

CITY OF LOS ANGELES  
BOARD OF DEFERRED COMPENSATION ADMINISTRATION

MINUTES  
MEETING OF MARCH 15, 2005 – 9:00 A.M.  
200 N. SPRING STREET, ROOM 1010

Board Members:

**Present:**

Shelley Smith, Chairperson  
Joya C. De Foor, Vice-Chairperson  
Sgt. Thomas A. Dawson, Ph.D.  
Richard Kraus  
Betty Porter  
Javier Romero  
Maggie Whelan

Staff:

Personnel: Maryanne Keehn, Personnel  
Steven Montagna, Personnel  
Francois Verin, Personnel  
Richard Bobb, City Attorney

1. CALL TO ORDER

The Chairperson called the meeting to order at 9:06 a.m.

2. PUBLIC COMMENTS

None.

3. MINUTES

Richard Kraus asked whether, since his status as a Board member was in question at the meeting of October 7, 2004, this might affect his being listed as a Board member. Richard Bobb of the City Attorney's Office indicated that it was his understanding Mr. Kraus was a Board member. Thereupon **a motion was made by Thomas Dawson, seconded by Mr. Kraus, to approve the minutes of the October 7, 2004 meeting; the motion was unanimously adopted.**

#### 4. EXECUTIVE SESSION (pursuant to Government Code Section 54956.9(a))

The Board of Deferred Compensation Administration convened an Executive Session to confer with the City Attorney regarding Galvin v. City of Los Angeles, Case No. BS 093076 and Nationwide Retirement Solutions, Inc. v. City of Los Angeles, et al., Case No. BS 093525. At the conclusion of this Executive Session the Chairperson, Shelley Smith, announced that the Board had returned to public session and that no decisions were made by the Board.

#### 5. REPORT 05-00: RESPONSE TO CITY COUNCIL VETO OF CONTRACT AWARD

Ms. Smith indicated that the recommendation from staff was to reject all previous proposals, cancel the January 2004 RFP and seek authorization from City Council to continue the current contract with Great-West on a month-to-month basis. She asked if staff wished to make any summary remarks. Steven Montagna indicated that to make the issue easier it had prepared two reports, the first report concerning canceling the original RFP in response to the Council veto, and the second report addressing Council's related recommendations.

Ms. Smith asked if there were any members of the public who wished to speak on this item. Chris Roux identified himself as an attorney with Weston, Benshoof, Rochefort and Rubalcava, representing Nationwide Retirement Solutions. He stated that for the record Nationwide wished to register its objections to the recommendation in that the City Council was without jurisdiction to veto the contract award of August 17<sup>th</sup>, 2004. Ms. Smith indicated she appreciated the objection and expected it would find its way into the advocacy of the parties. Cliff Ruff of the Los Angeles Police Protective League spoke to register his support of the staff recommendation.

Turning to Board discussion, Sgt. Dawson began by indicating that the two issues should be voted on separately. Regarding the second issue, he asked staff how it planned to get input from employees and noted his concern about the length of time a survey would add to the RFP process. Ms. Whelan asked if staff could provide a timeline.

Mr. Montagna indicated there were several unknown factors. He stated that a survey could take three to four months, and that development, issuance and review of an RFP could take 9-12 months. Ms. Smith asked staff if the recommendation to extend through the end of the year was based on a realistic expectation the process could be completed in this time frame. Staff indicated that, since the Board was now in mid-March, even this time frame was optimistic, but that this recommendation was designed with the intention of returning to Council again should more time be required.

There was discussion regarding the order in which the recommendations presented by staff should be addressed by the Board, and a decision to address first the recommendation concerning canceling the RFP. Mr. Romero asked staff the cost of

conducting a new RFP. Staff indicated that its guess was that the costs associated with the last RFP ranged from \$50,000-\$100,000. Mr. Romero indicated that to him this was a great deal of money and thought that staff should attempt to negotiate the fees with Nationwide. Sgt. Dawson indicated that the problem with that suggestion was that the City Council had said the Board didn't have a contract, so there was nothing to negotiate. Mr. Romero stated that he agreed there was no contract, but that the Board still had a valid action.

Ms. Whelan stated another problem with the suggestion was that it appeared to be giving Nationwide an opportunity to change its bid, and that was problematic. Mr. Bobb agreed with this assessment.

Ms. De Foor asked staff whether the City Attorney had reviewed the CAO report because of her concern about a fiduciary responsibility to provide education. Mr. Montagna responded that this question really had to do with constructing the next RFP, and could be addressed at that stage.

Ms. De Foor then asked if the City Attorney agreed that the Board was required to conduct participant surveys before going out to bid. Mr. Bobb replied that the Board was required to survey, but the timing was not clear and apparently surveys had not been conducted for some time. Sgt. Dawson indicated his view that it was not necessary to form a task force because the Board could issue a short survey asking participants about redesigning the system or what they wanted in a plan. Ms. Whelan indicated she still believed a task force was necessary to make sure the appropriate inquiries were included in the survey.

Ms. Smith indicated that the Board first needed to address the issues raised in Item 5, including responding to the Council veto and extending the current contract. She asked if there was a motion relevant to Item 5-A. **A motion was made by Sgt. Dawson, seconded by Mr. Kraus, to reject all proposals and cancel the January 2004 RFP for third-party administration which culminated in a decision by the Board on August 17, 2004; the motion carried with five ayes (Smith, De Foor, Dawson, Kraus, and Whelan) and two nays (Romero and Porter).**

Board members next discussed the Great-West contract. Mr. Romero asked if the contract could be terminated with 30 days notice. Mr. Montagna responded that he believed it was 60 or 90 days, but that the contract did contain an at-will termination clause. **Sgt. Dawson made a motion, seconded by Ms. Whelan, to request authorization from the City Council to extend the Great-West contract on a month-to-month basis through September, 2005, and authorizing the Board Chairperson to execute the extension upon Council's approval; the motion carried with six ayes (Smith, De Foor, Dawson, Kraus, Romero and Whelan) and one nay (Porter).**

## 6. REPORT 05-01: RESPONSE TO CITY COUNCIL VETO OF CONTRAC AWARD – TASK FORCE REVIEW

Ms. Smith indicated that staff's recommendation was to form two task forces to address surveying the membership and Board governance issues. Mr. Dawson indicated his concern with establishing term limits for Board members, stating he wished to make clear that if the staff recommendation was to pass it was only to form the task forces and not necessarily endorsing any specific recommendation from the CAO. Ms. Smith indicated Mr. Dawson had made a good point, sharing her belief that the Board would be able to weigh in on these issues. She further stated it was her understanding that with respect to the issue of term limits, that would be addressed on a separate track from the issue of what would go into the next RFP. Mr. Montagna indicated that staff's concept for the task forces was that they would study the issues and bring them back to the Board, but that the Board would have the final decision about what recommendations went forward to Council.

Mr. Romero indicated he would prefer a Board committee approach to examining these questions rather than using a task force. Ms. De Foor indicated her desire to have input from outside agencies. Ms. Smith indicated that her understanding for the recommendation was that formation of the task forces was a means of responding to the concerns voiced by participants that they had not been a real part of the RFP decision-making process; however, she indicated she supported the idea that Board involvement after the fact was entirely appropriate.

Ms. De Foor suggested that the same individuals from Personnel and CAO not chair both task forces because they might not have time to handle both task forces. Ms. Whelan indicated she thought both individuals were capable of handling both task forces. Mr. Montagna indicated that staff's intent was to have the critical function of the survey addressed first before moving to the other issues. Ms. De Foor expressed a further concern about whether those selected for the task force would understand the subject matter. Ms. Smith indicated her view that this was intended to be a vehicle for participants to be part of the process, and stated her preference that she'd like to give this proposal an opportunity to work.

Mr. Kraus expressed an interest in ensuring that organized labor's perspective was represented on the task forces. Mr. Montagna responded that the governance task force could certainly be asked to solicit labor's perspective as part of its research. Sgt. Dawson indicated that he might be interested in having one or two Board members serve on the task forces. Ms. Whelan indicated that in her view it was important for task force members to feel they could speak freely and not be intimidated by the presence of Board members. Ms. Smith commented that a compromise approach might be to allow the task forces to do their work and then to have Board committees study their findings before returning to the full Board. Sgt. Dawson indicated his interest was just in providing a resource for task force members.

Ms. Smith suggested that staff provide monthly updates on the progress of the task forces, thus deferring for the moment the question of what level of further Board involvement in their work might be appropriate. As a result, **a motion was made by Sgt. Dawson, seconded by Betty Porter, to adopt the staff recommendation to form two participant task forces, both consisting of representatives of the CAO, Personnel Department and Plan participants to provide further consideration and advice with respect to the recommendations of the City Council; and further requesting that staff provide monthly progress reports to the Board; the motion was unanimously passed.**

#### 7. REPORT 05-02: PARTICIPANT OUTREACH

Mr. Montagna indicated that staff had been exploring ways in which communication to Plan participants could be improved. Staff had developed a proposal for enhancing the Plan-level website and notifying participants via e-mail about Board meetings and activities, as well as identifying contact information for Board members to make them more accessible to participants. Ms. De Foor asked if provider presentations could be posted on the website as well, and Mr. Kraus asked that e-mail contacts be placed on the website. There was discussion about posting agendas, as well as Board reports, on the web, and whether it was appropriate to post staff reports that had not been approved yet by the Board. Mr. Montagna indicated this was useful so participants could understand the issues to be presented on a particular topic.

Sgt. Dawson indicated he had an additional concern about jamming up the Police Department e-mail system with Board reports. Mr. Montagna replied that staff's intent was to issue agendas only to individuals on the distribution list, but in the notification to refer recipients to the Plan website so they could pull up actual reports.

#### 8. BOARD REPORT 05-03: CONSULTING INVOICE HISTORY

Sgt. Dawson indicated his interest in discussing issues regarding payments to the consultant. Ms. Smith indicated that this issue could be discussed under the subsequent agenda item, but that this report would be received and filed.

#### 9. REPORT 05-04: CONSULTING SERVICES RFP

Ms. Smith indicated that the staff recommendation was to approve selection of Mercer Investment Consulting for a six-month contract with a contract ceiling of \$75,000 and direct staff to release an RFP for plan consulting services. Mr. Montagna indicated that staff wished to extend the contract term through August to provide sufficient time to issue the RFP, review results and execute a new contract.

Ms. Smith indicated she was aware the staff recommendation was for the Board Vice-Chairperson to be given authority to sign the contract. She stated, however, that she wished to note that her husband's 401(k) received permission to liquidate any Marsh and McLennan stock which is a parent holding company, and it was her understanding that all of this was completed last fall. She indicated that, as a result, she had no conflict of interest or appearance of a conflict.

In response to several questions from Sgt. Dawson, Maryanne Keehn clarified that the consulting services contract had been placed out to bid, two firms had responded, but neither one of them were able to satisfy the City's Standard Provisions requirements. Following this discussion, **a motion was made by Sgt. Dawson, seconded by Ms. Whelan, authorizing the Board Vice-Chairperson to execute a new eight-month contract with Mercer Investment Consulting for Deferred Compensation Plan consulting services with a contract ceiling amount of \$75,000, and authorizing staff to re-issue a new RFP for consulting services; the motion was unanimously adopted.**

#### 10. REPORT 05-05: ADMINISTRATIVE FEE TRUST FUND REIMBURSEMENTS

**Ms. Whelan made a motion, seconded by Sgt. Dawson, approving reimbursement from the Deferred Compensation Plan Trust Fund #896 to the Personnel Department for \$50,469.05 for the quarter ending 9/30/04, and \$50,496.05 for the quarter ending 12/31/04; the motion was unanimously adopted.**

#### 11. REPORT 05-06: INVESTMENT PROVIDER PRESENTATIONS

Ms. Smith noted that the recommendation from staff was to resume regular investment provider presentations to the Board beginning with the next meeting. Ms. Smith indicated it was the consensus of the Board that these presentations should be resumed.

#### 12. REPORT 05-07: RETIRED PARTICIPANT SELECTION PROCESS

Ms. Smith indicated that the recommendation from staff was to issue solicitations for the next retired representative on the Board. Ms. De Foor asked whether the Social Security number field on the form should be removed, and the Mr. Bobb indicated it should. Ms. Smith asked staff to review the form with the City Attorney's Office before issuing. At Ms. De Foor's and Ms. Whelan's request, the City Attorney was also asked to review the hardship application together with staff to address new privacy obligations under HIPAA.

**A motion was then made by Ms. Whelan, seconded by Ms. Porter, approving staff's draft correspondence/application form, with appropriate revisions from the**

**City Attorney, to be sent to retired Plan participants regarding the retired representative seat on the Board of Deferred Compensation Administration; the motion was unanimously adopted.**

### 13. REPORT 05-08: MEETING DATES, MEETING PROTOCOLS, HARDSHIP APPROVALS

Ms. Smith indicated that there was a report from staff that the Board approve a procedure for delegating approval of hardship applications in certain situations. Mr. Montagna indicated that staff had developed this recommendation as a result of some of the recent difficulty in scheduling meetings. He stated that given the difficulty in finding quorums, staff was requesting authority to approve hardship applications in certain limited circumstances. He indicated that two options had been outlined, one providing more discretion to staff and one less.

Ms. Smith indicated she had no objection to delegating this authority in these circumstances. Mr. Kraus asked what the Board's level of responsibility was. Mr. Montagna replied that looking at other 457 plans there was a broad range in terms of how hardships were handled, noting that some plans delegate this responsibility. He stated that the specific proposals created by staff would be consistent with other plans.

Ms. Porter indicated she thought the power should remain at the Board level. Mr. Bobb clarified that under both staff proposals an applicant would still have appeal rights to the Board. Mr. Dawson asked if there could be a provision where staff could go to the Chairperson to obtain a decision. Staff indicated this was one option. Ms. De Foor suggested having the City Attorney involved in the review process. Ms. Smith agreed with this concept.

**As a result, a motion was made by Ms. Whelan, seconded by Ms. De Foor, authorizing staff to approve hardship applications in situations where a regular Board meeting date has been canceled, after having submitted the case for City Attorney review and with approval from either the Chairperson or Vice-Chairperson; the motion was unanimously adopted.** Mr. Kraus asked that the Board receive reports of any cases approved by staff. Ms. Smith commented that this was an excellent suggestion.

**A motion was then made by Ms. Whelan, seconded by Mr. Kraus, amending the Plan Document, Section V(g), last sentence, to add the phrase: “*except where through Board action such authority has been specifically delegated to staff or to the Board Chairperson;*” the motion passed with six ayes (Smith, De Foor, Kraus, Porter, Romero and Whelan) and one nay (Dawson).**

Mr. Kraus asked whether Board meeting materials could be delivered earlier in advance of the meetings, and staff indicated it would make every effort to do so.

#### 14. REPORT 05-09: STAFF ADMINISTRATIVE REPORT

(Board members De Foor and Romero left the meeting prior to consideration of this agenda item.)

Mr. Montagna indicated that at the next meeting it would be presenting the 2004 Annual Report. Sgt. Dawson asked if participants received quarterly notices, and staff responded that they did.

#### 15. HARDSHIPS

**A motion was made by Sgt. Dawson, seconded by Mr. Kraus, approving the staff recommendations in hardship cases 05-05, 05-06, and 05-07 for full, full and partial \$6,500 (net) withdrawals, respectively, all contingent upon a suspension of deferrals which shall remain in effect until such time as the applicants elect to re-enroll, and with authority in Case No. 05-07 to disburse additional amounts based on continued documented wage loss; the motion was unanimously adopted.**

#### 16. NEXT MEETING DATE

April 19, 2005.

#### 17. ADJOURNMENT

The meeting adjourned at 11:14 a.m.

\* Minutes prepared by Staff member Steven Montagna