

***West Palm Beach Firefighters Pension Fund***  
**MINUTES OF MEETING HELD**  
**February 5, 2004**

Chairman Dave Allison called the meeting to order at 1:03 P.M. in the meeting room at Station 2, West Palm Beach, Florida. Those persons present were:

**TRUSTEES**

Dave Allison, Chairman  
Dorritt Miller  
David Merrell  
Tom Harris

**OTHERS**

Bonni Jensen, Hanson, Perry & Jensen, Fund Counsel  
Scott Baur, Pension Resource Center  
Jeff Swanson, Merrill Lynch

**INVESTMENT CONSULTANT REPORT (Jeff Swanson, Merrill Lynch)**

Jeff Swanson reviewed the performance for the invested assets for the quarter ending December 31, 2003. The total assets increased by \$6,265,397 for the quarter to \$82,451,360 representing an increase of 8.2% over the prior quarter. As of December 31, the Pension Fund had an allocation of 67% of assets invested in equities.

The international portfolio returned 14.8% for the quarter, but still trailed the benchmark at 17.1%. Davis Hamilton Jackson also under performed as value performed better than growth, and lower quality issues showed higher returns than higher quality issues. Jeff Swanson reported that Massachusetts filed suit against Templeton the day before the meeting, alleging that the investment management firm allowed a certain hedge fund special trading privileges.

Over longer periods of time, the returns on the Pension Fund assets exceeded the benchmark with reduced volatility or risk. Jeff Swanson noted that the asset allocation maintained by the Pension Fund produced more of the returns than even the individual investment managers. The Pension Fund also showed strong performance in comparison to the Merrill Lynch public pension plan sample.

**MINUTES**

The Board reviewed the minutes of the meeting held December 4, 2003, noting a typographic error on the first page. A motion was made, seconded, and passed 4-0 to approve the minutes as amended. A motion was made, seconded, and passed 4-0 to approve the minutes for December 22, 2003. The Board requested clarification of the acronym "Bac-DROP" noted in the minutes, which stands for "Benefit Actuarially Calculated DROP".

**DISBURSEMENTS**

A motion was made, seconded, and passed 4-0 to approve the disbursements presented by the administrator.

### **ATTORNEY REPORT (Bonnie Jensen)**

Bonni Jensen provided a copy of the most recent revision of the Special Act to the Board. She then reviewed the changes to the provisions of the plan for the Trustees.

A motion was made, seconded, and approved 4-0 to draft policies where required to clarify the changes to the Special Act based on the assumptions used by the actuary to cost the changes.

### **HEARING (Mildred Hubbard)**

Joni Hamilton, Mildred Hubbard, William Rutter, and court reporter Kathy joined the meeting. The hearing for Mildred Hubbard commenced at 2:13 PM. The Board taped the proceedings as the official public record for the hearing.

Bonni Jensen began the hearing with an opening statement. She stated that the hearing was a non-adversarial proceeding. She then reviewed the rules for introduction of evidence, and she reviewed the materials prepared prior to the hearing labeled as exhibits A through T. She concluded her opening remarks.

Mr. Rutter, representing Mildred Hubbard, reviewed a memo for the Board. He noted that Mr. Donald Hubbard retired in 1985 from a disability incurred in the line of duty after 27 years of service. He was married to Betty Hubbard at the time of his retirement, although Betty Hubbard predeceased Don Hubbard in September of 1997. Mr. Rutter also reviewed the history of changes to the Special Act regarding the benefits offered to surviving spouses of retired participants. He noted that the plan prior to 1988 provided a survivor benefit only to the spouse as of the date of retirement, but after 1988 the plan changed to provide a survivor benefit to a surviving spouse as of the date of death provided that the participant was married at the time of retirement.

Mr. Rutter stated his position that such changes to the Special Act covered participants that previously retired retroactively. He cited a precedent by City of Daytona Beach vs. Caradonna that plan changes cannot diminish benefits to retired participants. He then argued that Mildred Hubbard married Don Hubbard with the assurance that she would receive a survivor benefit from the Pension Fund in the event that Don Hubbard died. Mr. Rutter cited Kuge vs. the State of Florida as the precedent for detrimental reliance on advice given by the plan administrator.

Mr. Rutter reported that Mildred Hubbard worked in the clothing department at Saks Fifth Avenue prior to her marriage to Don Hubbard. She earned approximately \$30,000 per year. Saks also provided a retirement benefit to vested employees. Mildred Hubbard separated from Saks with 3 years of service, prior to vesting in the plan. Mrs. Hubbard was not able to provide details regarding the type of plan or benefit she had accrued upon separation from Saks.

Mr. Rutter stated that the change to the Special Act modifying the survivor benefits in 1988 did not specifically stipulate that the changes applied only to participants retiring after 1988. The 1988 change to the Special Act repealed specific provisions of the prior law. Mr. Rutter then reviewed the audit notes accompanying the 1990 financial statement, which did not indicate that retired participants prior to 1988 had different benefits from those participants retiring after 1988. The audit notes accompanying the financial statement in 2000 also did not indicate different benefits based on the retirement date.

Finally, Mr. Rutter provided a copy of the provisions of Chapter 175 Florida Statutes in effect in 1999 prior to Don Hubbard's death. He again stated that, once granted, benefits to vested participants cannot be reduced or diminished. Trustee Dave Merrell questioned possible exceptions to Chapter 175 contained in Chapter 112 Florida Statutes. Mr. Rutter did not have details available regarding the provision of Chapter 112.

Mr. Rutter reviewed in detail the transcript of the deposition taken from Scott Baur, administrator for the Pension Fund with the Pension Resource Center.

The court reporter swore in Mildred Hubbard. Mrs. Hubbard discussed the circumstances leading to her marriage to Don Hubbard. Dave Merrell asked her about her job prior to employment with Saks. Dave Allison asked additional questions about the changes to the Special Act modifying the provisions for benefits paid to surviving spouses of retired participants. In response to a question posed by Dorritt Miller, Bonni Jensen informed the Board that the Trustees cannot create new benefits. Instead, the Board must administer the provisions of the Special Act. Action by the Board in violation of the provisions of the Special Act and Chapter 175 Florida Statutes may expose the Board and the Trustees individually to possible claims of a breach in the fiduciary obligation to the plan.

In response to a question by Ms. Jensen, Mr. Rutter affirmed that the Board treated Mildred Hubbard fairly during the hearing, and he presented all of the evidence on behalf of his client. Mr. Rutter restated his argument for detrimental reliance based on advice supposedly provided by the administrator to Donald Hubbard. The hearing ended.

Bonni Jensen instructed the Trustees. The Board must grant or deny the benefit requested by Mildred Hubbard no later than 5 days from the hearing. A motion was made, seconded, and passed 4-0 to deny the request by Mildred Hubbard a survivor benefit from the Pension Fund.

#### **ATTORNEY REPORT (Continued)**

Bonni Jensen continued to review the proposed changes to the Special Act for the Board. After she completed her review of the proposed changes, she noted that the Trustees must meet again to sign the order for the hearing for Ms. Hubbard. A motion was made, seconded, and passed 3-0 to authorize signing the order for the hearing for Ms. Hubbard outside a meeting of the Trustees.

There being no further business and the next meeting being scheduled for Thursday, March 4, 2004, at 1:30 P.M. at Station 2, the meeting was adjourned.

Respectfully submitted,

Tom Harris, Chairman