Approved Minutes
Meeting of the
AC TRANSIT RETIREMENT BOARD
November 13, 2017

ROLL CALL

The meeting was called to order at approximately 1:40 p.m.

Members Present:  Chair Jeffrey Lewis, Vice Chair Yvonne Williams, Davis Riemer, Joyce Willis, Claudia L. Allen
Absent at Roll Call:  None

Also Present:  Hugo Wildmann, Retirement System Manager; Bertina Ng, Retirement System Analyst; Pavit Masson; Russell Richeda, Legal Counsel; Carolyn Smith, NEPC; H.E. Christian Peeples, District Board Liaison; (the following individuals were at part of the meeting): Stephanie Lord, Loomis Sayles; Denise Standridge, General Counsel; Michael Pineschi, UNITE HERE; Tom Hickey (on the phone)

PUBLIC COMMENTS

The recently appointed Board Member Claudia L. Allen was sworn in by the District Secretary.

Member Riemer thanked the Board and Staff for rescheduling this month’s meeting so he could attend.

CONSENT CALENDAR

A. Approval of Minutes for October 4, 2017

Chair Lewis pointed out an error on page 2, item I, of the minutes where it was incorrectly stated that he had made a motion. The minutes are also were missing pages 4 and 5. Chair Lewis suggested that we remove the minutes from the Consent Calendar and review two sets of minutes at the next meeting.

B. Approval of Financials for September 2017

APPROVED.

C. Approval of Invoices for $428,784.47

APPROVED.
D. Approval of Retirements for November/December 2017:

1. Anthony Cleveland (Rescission of November Retirement)
2. Joseph Robinson (November)
3. M. Karen Amos (December)
4. Barbara Daniels (December)
5. Christopher Douglas (December)
6. Linda Montouth (December)
7. Janis Smith (December)
8. Alex Williams (December)

The Board congratulated Christopher Douglas for 27, Linda Montouth for 32, and Alex Williams for 25 years of service.

**MOTION:** RIEMER/DANIELS to approve the consent calendar, with the exception of the minutes. (5-0-0-0)

**REGULAR CALENDAR**

The Retirement Board May Discuss and Take Action on the Following:

Y. Retirement System Manager Report:

UNITE HERE and Brookfield

Michael Pineschi from UNITE HERE came to follow up on what was discussed at the last meeting pertaining to Brookfield. He stated that Brookfield had not yet spoken with UNITE HERE. After some discussion, the Board decided that Hugo should send Brookfield an e-mail urging them to take the necessary steps to talk with UNITE HERE.

E. 2017 Actuarial Valuation - Hugo Wildmann

**MOTION:** RIEMER/DANIELS to accept the actuarial valuation. (5-0-0-0)

F. Investment Performance, Rebalancing and Asset Allocation – Hugo Wildmann, Carolyn Smith

Hugo said that the Plan is up 12.5% through the end of October. Carolyn went over the higher returns on the first few pages of the presentation and discussed the major contributors to the Plan’s high returns.
Carolyn went over the performances of the fund managers in the portfolio. She pointed out that Eaton Vance (Parametric) is performing poorly as they underweight the larger countries in the index. Chair Lewis pointed out that we have two emerging markets equity managers, City of London and Eaton Vance. He asked if another firm besides Eaton Vance might be a good complement to the City of London. Chair Lewis asked Carolyn for a suggestion and she stated that she is comfortable with our current manager structure. She said we could change our weighting within the asset class if the Board desired. Hugo mentioned that when we hired Eaton Vance we knew that they underweighted the larger countries in the index and within those countries they underweighted the largest companies. Member Allen asked Carolyn if Eaton Vance is sticking to their process and Carolyn said yes. Member Riemer stated that he would like to continue with Eaton Vance.

Hugo went over the chart in tab F of the binder and discussed the changes by reviewing the asset allocation sheet. Hugo informed the Board that this table reflects a $3 million sale from the City of London. Member Riemer asked Hugo to change the formatting of the chart to somehow indicate that the numbers shown are dollar amounts. Vice Chair Williams asked where the $3 million was moved to and Hugo responded that it went into cash.

G. Third Quarter 2017 Investment Performance Report – Carolyn Smith

H. Tom Hickey on the Possible Hiring of Landmark – Hugo Wildmann

Tom Hickey joined the meeting by telephone. Hugo stated that Tom will discuss the Landmark investment from a legal perspective and will also discuss the topic of Unrelated Business Taxable Income.

Tom said that Landmark has a superb reputation and it is a well-known and respected firm. He went over some of the details of the distribution pattern pertaining to how we would receive funds from our investment in Landmark. He then directed us to item 7 of the Side Letter, which relates to Permitted Disclosures, and explained the new California Law (AB 2833) that requires fund managers to release full disclosure pertaining to fees on certain types of investments. Tom discussed that he knows it is unclear if the Landmark investment would be covered by AB 2833 but he thought getting this language in the Side Letter would be advantageous to the Board.

Tom moved on to the issue of Unrelated Business Taxable Income (UBTI) and introduced the topic to the Board. He mentioned that the current tax bill has a provision that would require public pension plans to pay taxes on this type of income. The view of our plan (and others) is that we are exempt from paying taxes on any income. The provision in the bill would require the payment of taxes on UBTI for all investments made by a public pension
Chair Lewis asked Tom if he knew how much of the projected investment return would be attributable to UBTI with our existing investments and the investment with Landmark. Tom informed the Board that Landmark’s fund documents state that the investment “may” generate UBTI, which could suggest that they are uncertain or that the amount is “de minimus”. Tom stated that there will be more clarity if legislation passes, but until then it seems that nothing in the Landmark documents indicates how much UBTI there will be and how much will be taxable. Member Riemer asked if leverage is subject to UBTI and Tom responded yes. Tom also mentioned that some Cayman Island investments block UBTI, and Chair Lewis responded that he would not be comfortable with that.

After a discussion about UBTI, Chair Lewis asked Hugo to find out how much UBTI we have received from our other investments.

Tom asked the Board for authority to release the Side Letter to Landmark. The Board authorized Tom to do this. Chair Lewis asked Tom if we need to disclose that we will be doing further investigation because of the UBTI issue and Tom stated that he will mention that to Landmark and their in-house counsel. Member Riemer asked if the return we receive will count as carried interest in the tax code, and Tom said 88% of the carried interest goes to us and the other partners and the rest goes to Landmark. Member Riemer also asked if Tom is aware of sexual harassment cases that these managers have been involved in and he said no.

Tom will send the Side Letter to Landmark and copy Hugo and Carolyn.

We took a break at 2:56.

The meeting started again at 3:03.

I. Hiring of Landmark to Manage an Investment in Real Estate * - Hugo Wildmann, Carolyn Smith

This was discussed under the prior section.

J. Investment Review of Current Fixed Income Manager – Loomis, Sayles – Stephanie Lord

Stephanie Lord from Loomis, Sayles started her presentation by discussing some of the staffing changes at Loomis. She continued by discussing the investment portfolio and its allocation among various fixed income sectors.
Stephanie mentioned that Loomis is changing the Guidelines for the fund we are invested in and this will give Loomis more flexibility in their investments. Currently certain minimums exist for investment grade credit in the portfolio and the new guidelines will eliminate some of these restrictions. Hugo mentioned that he was not necessarily in favor of these changes and the removing restrictions can at times increase investment returns; the elimination of restrictions can also decrease the diversification in the portfolio and this can be harmful to us. Other Board members agreed that eliminating the floor on investment grade investments was not something the Board was enamored with.

Carolyn said her research team was OK with the guideline changes. Stephanie said she would relay our comments back to her managers and that she will have Loomis draft a clearer memo with more explanation on the guideline changes and send the memo to Hugo.

Stephanie reviewed the recent performance of the fund.

The presentation ended at 3:33.

M. Calendar for 2017 and 2018 - Hugo Wildmann

The Board reviewed the calendar for 2018. Jeff wants to change the January meeting to the 18th and the Board agreed with this change. The Board also scheduled the April meeting for April 19th.

N. Plan Amendment Review Per Board Policy #665 (Formally 170) – Hugo Wildman, Russ Richeda

Hugo referred the Board to the second page, which is a draft of the memo pertaining to any comments the Retirement Board has on the proposed Plan amendment for non-represented employees. Hugo mentioned that the amendment affects unrepresented employees hired after January 1, 2016.

Russ wanted to note that one of the sections of the Amendment, 13.2 results in provisions that might create issues under the vested rights doctrine. Vice Chair Williams asked if 13.2 of the draft amendment applies to all employees. Chair Lewis clarified that the amendment we are discussing only applies to non-represented employees and Denise and Russ mentioned that it could apply in certain cases to non-represented employees who were previously represented employees. There was some further discussion and Hugo summarized how the amendment would work.
Russ moved onto item 2, which regards benefit enhancements, and summarized what this means. Vice Chair Williams asked if the money being returned after a felony conviction was with or without interest. Chair Lewis asked Russ to include this in the memo if it is not part of PEPRA.

Russ went onto item 3 and mentioned the new definition of compensation, which only applies to service retirement and not disability retirements. Chair Lewis asked Russ to explicitly include in the memo that we are using the September CPI as per the CAAP to determine compensation limits.

Vice Chair Williams had a question about page 6, item c, which discusses compensation limits. Russ said that this raises the compensation limit that can be used in the formula. Chair Lewis clarified that this applies to the maximum amount of salary that can be taken into account when computing participants' final average and Hugo mentioned that this also would be the limit used in determining employee contributions.

Member Willis asked what in PEPRA applies to everyone. Russ directed us to Section 13.2, which applies to all non-rep employees, and 13.3, which applies to non-rep employees hired after 1/1/2016. Denise clarified that there will be another plan amendment for the bargaining units at a later time and that amendment will have similar language.

Russ moved on to discuss the interest rate that will be accrued for employee contributions. He and Hugo mentioned that the rate is lower than most other California Retirement plans and that it did not have any upper cap. Hugo mentioned that this rate exceeded 15% in the 1980's. It is also noted that the District Board might want to consider putting a cap on this rate. Hugo mentioned that in implementing PEPRA the Retirement Board will most likely need to adopt certain policies as the Plan Amendment will most likely lack certain specifics that will be required to implement the employee contribution.

**MOTION:** RIEMER/ALLEN for Hugo to send memo to the District, with minor changes as discussed, subject to the approval of Chair Lewis and Vice Chair Williams. (4-0-0-1)

Ayes:  Vice Chair Lewis, Vice Chair Williams, Member Riemer, Member Allen
Noes:   None
Abstain: Member Willis
Absent: None

**MOTION:** WILLIAMS/RIEMER to reconsider the previous motion regarding the plan amendment memo and to revote on that motion. (5-0-0-0) (The vote was unanimous and supersedes the prior vote where Member Willis abstained).
L. NEPC Work Plan for 2017 – Hugo Wildmann, Carolyn Smith

The Board discussed the calendar and Hugo asked the Board about the agenda item pertaining to Sands and if we wanted them at the meeting in December. The Board decided that Sands did not need to attend.

The Board took a break from 4:28 to 4:34.

O. PEPRA Implementation – Hugo Wildmann

The District has hired Hanson Bridget to work on PEPRA implementation. Hugo requested authority from the Retirement Board to spend up to $5,000 on obtaining advice from Ice Miller in the implementation of employee contributions for the PEPRA Amendment. Hugo mentioned that he might well not need any advice from Ice Miller but wanted the option of obtaining it if he thought it was prudent. Russ said that he has worked with Ice Miller in the past, and they have an in-depth knowledge of PEPRA and employee contributions and tax considerations.

**MOTION: WILLIAMS/RIEMER** for Hugo to spend up to $5,000 on Ice Miller for advice on implementing PEPRA if he thought it was needed. (5-0-0-0)

P. Benefit Statements for Employees who Transferred from AFSCME to Non-Represented After 1/1/16 – Hugo Wildmann

Hugo informed the Board that we e-mailed seven non-represented employees that we were not sending them Benefit Statements because of the proposed PEPRA Amendment.

Q. Update from District General Counsel on Reported Bullying Allegation — Denise Standridge

Denise said there was a bullying complaint against a Retirement Board member that was investigated and the conclusion reached that it was unfounded. Denise said that the District will require harassment and bullying training and Sherri Stokes will let the Board know when she will be available to provide it. The District requests that the Retirement Board complete this training by January. Vice-Chair Williams asked if this can be done during a Board meeting and Denise said yes.

K. Draft Semi-Annual Report – Hugo Wildmann

T. Workload and Hiring Plan – Hugo Wildmann
Hugo discussed workload issues and expressed concerns about the processing of 1099’s in January. He mentioned that Albert was involved in this last year as were other District employees who are no longer here. Hugo said he will have a recommendation for the Board at the December meeting on hiring a new employee and Chair Lewis brought up the idea of hiring for a grade 6 or above.

R. Response to District Board on the Processing of Disability Application – Hugo Wildmann

There was a complaint issued from the spouse of an AC Transit Employee about the Staff. Hugo summarized the background and the scenario that led to the complaint. Vice Chair Williams said she spoke to the person and one of her first complaints was that she came to drop off confidential medical paperwork and was made to wait in the lobby for an extended period of time. Hugo prepared a letter from Chair Lewis to the District board to address the complaint. Chair Lewis is comfortable with the memo with a couple of suggested edits. Chair Lewis would also like to include the timeline as an attachment to the memo. The Board also agreed to send a letter to the spouse of the disability applicant.

MOTION: RIEMER/WILLIAMS that Chair Lewis will compose a letter to the District Board and the complainant, using Hugo’s letter as a model. (5-0-0-0)

S. Benefit Statements, Letter and Division Meetings * - Hugo Wildmann

Hugo informed the Board that Bertina is going out to the districts.

U. AB 1234 Training – Russ Richeda, Hugo Wildmann

It was decided that the first hour of the next Board meeting would be dedicated to AB1234 Training, with perhaps an additional hour later that meeting.

V. Paratransit Employees in the Retirement Plan * – Hugo Wildmann

Hugo will write something to the District to look into this by next month.

Y. Retirement System Manager Report:
   1. District and Retirement System Agreement

   Hugo said that the District Board approved this agreement last week and it needs to be signed by Chair Lewis. Hugo is waiting for Denise to provide a clean copy to be signed.
2. ATU Retirement Workshop

Hugo informed the Board that Staff provides the material, and the union is in charge of getting people to the workshops, which are typically done on Saturdays. Vice Chair Williams said she will send Hugo an email to schedule something.

Z. (CLOSED SESSION)
   a. Gerardo Alarcon – Total and Permanent Disability
   b. Ervin Byrdsong – Total and Permanent Disability
   c. Delmar Mitchell – Total and Permanent Disability
   d. James Thomas – Total and Permanent Disability
   e. Anjenette Brown – Occupational Disability
   f. M. Karen Amos – Occupational Disability

2) Matters Relating to Pending or Threatened Litigation
   a. Conference with Legal Counsel – (Government Code Section 54956.9(a)):
      1) Geraldine Adams – Appeal of Denial of Total and Permanent Disability
      2) James Cornelious – Appeal of Denial of Total and Permanent Disability
      3) Terance Chrisman – Appeal of Denial of Total and Permanent Disability
      4) Michael Jefferson – Appeal of Denial of Total and Permanent Disability
      5) Linda Young – Appeal of Denial of Total and Permanent Disability

3) CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION (Government Code section 54956.9(d)(1)): Mehdin v. Gebregzabher

4) Public Employee Performance Evaluation
   (Government Code Section 54957)
   Title: Retirement System Manager
   Title: Retirement System Analyst

AA. Resume Open Session
1. Report and/or Action on Closed Session Items

Russ stated that the applications for Total and Permanent Disability for Delmar Mitchell was approved effective August 1, 2017 and for James Thomas was approved effective March, 2017.
PENDING ITEMS FOR DISCUSSION

Member Riemer would like the public employee performance evaluations to be put on the next meeting agenda.

RETIREMENT BOARD COMMENTS

ATTORNEYS’ REPORT

ADJOURNMENT

MOTION: WILLIAMS/ALLEN to adjourn (5-0-0-0).

The meeting adjourned at 5:42pm.