agenda Item #5c – Who has Final Authority on Changes to the Plan Document

Mr. Cohen informed the Board that in Section 9.01 in the Plan Document states that the Utility Board reserves the right to make, from time to time, any amendments to the System which do not cause any part of the fund to be used for, or diverted to, any purpose other than the exclusive benefit of members or their beneficiaries.

Agenda Item #5d – What is the Process to Change Governance

No specific discussion took place.

Agenda Item #5e – What is the Process for Resolutions Pertaining to the Pension Plan

i. Trustees- Mr. Cohen said the Trustees act by resolution and make recommendations to the Utility Board. He said the trustees engage services of accountants, attorneys, actuaries, investment managers, and performance monitors as advisors of the plan. He said that the trustees pass resolutions but they are suggested resolutions that go before the Utility Board for final approval.

ii. Utility Board- Mr. Cohen said that pension resolutions go before the Utility Board for approval and at that time if the Utility Board adopts it becomes part of the plan.

Agenda Item #5f – Review Sunshine Consideration

Mr. Eden gave a brief description of the Sunshine Law and said anytime two Board members are together they not discuss KEYS business.

i. Trustees- Mr. Cohen agreed with Mr. Eden that any discussion between two or more trustees that does not occur in a public meeting is a violation of the Sunshine law.

Mr. Cohen also voiced his concerns with violating the Sunshine Law through email and said to be very cautious not to hit the reply all button when sending emails to Board members or Trustees.

Mr. Eden said he has an article from the April issue of the *Florida Bar Journal* titled "Modern Sunshine", which he will distribute to the Board later today.

ii. General Manager/CEO and Management Services Director- No specific discussion took place.

iii. Management Services Director and Union Representative for Negotiating Team- Mr. Ryder stated that Union Negotiations meetings are advertised to the public and therefore he does not see a conflict. Mr. Eden agreed with Mr. Ryder. However the attorneys pointed out that there is not a written decision nor a Attorney General Opinion on the issue.

Agenda Item #5g – Review of Trustees Makeup

Mrs. Tejeda stated there is a document included in the packet that lists the names the trustees for the pension plan and the departments they represent. Also included in the packet is the language regarding the appointment of the trustees.

i. Current Makeup – Mr. Cohen stated that KEYS has the largest pension trustee board that he's aware of but it works very efficiently for KEYS.

ii. What is the Appropriate Number- Mr. Cohen said in his opinion the current number of trustees work. He said he had various concerns in the past when there were 18 trustees with the number being so great but it has worked very well with the current 13 trustees.

iii. Should Utility Board Members Serve as Trustees- Mr. Eden said he is not aware of any legal reason a Utility Board member is not allowed to serve as a trustee.

Chairman Hernandez stated he was relieved when the Utility Board was removed as trustees. He feels there was a conflict due to any issues that arose would ultimately have to come before the Utility Board to be resolved and he felt it was a conflict to serve on both Boards.

iv. Should the General Manager Serve as Trustee- No specific discussion took place.

v. Should there be Term Limits- Chairman Hernandez asked Mr. Cohen what are the term limits of other Pension Plans he works with. Mr. Cohen said he is only aware of one plan that has a term limit, which is eight years. Mr. Cohen said by Statute there is not a term limit.

Mrs. Free informed the Board that currently the Pension Board of Trustees term is four years at which time they can run for re-election without limitation.

h) What are the Responsibilities of the Trustees- Mrs. Tejada informed the Board there is a two page document included in the packet that describes the responsibilities of the trustees. She asked Mr. Cohen to review with the Board.

i) What are the Responsibilities of the Utility Board to the Pension Plan- Mrs. Tejada stated this item was previously addressed.

j) What are the Responsibilities of the Plan Administrator – Mrs. Tejada informed the Board that the Plan Administrators duties are listed in the packet.

i. Who Should Pay Salary for Plan Administrator (UB/Plan)- Mr. Cohen stated that currently the Utility Board pays for the Plan Administrators salary, and the duties are included in the job description of the Finance Staff Assistant, and he feels it has worked very well as is.

k) What are the Responsibilities of the Secretary/Treasurer- Mrs. Tejada informed the Board that there are no defined documents.

Mr. Cohen said that it is stated in the Plan Document that the Utility Board Chief Financial Officer (CFO) will be the Secretary/ Treasurer of the Pension Plan. He has never seen a document that states the job description of the Secretary/ Treasurer of the Pension Plan. He said the Secretary/ Treasurer of the Pension Plan is not considered a trustee per the Plan Document.

Mr. Batty asked if someone could contact other agencies and review the job descriptions for Secretary/ Treasurer of other Pension Plans. Mrs. Tejada said she will seek the requested information, develop job duties and get approval.

l) Who Hires/Pays for Consultants - Mrs. Tejada said over the years it has been questioned if the Utility Board or the Pension Plan should pay for consultants.

Mrs. Tejada informed the Board that a copy of the Disbursement Report is included in the packet for the Boards review.

i. Purchasing Procedures- Mr. Cohen stated that he is not aware of purchasing policies of other plans and stated it is up to the Administration and he is not aware of a statement that requires governmental plans to use a bidding process.

Mr. Batty said there should be a defined document that states the process for expenditures over a certain dollar amount. Chairman Hernandez agreed with Mr. Batty.

The Board asked that the Pension Plan create a purchasing policy that mirrors purchasing procedures of the Utility Board.

AGENDA ITEM #6 - ACTUARIAL REQUIREMENTS TO FUND PENSION

a) Review Assumptions- Mr. Wilson reviewed a power point presentation with the Utility Board. The presentation is available upon request.

b) Review 14 Year Actuarial Requirements vs. Utility Board Contributions- Mrs. Tejada informed the Board that a schedule of pension contributions worksheet is included in the packet for review.

c) Review Projections of Future Pension Actuarial Requirements- Mrs. Tejada informed the Board that a copy of the actuarial Projection Study is included in the packet for review.

d) What do Other Entities Contribute- Mrs. Tejada informed the Board that a copy of Employer and Member Contributions Reported in the Department of Management Services of the State of Florida Database is included in the packet for review.

e) Discuss Utility Board Contribution Level- Consider Cap- There was discussion as to why KEYS does not pay into Social Security. Mr. Cohen gave a brief explanation but said he needed to research further. He said he would provide information to Mrs. Free and Mrs. Tejada to distribute.

The Board instructed staff to research further and report back to the Board.

AGENDA ITEM #7 - EMPLOYEE CONTRIBUTIONS

a) Review 15 Year History of Employee Contributions- Mrs. Tejada informed the Board that a Schedule of Pension Return on Investments Document is included in the packet for review.

b) What do Employees of Other Entities Contribute- Mrs. Tejada informed the Board that information regarding what other local entities contribute is included in the packet for review.

c) Discuss Pros/Cons of Employee Contributions- Mrs. Tejada informed the Board that this is an item that needs to be negotiated at the table and if changes were made they would become effective October 1, 2012.

Mr. Batty stated he feels this is an item that should be discussed down the road and would be discussed for future employees and not current employees or retirees. He said it needs to be addressed for new hires.

AGENDA ITEM #8 - RISK ON INVESTMENT VOLATILITY

a) Review 15 Year Investment Returns - Mrs. Tejeda informed the Board that a document for the Schedule of Pension Return on Investments is included in the packet for review. Mr. Wilson reviewed employee contributions during the last 15 years and accumulated employee contributions for active members as of January 2010.

Mr. Batty asked when the plan went from contributory to non-contributory. Mr. Wilson stated it was more than 15 years ago.

b) Compare Actual Returns to Actuarial Assumptions - Mr. Wilson review 14 year investment returns, actual versus assumed.

c) Discuss Methods to Share Investment Volatility- No specific discussion took place.

AGENDA ITEM #9 - INVESTMENT OVERSIGHT

a) Who Selects/Monitors Investment Consultants- Mrs. Tejeda said currently the Pension Board of Trustees goes through a Request for Quote (RFQ) process and the Pension Board of Trustees selects as part of their delegation of duties.

b) Review Investment Policy- Mrs. Tejeda informed the Board that the Investment Policy is included in the packet for review. The Investment Policy was adopted in May 2007 by the Board of Trustees. Mrs. Tejeda stated that it had not been approved by the Utility Board.

Mr. Batty asked why it had not been presented to the Utility Board for approval. Mrs. Tejeda said she did not have an explanation and Mr. Cohen said he believed he should have been approved by the Utility Board.

There was discussion that a document should be created listing what items need to come before the Utility Board for approval and what items the Utility Board grants the Pension Board of Trustees to approve.

Mr. Batty requested that the Utility Board is updated either annually or quarterly on the Investment Consultant Report.

c) What is the Process to Change Investment Process- Mr. Cohen stated the Utility Board is able to change the process when necessary but needs to be followed as set forth in Florida Statutes.

AGENDA ITEM #10 - RETIREMENT ELIGIBILITY/ BENEFITS

a) Review Retirement Eligibility- Mrs. Tejada informed the Board there is a document included in the packet describing normal retirement, early retirement and term vested employees.

b) Review Benefits/ Calculation Formula-

i. Compare Benefits/ Calculation Formula for Those Hired Before June 1, 2010 and After - Mrs. Tejada informed the Board a document is included in the packet which explains the benefits and calculation formula. She said the document gives the options offered to employees/retirees and the calculation for employees hired prior to June 1, 2010 and employees that will be hired after June 1, 2010.

ii. What Benefits/ Calculation Formula do Other Entities Provide- Mrs. Tejada informed the Board there is a benefit calculation formula document included in the packet for other local agencies.

AGENDA ITEM #11 - MISCELLANEOUS ISSUES

a) Can an Existing Benefit for a Retiree be reduced or Taken Away- Mr. Ryder stated that the Florida law is very clear that retiree's benefits are protected.

b) Can an Existing Benefit for an Active Employee be Reduced or Taken Away- Mr. Ryder stated that active employees that are not vested can be subject to change through the collective bargaining process. He said under collective bargaining laws the Utility Board had the ultimate authority to decide what the benefits will be. Mr. Cohen agreed with Mr. Ryder.

c) Why/ How/ When did the Pension Plan get Included in the Union Contract- Mrs. Tejada informed the Board that an exact date was not found as to when the Pension Plan was included in the Union Contract but it was determined it was sometime in the 1970s.

Mr. Ryder stated that KEYS contract language pre-dates the Tallahassee opinion. He said that in the 1980's the Florida Supreme Court made it crystal clear the Chapter 447 and the Florida Constitution required that pension benefits are a part of the terms and conditions of employment and made them a mandatory subject to bargaining.

Mr. Ryder stated that if changes are made to a Florida Pension Plan without bargaining the company is subject to unfair labor practice.

d) Pension Resolution #77 and Associated Utility Board Resolution #768- Mrs. Tejada that Pension Resolution #77 was approved by the Pension Board in January and then brought to the Utility Board as Resolution #768 for approval and was tabled until the Utility Board meeting at the end of May.

Mrs. Tejada said the Utility Board Resolution #768 removed the language that, "recommendations from the System's actuarial or financial advisors determine the COLA needs to be eliminated or decreased, it shall be within the discretion of the Trustees to do so."

Mrs. Tejada said there was also additional language added that, benefits being paid to retirees will be increased by three percent and the amount cannot be lowered for current retirees or plan members.

A discussion ensued that although the language in the resolution states, "based on recommendations from the System's actuarial or financial advisor the COLA can be eliminated or decreased" it has never been eliminated or decreased or date despite some very bad economic times and significant increases to the actuarial required contribution.

Mr. Wilson stated that he, as the actuarial, was never given guidelines to follow from the Pension Board; therefore, he did not have the information needed to make such a recommendation.

Mrs. Tejada stated that the System does not have a financial advisor and the actuary includes the 3 percent COLA as an assumption and therefore funds accordingly, so he would never recommend a need for changing the three percent COLA.

Mr. Ryder said that the three percent COLA for retirees was negotiated back in 2001 and is a benefit.

Mr. Ryder informed the Board if they approve Resolution #768 the resolution will eventually impact current employees that will become future retirees and therefore changes could not be made until 2012, during union contract negotiations, unless it was open prior to that time with agreement from both parties.

Chairman Hernandez asked Mrs. Tejada if she was clear with the direction of the Board on the items discussed. Mrs. Tejada stated that staff will follow up on the following items:

- Develop duties for the Secretary/Treasurer
- Develop a Purchasing Policy for the Trustees to follow
- Develop a report with indicators and update the Utility Board quarterly, bi-annually or annually
- Look at Social Security to the extent it benefits the utility, employees and the ratepayers
- Make a list of delineation of responsibilities of the Trustees
- Bring Utility Board Resolution #768 back before the Board in May

OTHER BUSINESS

There was no other business to come before the Board.

ADJOURNMENT

Motion was made by Mr. Batty to adjourn the Pension Workshop of April 16, 2010 at 11:33 a.m.

APPROVE:

Lou Hernandez, Chairman

ATTEST:

Lynne E. Tejeda, General Manager/CEO & Secretary

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