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>> Matt Loesch: Good morning everyone. I'd like to welcome you to the June meeting for the Federated employees retirement system. If there are a few glitches we are working through our problems. We have orders of the day, things that need to be added. I'll try to go slowly. If you want to write these down, here we go. This is under item 1A, Matthew Harvey, effective date is not listed there, the effected date is 4-10-08. 1B, again the effective date for Shirleen Lilly is -- effective date is 3-28-06. Skipping to item 3EE, Rita Diane moreno is pulled. Item 3GG, the effective or date change from June 30th to June 26th. Item 3KK, there is no department listed there, the department is D.O.T. Item 4 A, there is no date there, it's August 10th, 2008. And then that was 4A, under the deferred vested, Steven Alexander. Item 15, has an effective date change to June 2nd, not June 1st, June 2nd, 2010. Other than that it appears we will be taking things presently as the order they're in on the agenda. So other than that we need to go to our closed session. Which I believe is down the hall, and -- (inaudible).

>> Matt Loesch: It's been -- for August 6th, 2010. I apologize, not 2008. How about that. Okay, we are going to go in closed session and we'll be back. [ closed session ]

>> Matt Loesch: Okay, the note here on the -- okay. Before I read the item on the closed session if I could add one more order of the day then please. Hot off the presses it appears. Under deferred vested, this is item 4D, Sharon Estes, pull her application at this time. So she's not on there anymore. Okay from the closed session the item here is initiation of litigation pursuant to subsection C, section 54956 of government code, matter of items to be discussed is 8. Is --

>> There is no result to report-out.

>> Matt Loesch: Okay, so move on to item 1A please, disability retirement of Matthew Harvey, animal control officer, effective date 4-10-08, service connected disability, period of service, 1.75 years. This is continued from may. I believe you're at this podium please. What I'll ask is a quick recap from last month from staff and anything further from Harvey and we'll get moving.

>> Matthew Harvey is requesting a service-connected disability based on left elbow, left shoulder, neck, 52 years of age, 1.75 years of service. Medical reports are in your file. His work restrictions are he cannot fully twist his left forearm. He should avoid forceful gripping with his left forearm. he should avoid forceful gripping with his left arm. He is currently separated on 12-14-08. At the time of application and at the time of separation he was on unpaid leave. There is no permanent modified duty available. There were alternate employment positions available. This matter was continued from last meeting due to some questions regarding alternate employment.

>> Matt Loesch: Ms. Bappy, did I get the name right?

>> That's correct.

>> Matt Loesch: Anything further?

>> No I believe I said everything last time.

>> Matt Loesch: I believe the reason it was held over, was some concern or comments or questions that were geared towards staff, in particular human resources staff, and that was generally coming from Mr. Constant. We had Mr. Danaj here and Mr. Danaj you had a chance to look at the particulars here, so Mr. Constant.

>> Pete Constant: Thank you. Mark, my concerns were what seem to be clearly conflicting statements from the city on work restrictions and availability of alternate employment. And I would like to hear more about how we reconcile those, and want to hear from you on those particular things.

>> Mark Danaj: Mark Danaj director of human resources. Councilmember, I guess to start off, the shortest answer would be that the retirement board has asked two different questions of the city. One is represented in the March 23rd letter to our general services department, asking whether or not Mr. Harvey could be accommodated in the position of animal services officer, with those two work restriction. And the answer is no. Then the second question that is asked by the retirement board of the city and a different question is could he be accommodated in

any other position with these work restrictions or could he have been accommodated in any other position the city had, at the time of his retirement? And the answer is, he could have been accommodated as an account clerk.

>> Pete Constant: So why was he not?

>> Mark Danaj: Because at the time of the interactive process, he presented to the city work restrictions that far exceed the ones that you were asking us to consider. And so at the time, the work restrictions he gave us were far in excess of these that your independent physician says are his work restrictions and you as a result we could not accommodate him.

>> Pete Constant: So point those out for me in the packet. Because I don't see the difference. In fact, unfortunately my little flags from last month fell off so I'm searching through as we're talking here. But when we read them from last month they read virtually identical. I'll keep looking for them but if you could point me through them, then we can --

>> Mark Danaj: There is no need to look for them. They're not in the packet. The retirement board does not ask for them. If you asked for them we certainly could and provide you with an overview right now.

>> There are medical reports in the packet that is distributed to the board. Those medical reports are not shared with anyone outside of the board. But if the board thinks it would be illuminating, certainly have the work restrictions here that were used to conduct the interactive process prior to Mr. Harvey's separation and can I read those to you, or Mark can.

>> Pete Constant: So I'm -- let me find the page here. I'm looking for the one, because I have the memo here on page 12, or our stand page 12, that say, okay, yes, 15 and 12. Let me get to the right page. So I'm looking at page 50, serialized page 50, dated April 7th, 2009, that says the retirement board restrictions for Mr. Harvey are as follows. he cannot fully twist his left forearm, he should avoid forceful gripping with his left arm. Had the above restrictions been in effect at the time of the interactive process he could have been accommodated in an account

clerk 1 position, which is what you just told me. And then I look at page 12, and it's dated just two weeks prior to that, and it says, after review of the restrictions listed below and I'll jump forward because those restrictions are exactly the same, he cannot totally twist his left forearm, he should avoid forceful gripping with his left arm, it says general services had determined it could not have accommodated Mr. Harvey's restrictions at the time of separation, either the ASO position, a modified ASO capacity or any other position within the department. So why are we sending out conflicting messages, why does -- why would this memo be put out and then, a conflicting memo put out two weeks later, instead of the city administration which we are one city organization, head by one human resources department, why would not the general services memo come to human resources and you guys give us one clear picture of whether or not this person, at that time, could have been accommodated?

>> Mark Danaj: Councilmember, I think that's a very good question. Again the answer is that the retirement department, on your behalf, asks two different questions to do two different principles in the city. So the retirement department asks the city, with these two restrictions, that are identical in both memos as you've pointed out that on the March 23rd memo they asked the department from which the employee is coming, in this case the general services department they asked could this individual have been accommodated with these restrictions which again remember are different than the restrictions which he presented to us when he was employed and frankly was much lower than he presented to us as an active employee. But with these restrictions, the retirement department asked general services, the department he's coming from, with these restrictions could he have been accommodated in the class from which, or in the class he was serving which is animal services control officer. The answer of the department, and of the city, is in the confines of that question, and it's worded very specifically, no, he could not be accommodated with these work restrictions. But then, if I might just conclude, so then the retirement department asks a second question of the city and says with these same work restrictions, again, lower than he presented to us as an active employee, are there any positions that he could be accommodated with his restrictions? Retroactively we are answering yes, had this been his work restriction at the time he was separating from the city he could have been accommodated. But in reality, when he was an active employee with the city those are not the work restrictions we were given or we worked with. They were higher as presented by his treating physician.

>> Pete Constant: So we've been running a retirement board here for decades. Why would the retirement board have to ask you two different questions at two different times instead of just getting one coordinated response? Because general services is not the employer. The City of San José is the employer.

>> Mark Danaj: Correct.

>> Pete Constant: So why -- because I'll tell you this clearly sends mixed messages. You can give me all the explanations in the world of what people were thinking but when it comes forward in a packet like this we look at it and the average employee who you know is dedicating their career working for the City of San José sees these as conflicting messages, why would not the City of San José have a coordinated response, is question one. You don't have to answer that now but it is something I expect an answer for, from a policy level from the city council level. I also have a question, first for Mr. Harvey. Did you voluntarily leave the City of San José?

>> I was given the choice of being terminated, or --

>> Pete Constant: You have to talk into the mic.

>> Matt Loesch: Instead of before the microphone thank you.

>> I was given choice of having been terminated, showing that as a termination on my record or voluntarily stepping down. I didn't want to show that I had been fired.

>> Pete Constant: So I'd like to ask more about that. And as you know, Mark, I got one of these letters when I was a city employee, that didn't even give me the option of being terminated or being voluntarily separated. It just said you've run out of this time and as on this date you're going to be considered voluntarily separated from city service. And I'll tell you in my mind, there was absolutely nothing voluntary about it. And I think a coerced voluntary resignation, there's nothing voluntary about it. And I've heard that at least a half a dozen times just in

the past two years on this board. And do you really think it's voluntary when you tell someone, quit right now or you're being terminated?

>> Mark Danaj: Put that way no, it doesn't sound like it's very voluntary.

>> Pete Constant: No, that's fine. Then when I look at the -- our city policies, well, in fact here, Mr. anders just provided me a letter that was actually written by the city on 11-10 of '08, and I'll just quote it. It says at this time the interactive process has come to a close because I have no expectation that the city will be able to accommodate your work restrictions now or in the future. Further I plan to recommend that the general services department proceed accordingly with a voluntary separation. Thanks very much for your cooperation. I wish you the best in your future endeavors. That doesn't look like a very voluntary, in says by the way I've made a decision for you that you're voluntarily leaving. What I have a problem with is just how we're treating our employees. And I'll tell you, I've read the codes, I've read our policies. There's nothing in there that says, by the way, you agree the minute you are hired, that if you get hurt, you're going to voluntarily leave us if we can't accommodate you. So at minimum, I think that we need to be more honest in how we talk to our employees and we need to tell them straight up what we're doing. Now, I'm very concerned about this process of us separating workmen's comp from retirement and using one as a crutch for the other. Because I'll tell you from the employee perspective, I don't think they really give a damn which set of legal guidelines. I think they just want to be treated affirm and they want to be told ahead of time what's going on. And if we -- I think we need to come to resolution on this because I don't think it is fair in the least to a city employee that we treat them this way. Now, I want -- if you can go over for me again just so it's very clear for me and everybody else, how -- what restrictions were presented to you, and I know you tell me you don't get the actual doctor's documents. But if you can refer me to the documents in the pamphlet you have to make that determination. I'm trying to reconcile if there was a genuine attempt by the city to accommodate this worker's injuries.

>> Mark Danaj: Sure, councilmember. I will have Alan Demers list the actual restrictions that we dealt with in terms of trying to return Mr. Harvey to work. But just to respond a little bit to the overall conversation I think the key here is to understand that there are different work restrictions that are being presented to two different

parties. When we were working with Mr. Harvey to actively return him to work there were different work restrictions and frankly, they were higher. So the burden of the city was that we had to deal with work restrictions that were much more difficult to meet than the ones that are being represented to you as you consider your disability retirement.

>> Pete Constant: And that's what I'm asking to see.

>> Mark Danaj: Absolutely.

>> Pete Constant: Can you refer me to those in the packet?

>> Mark Danaj: Absolutely.

>> The work restrictions that were presented --

>> Pete Constant: Can you refer me to the documents in the packet so I can fall along with you?

>> Page 27 makes reference to some of the work restrictions. Some of the work restrictions are also addressed in the supplemental medical report, page 22, in which Dr. Coleman reviews the account court position that the city had identified for placement for Mr. Harvey and suggests that after speaking with Mr. Harvey about his abilities he doesn't believe Mr. Harvey could successfully be placed in the position.

>> Pete Constant: Okay, so I'm reading those two pages. They don't seem all that much different from the ones that are listed on those pages of the memos that I read off. I guess what I'm looking for is, I'm looking for the delta. Where's the difference, specifically, between what the city uses its evaluation for workmen's comp return to work, versus what we're seeing as a disability retirement. That's what I specifically want to see.

>> Certainly. So the work restrictions were no climbing, no reaching above shoulder level --

>> Pete Constant: Again refer me to where you are so I can follow along.

>> Okay, page 26, is also spelled out some of these. I mean there's not a single summary in your packet as far as I can tell. But if you cobble together the various medical report.

>> Mark Danaj: If I can answer your question directly --

>> Pete Constant: Legality me clarify, please.

>> Mark Danaj: Okay, please.

>> Pete Constant: So are you telling me that when you guys make a decision on whether you are going to accommodate a worker's restrictions you don't have a document that you refer to that has all the restrictions in one place, you -- hang on let me finish, please. I really dislike being interrupted and it's happened several times already, and I'd like to just be able to finish a thought, and then have you respond. Especially Mr. Danaj. You do this at every meeting we have. So take a breath, relax, and when I'm finished with my question then you can answer it, okay? So if I can get back to my train of thought here. Are you telling me that when we have an employee, and we've got half a dozen different medical reports and little check-box forms like we have here on page 26, that there is not one reconciled sheet that has all the work restrictions in a succinct form, or do we quotas we were told, quote, just cobble together information from different parts? That's the question.

>> Mark Danaj: Councilmember, no, that is not the case. We do have a very succinct listing of the work restrictions that we are dealing with when we are in an interactive process to return people to work. The differences and the reason why it is not in your packet is because you do not ask for it. You ask us to answer questions based on work restrictions that typically are lower and easier to meet as presented to the process you have to consider a disability retirement. I am more than happy, and perhaps this could be one of the outcomes of the study session that was suggested last time to talk about the item of perhaps sharing those with you and letting

those be a part of your packet and for your consideration. When the city runs through an interactive process to return people to work there is a very succinct list of which Allen is listing. However, you do not ask for it. In fact I've been asked -- told that in an interactive process you don't want it in your packet. We would be happy to include it for you.

>> Pete Constant: I would think if we went back and listened to the tape of last month I think I very clearly asked for that. I think that that's the whole reason we're here this month is because of this exact discrepancy. So for you to sit here and tell me that I didn't ask for it I don't think is quite accurate. And you know, maybe I don't recall last month as clearly as I think I do. But I clearly remember, the whole purpose for deferring this was to get that specific information, and to have some reconciliation of these two differences. So am I wrong?

>> Mark Danaj: No, you're not wrong. Councilmember just to clarify my remarks, I don't mean you personally. I mean you meaning the retirement board or as represented by the administration that works on your behalf. The retirement board does not ask for the work restrictions that we had to consider when the employee was an active employee and representing their work restrictions us and again typically at a higher level of restrictions than then ones you end up considering for disability retirement.

>> Pete Constant: I understand that's a global question, which again gets me back to why I think our process is screwed up. Because I don't think we're two legal entities before the same organization with the same employees. And we go through the same process over and over again, and if we have to be more overt in what we are asking in general for each applicant then maybe that's something but I asked a specific question last month and I don't have an answer. So I guess that's what's troubling me. Forget the global process and the process the city has and the retirement board has. But I asked for some reconciliation on these specific two things and what I got in my packet and what I got coming into this meeting was an exact carbon copy I had 30 days ago or however many days ago it is. I don't think we're any closer to any resolution which for me quite frankly is a problem.

>> Matt Loesch: If I could not interrupt but butt in.

>> Pete Constant: No, go ahead.

>> Matt Loesch: I don't remember you asking for a specific document. I do remember you asking Danaj to come in and be able to answer questions. I don't remember a specific document you might have but one thing, some of the questions I think you're getting at are really global questions that talk to -- talk about our process that we said we really need to have this study session, and I think a lot of this discussion would really be focused very deeply on that area, and in that setting. Not that your questions aren't pertinent because they do high into Mr. Harvey. But I also -- I want to make sure that those things get put under -- and I'm looking for an August date and I'll be working with the attorneys and so forth to make that happen. But some of these things, we -- we're bringing in these larger discussion of things that are really tied in to the more global problem, that are somewhat tied into this case. I mean if someone else can remember, I don't remember a specific document coming in that -- so you would be delinquent, the department would be delinquent in getting that for us.

>> Pete Constant: I don't think I necessarily asked for a specific document but I asked for the specific restrictions and I see them struggling to answer that question. So maybe it's just not being said very clearly. But what were those specific restrictions, that were considered, at the time that the city decided that they could not provide any employment within the city that met those restrictions?

>> Mark Danaj: I can answer that councilmember. No climbing, no reaching above the shoulder level, occasionally push and pull, occasionally carry and lift up to five pounds with left hand, no grasping with the left hand, very limited use of left shoulder, left elbow and left upper extremity. At the time of his employment the city felt he could meet the qualifications of an account clerk. And at the very end of that process, as we continued to push to place him in that, he brought forward further supplemental reports from his doctor that essentially said he could not do that job. And that particular -- that last item -- sorry if I could just conclude the thought -- that last item from his physician is -- happens to be in your packet, on page 22, dated November 4th, 2008.

>> Matt Loesch: Okay Mr. Constant, I got a few people that have flagged in here and maybe it will help bring something together. The first was Ms. Dent.

>> I think the dialogue has occurred on what I was going to ask about. Thank you.

>> Matt Loesch: Thank you. Mr. Overton.

>> Edward Overton: Was Mr. Harvey at any time specifically offered a position with the city?

>> Mark Danaj: No, not formally, because at the conclusion of the process, again as represented on page 22 of your packet, his physician told him he could meet the requirements of a position of account clerk that we were essentially concluding a process by which to place him in.

>> Edward Overton: So it appears then that he's caught in kind of a catch 22. His doctor says he can't do the account clerk position, the city says he can. And because the city relied on his doctor's restrictions, the city did not offer him work. Is that accurate?

>> Mark Danaj: I would say yes, but I would add, as represented in the work restrictions, that he and his physician presented to the city. Again, pointing you to page 22 in your packet, with the line that concludes, at this time, I doubt that the patient would be able to successfully be retained in this account clerk position. We went through a very detailed interactive process including interviews and preparing him for a placement, and at the 11th hour, this final, additional restriction came in from his physician.

>> Edward Overton: But you're representing that the restrictions that the city has would trump his physician's restrictions in the City's mind, at the time that he retired, had you known those restrictions you would have offered him work, is that what I'm hearing?

>> Mark Danaj: I'm sorry, trustee Overton, if you could ask the question again.

>> Edward Overton: I'm saying at the time you are going through the interactive process you're using his doctor's restrictions.

>> Mark Danaj: Correct.

>> Edward Overton: And his doctor's restrictions said no, he cannot become an account clerk. Later on you got restrictions from the board's doctor that says those restrictions are too stringent, these are the actual restrictions that I would place on him.

>> Mark Danaj: Correct.

>> Edward Overton: Did you then go back and say okay Mr. Harvey, our doctor says you can become an account clerk. Here's the job. Are you interested in doing it? Or did you rely on this bogus voluntary separation, and therefore, he's not eligible for Dadadadada?

>> Mark Danaj: To answer your question, no, we did not go back, because we don't have the authority to take your physician's restrictions and apply them to returning him to work. Because when we interact with him he represents himself with his physician's restrictions.

>> Edward Overton: But if you don't have the authority to trump his doctor's restrictions with our doctor's restrictions, why didn't you then say, yeah, you're disabled?

>> Mark Danaj: I don't think it's the authority of the employer to define somebody who is disabled or not disabled.

>> Edward Overton: Yes, I realize that but the disability hearing committee relied on your representation that these restrictions are the ones that we're considering in determining if he could have worked at the time he left.

>> Mark Danaj: I understand that but those are not the restrictions that we can work with in trying to return him to work. There are two separate restrictions from two different bodies.

>> Edward Overton: Okay, so final question. Would you offer him a job now?

>> Mark Danaj: We would have to go through an interactive process and work with the work restrictions that he would present to us, that we'd have to come to a new determination on whether or not he met them or whether or not we could accommodate him in a position at the city. So you would loop back at the same process again and arrive at the same conclusion again?

>> Mark Danaj: I don't know the outcome of that. It would be determined by the restrictions he and his personal physician would present to the city.

>> Edward Overton: Mr. Chair, I'd move the approval of the applicant's request.

>> Matt Loesch: We have a motion, do we have a second. We'll still ask questions, but we have a motion on the floor.

>> Ash Kalra: I'll second.

>> Matt Loesch: Okay, so we have a motion and a second. We'll continue with our discussion, please. Are you finished, Mr. Overton? Mr. Kalra.

>> Ash Kalra: Thank you. Well first of all, I think it may not be anyone's fault here in terms of terminology here but I do agree that voluntary separation is not accurate. At least we can come up with an accurate name. It could be procedural separation, but at least that can be one thing we can talk about going forward, just so there's a little more clarity as to what is happening and doesn't instantly, by saying voluntary, it puts -- it puts the applicant in a

certain light as to their actions. And that's not accurate and so I think that hopefully, we can -- I think we've now come to the understanding of what it really means but just going forward that is something we should definitely look into. Also, in terms of the restrictions, I think that I understand the fact that maybe the retirement board, or the administration, doesn't ask for certain things, so therefore, it's not provided. But I also think it's important that all relevant evidence for us to make a decision should be considered, in terms of what should be included in the packet. Now, the records are in there, that do kind of cobble together the different restrictions. But if there is in existence one sheet or one place where all those restrictions exist I think that's highly relevant information for us to have. Because that's where we find conflict is the separation from the department or position the individual has, or the fact that they can't work in that capacity, then later they're told well, given the restrictions that we have we can find you the position, but the conflict is their personal physician or other physicians that have seen them are putting higher restrictions, and that's where the conflict is. That is highly relevant for us to know. That would save us time and energy flipping back and forth kind of putting together where we are. And my understanding some I may be incorrect but my understanding is the ADA requires that we take the individual's reputations based upon in addition to their physician's, based on their physician's recommendations is that accurate?

>> Mark Danaj: In large part and within reason, yes, councilmember.

>> Ash Kalra: Thank you. It's important to note as well that it's not kind of scheming going on but that's part of the law. Is that because there is an underlying notion that, in some of the comments I've heard, that Mr. Harvey and his doctor are either fabricating restrictions or somehow putting the other restrictions at the 11th hour to avoid having to be put into a position. And I don't -- you know I admit it's a very serious allegation, I don't necessarily looking at the time line see that to be accurate but I do have some questions on the time line because it looks like even in July 2nd of 2008, prior to the October 22nd letter, in which -- which is referred to which gives the greater restrictions, even July 2nd it seems like there's an evaluation that has similar restrictions, the similar restrictions that the doctor concludes limits Mr. Harvey on October 22nd. And so what was the time line of the process of trying to push Mr. Heavier Harvey into this account clerk position?

>> I know it.

>> Ash Kalra: If any of you have information on it.

>> He filed his application in may. There is attached to my brief is exhibit B which is the first meeting he went to with the interactive folks, I don't know what to call them, July 22nd of 2008. The next time they contacted him is exhibit C to my brief, was August of 2008. The next time they contacted him was exhibit D, September 3rd of 2008. What did I say, September 23rd of 2008. And then exhibit E is -- E and F is his meeting with the account clerk position interview.

>> Ash Kalra: And what date was that?

>> October 23rd, of 2008.

>> Ash Kalra: Okay, so October 23rd is the meeting, October 22nd is when the restrictions from Dr. Coleman came. Oh yeah.

>> Actually, this was an area I wanted to speak to. The letter provided by counsel on October 23rd is when he met with OED for a specific position. That specific position handwritten notes say intensive seven to eight hours a day purchase order entry. And I believe the physician was responding to this particular job, and that response came on November 4th. So I think what the physician was saying, and counsel or someone can speak to me if I'm wrong, they were responding that he didn't think this particular job was suited for the disabilities and the restrictions that we placed. I don't think it was precluding him from any job in the account tech or account clerk class, is that correct?

>> That's correct.

>> Thank you.

>> Ash Kalra: And thank you for the clarification of even the follow up evaluation after that meeting. So I think the suggestion that at the 11th hour I mean I think that it can be reasonable that you can go to your doctor and get a final evaluation before you get into the interview, or into the meeting knowing what position you are, knowing you have a disability. The October restrictions seem very similar to the July restrictions that were placed as well and they're followed up with a further evaluation after he is given evaluation of what the position is. I don't know, looking at the kind of position I don't know that we want -- and I know that we do and we should do everything we can to accommodate our employees. But having a disabled animal control officer pushing into an account clerk position, I don't know if that's the best way to go about it. So looking at the -- the timing of the report, there just seems like he was -- I mean it could be looked at as 11th hour and all that but it can also be looked at as due diligence making sure he is getting the most up to date evaluation of his position and then get the follow up after that. And it does seem like relatively strenuous position at a terminal. He may not be out in the field, but it does seem like something that would require a lot of activities as stated in the job description. So I don't know if you have any follow up comments based on my questions or comments.

>> Mark Danaj: Sure, councilmember. With regard to the return to work program or process, we look at any and all vacant positions that an employee might be able to meet the qualifications of and in the context of the work restrictions that they have. The work restrictions that he was begin, especially as the process came to a decision point, were such that it did not qualify him to be account clerk. Not allowing more than 20 minutes of data entry, essentially disqualifies you from being an account clerk.

>> Ash Kalra: And I would agree with that, even a layperson that's not a doctor probably could guess that. And so I -- given that, though, it seems like Mr. Harvey is being -- I mean, I don't want to say penalized, but his doctor's evaluation has to be used as kind of the barrier as to whether he can perform the position or not. And if his doctor, if he has a legitimate doctor that's licensed and does an evaluation, why is that evaluation kind of -- in some way is being -- not used against him because I'm assuming that his personal physician that's seeing him has more information about him than any other doctor that's using -- that's using kind of -- and whether it be Dr. Das or any other doctor that has to do an evaluation, it's more challenging but this doctor is seeing him more regularly and does an evaluation and I'm getting a sense that that evaluation is somehow restricting the ability to find him work,

but why can't that restriction also be seen as you know what, this is just not the right position for him because of his restrictions, you know what I mean? It seems like we're not getting value to that restriction that his doctor that sees him regularly for this injury is giving, and in some sense saying that that doctor is either is wrong, or just being disingenuous or somehow being protective of Mr. Harvey or look at it as medical records of a physician that we should be taking into account as legitimate.

>> Matt Loesch: The slide over there, Dr. Das do you have something you want to say?

>> Yes, I think we have two different issues that we want to address. Councilmember Kalra hits it on the head, with regard to the restrictions that were provided to the city during the interactive process. If you read the -- if you read the report on page 22 by Dr. Coleman you'll see that he's relying on what Mr. Harvey says he can and cannot do. And he describes what the barriers are to performing the job. There's a progressive aching and he's unable to reposition his arm comfortably and he needs to reposition his arm frequently. That prevents a barrier to performing that job on a prophylactic basis. That doesn't mean he can't perform that job but there are other considerations that are subjective that prevent him from doing the job. And so from a protective standpoint as you state, Dr. Coleman is protecting his patient from symptoms associated with working. S that absolutely correct. In terms of whether I dismiss the restrictions provided by Dr. Coleman that's not correct. I just have a different burden and a different code to follow. A municipal code, not a workers compensation code. And in that Municipal Code what we are looking for are restrictions meaning an inability to perform the job. He meaning it is not a choice. It's not something where some pain medicine or an injection or some other type of treatment may facilitate or allow him to do that job. It's yes or no, can he do it? And of course it is very difficult to come up with the preclusionary restrictions a lot of times when there is pathology that corresponds to a problem. So if there's pathology that corresponds to a stated limitation, it's much easier. But when there is an absence of pathology that corresponds to a stated limitation, then a restriction provided for those symptoms is prophylactic. It is not preclusionary. Did I say that okay, confused?

>> Ash Kalra: Believe it or not, I understood. That's a reflection of me not you. I got exactly what you said. And I think that that's -- I understand that there's a different burden, a different barrier but I do think it adds for some

confusion when it indicates that we could find work for him given the restrictions when there's a pretty high bar for preclusionary restrictions. And I think that although -- although this supplemental report by Dr. Coleman on November 4th as well as the one that was done the week prior or a couple of weeks prior to that, given the fact that Dr. Coleman has been treating Mr. Harvey and like any doctor you have to get a sense of what kinds of activities are hindering their progress or still bothering them, that these limitations seem a little bit -- although not preclusionary, do seem inconsistent with the account clerk position pretty clearly. And yes, maybe he can take a bunch of pain medication or inject himself to get him through the day and that wouldn't be considered preclusionary but I don't think that's exact -- although that may be the burden that you have to face, that you have to meet in order to determine someone -- determine the restriction preclusionary, the fact that the restrictions that are here, although subjective and although limiting and not preclusionary, to me, seem very inconsistent with putting him in an account clerk position. And especially, if -- especially given the job description which makes it very clear that there's going to be a lot of activity at the computer monitor, and you know, over a long term period and that it's not realistic every 20 minutes you can give someone a break like that or every 20 minutes pop a pill and be able to get through the day. And so that's not, again, that's not a reflection on you or your opinion. Because you're given a different standard that you have to meet. But I think it does speak to the decision we have to make as to whether that was realistically a position that he could have done. And I think that that's at the end of the day, that's what we have to consider. And I just don't think that given the injury he had, given the doctor's reports both prior to and after the opportunity to interview for the position, and given just the nature of injury that occurred, I mean, I think that although maybe not preclusionary, the injuries may not be preclusionary, I think they're limiting enough this would have been a position that most likely would have exacerbated any injury he had and he would just be back here a year or two after that anyway with a disability claim because of repetitive use or what have you, exacerbating his injury. It just doesn't seem like a good fit. So I think that you know, I'll support the motion based upon the fact that I think that although that on paper he may be able to do the position I just don't think that it's realistic and I think that in retrospect it's a lot easier to say he could have easily accommodated that position, but given his restrictions and given the prior records, the records are here are legitimate, I just don't see it as -- I don't see that we would have been able to accommodate him with the position.

>> Matt Loesch: Dr. Das do you have any further?

>> Just once again in terms of the issue also comes down with the proof of the pudding is in the eating so to speak, meaning as you say it's very difficult to determine whether someone could theoretically do something or not. Therefore if there's an attempt or effort made to perform the activities or perform that job then we can come to -- there is additional accommodations that can be done, there's ergonomic accommodations that could be made. In terms of working with the employee, working together to try to see if something can work. And that's what makes it much, much easier rather than projecting theoretically into the future whether someone could do this or not do this position.

>> Matt Loesch: Mr. Richeda.

>> On page 87, with respect to that is a point Ms. Papi made in her briefing that one of the minimum qualifications is type 35 words a minute. And the board could certainly reasonably infer that given these restrictions, that that minimum qualification may not be able to be satisfied. So it's not just prophylactic. It's not just pain but that there appears to be a mechanical obstacle to him meeting the minimum qualifications of that position.

>> Matt Loesch: Thank you. Mr. Busse.

>> David Busse: In the staff report, it says it is denied based on the fact there is evidence to show his condition does not preclude him from doing other work with the city, and at the time there were alternate employment positions presented to him, and yet in the November 10th letter, which was a week before he was separated, and in the letter of separation, it says at this time the interactive process come to a close because I have no expectation the city will be able to accommodate your work restrictions. Which is it?

>> Are you talking about during the disability committee hearings?

>> David Busse: Right.

>> When we consider -- we obviously have to consider what the board's position says and the work restrictions presented. When we are talking about return to work on an ADA standard, we also look into consideration of somebody who's applying for a job, and being told they can't do a job because of a certain disability, we always sort of look at it from both perspectives. And is -- are certain minimum job functions essential requirements of the job could he do it, could accommodations be made. We had testimony from Dr. Das of work restrictions we had. Testimony that there was jobs available that were not tried. I don't even he know I think the -- at the time the testimony was we thought the job had been offered. It was only at this hearing that it was found out that it was not true. But at the time when we rely on the testimony and evidence in front of us at that time and at this time, it appeared there was a job available.

>> David Busse: So essentially to paraphrase Councilmember Constant's concern here we have the disability committee and the retirement board asking a question, and back in September or November of '08, we had return to work asking the same question, both of them making a decision based upon different evidence. Right? Except that the retirement board's and the retirement services department and to some degree HR's asking of the question is retrospective.

>> That's correct.

>> David Busse: Wasn't done at the time.

>> Wasn't done at the time?

>> My restricts wasn't made at the time, of the initial --

>> That's correct, because they come after the fact. And we have to work within the parameters of the disability retirement code. And that's -- and I don't know how to say that any more similar. Allen has to work within his code.

>> Matt Loesch: Mr. Constant.

>> Pete Constant: So I'm going to get back to this so-called interactive process, because I'm not quite sure, it's again descriptive of what happens, because it seems like a one way process to me. How is it in an organization with thousands of jobs, the only job that we've identified that this person supposedly can be accommodated in referring back to page 50 where it says that we at the time of separation we could have accommodated in the account clerk position and I'm just paraphrasing that, when the job position requires typing 35 words a minute which last month we had testimony that the applicant does not type 35 words per minute, and that the handwritten instructions on whichever exhibit that was, D or E, says intensive data entry, and the only job that our personnel department was able to find was a job that uses both upper extremities intensively, when the restrictions are specifically geared towards the upper extremities. And the reason I asked that question -- and I'll let you get an answer in a second -- is it seems like the city is picking out a job that the employee can't do or is not qualified to do, specifically here, not in mental capacity but just physical capacity, and typing skills, which I couldn't take a job that requires 35 words per minute of typing. And saying, well, since you can't do that, you have to retire, and I don't mean this in a derogatory sense, but dumping the employee on the retirement board and saying okay, now, it's your responsibility to pay for this person for the rest of their lives because we've only identified this one job that requires these specific skills, that require intense work from the exact body parts where you have been industrially injured where you have restrictions. But none of these jobs in the city that don't involve typing, for example.

>> Mark Danaj: Councilmember on behalf of the City of San José I can assure you that we did not find a job or work with a job that he was not qualified for. I can also assure you that there is no incentive nor policy to try to dump employees on the retirement board. As the plan sponsors we pay the expense of all benefits that this board provides to eligible employees. To your specific questions, the 35 words per minute is -- there is no restriction. Whether you're looking at your restrictions or the restrictions he presented to us, he was not -- did not have a restriction stating he could not type 35 words per minute. Which is why that was not an issue for us. It became an issue at the very, very end of the process. His doctor at the very last minute sent supplemental restrictions, after he had already gone through the proficiency test for account clerk which we felt he passed which was another reason we were continuing to pursue the placement in that position. And again, to the issue of

why account clerk, we look at any vacant position at the time, and at that time, that was the most reasonable position that was vacant, for which we thought he actually could have worked, and even with the work restrictions, we were working with his physician, we thought he could be placed in that. It was only at the very end of that process, again, after he had interviewed for the position, after he had gone through proficiency tests for the position, in which case we still felt he was qualified for the position. At the very end we got additional restrictions from his physician.

>> Pete Constant: I reviewed the proficiency test, and there was no typing proficiency tests provided. How many words per minute does Mr. Harvey type?

>> Mark Danaj: Councilmember, I don't know how many words per minute he types. But the restrictions he gave us do not preclude him.

>> Pete Constant: But the minimum knowledge skills and abilities is clearly 35 words per minute. How can you offer a job to somebody, and say, well, you have the ability to learn to type 35 words per minute. I'm 47 years old, almost here, and I doubt if I spent the next two years trying to learn how to type, that I could type 35 words per minute.

>> Mark Danaj: Councilmember, it was the opinion of the city that of the totality of the requirements of the job he met a sufficient number of them for us to place him in it. It was the interest of the -- it was the desire of the City of San José to place him in this position. And again, neither your board work restrictions nor the restrictions he presented to us at the time he was an employee prohibited him from typing or had a restriction that somehow would inhibit the level of typing we felt was sufficient.

>> Pete Constant: But the job description which you can refer to page 86, that comes off our Website, it doesn't say meets three out of the following five requirements. It doesn't say suggested that you be able to type. It says minimum skill level, typing 35 words per minute, and then we spend time, money and effort testing someone on proficiencies that aren't even delineated in the minimum job restrictions, but we don't test for a minimum job

restriction. So at minimum we're setting up an employee for failure because how can an employee going into a job and perform at, meets standard, which is required to maintain your job, if you don't possess the basic minimum required skill?

>> Mark Danaj: Councilmember, it was in the interests of San José as it typically is to return people back to work. We wanted to return him back to work. We wanted to put him in the position of an account clerk. He did not express any concern or inability to meet those. It was only at the end of the process when additional supplemental information came in from his treating physician, that essentially did not allow us to do that.

>> I have to clarify something.

>> Pete Constant: Let me jump in with one question then I'll let you. Shouldn't the question be asked, at the beginning of the interactive process, not at the end? Can you type, if a job requires a minimum requirement skill of typing. To me, I mean, we're in the business of being an employer, as a city, if Mr. Harvey came in and filled out an application for account clerk today, and we had ten openings, and he put that he types one-handed, one-fingered, 20 words a minute or like me 20 words every 20 minutes, would we even allow him to apply for the job?

>> Mark Danaj: Councilmember, Mr. Harvey was aware of the minimum qualifications and of the position we were trying to place him in. And also, as we go through the interactive process, there is some degree of judgment that we exercise as an employer. In other words, trying to try for placements. I guess that would be the most direct answer for why exactly do we not test him for a minimum of 35 words per minute? We felt there was a large grouping of the qualifications that he could meet. He was aware of it as we went through the interactive process that we can detail with you. It was not just a single appointment on the topic. It included him going through proficiency tests, him going on interviews of various vacancies within the city. This was a long process in which we were trying to place him. The single issue of knowing exactly whether or not he could type 35 words per minute, at the time, wasn't a singular barrier for us to try and be responsive, to our responsibilities in the interactive process in trying to place people back to work. Again I would just underscore that we wanted Mr. Harvey to return to work. We wanted to place him as an account clerk.

>> Pete Constant: Well, I don't think I can reconcile those statements, because I would never even dream of taking someone with arm and particularly forearm restrictions and asking them to type. And I think that you had something you wanted to add.

>> I have a very brief comment I wanted to make about an inaccuracy that has been repeated over and over and over this morning. These work restrictions and Mr. Harvey's going his doctor was not last minute and it wasn't 11th hour. I want to make very clear because there seems to be a misunderstanding with these personnel folks, there was a July 22nd memo, I pointed this out to Councilmember Kalra, Mr. Harvey was told about the account clerk interview about a week before he went for it. There was no prior discussion of typing, there was no prior discussion of can you type 35 words per minute, can you type any, how much can you type, if you can only type one-handed, would you be willing to do that, no discussion of it. He shows up on October 23rd. He's handed what I've attached Exhibit G. Mr. Harvey takes notes and writes down seven to eight hours of intestine typing. He goes to his doctor, says, let me go to my doctor. The suggestion this is 11th hour and Mr. Harvey's fault and Mr. Harvey didn't want a job is simply nonsense.

>> Can I also add that the people I interviewed with also wanted my doctor to evaluate it. They asked me.

>> Matt Loesch: Okay. Anything further Ms. Papi you would like to add?

>> No thank you.

>> Matt Loesch: Further comments or questions?

>> Pete Constant: Sorry I forgot to put my light on. I'll tell you, I'm very reluctantly going to support the motion. And I'm not going -- the reason I'm reluctant is because I think the city should have been able to find a position for Mr. Harvey. And I think it's unfortunate that the Department of Retirement services and the Federated retirement system is going to be paying out a retirement for someone that I don't think needs to be retired. I think

the city could have, and should have, been able to find employment. And it kills me to have to vote to give a retirement on someone that I know has the ability and the desire to work. And this is not the last we're going to hear about this process, I guarantee you, besides the study session here. We definitely have to fix this, because it's not fair to anyone involved, whether it's Mr. Harvey, or the taxpayers who are footing the bill.

>> Matt Loesch: Okay, any further comments, questions? Motion on the floor to approve the service related disability, it was seconded. Who was the second? Okay, so we have Busse for the second. So all in favor. We have five and I'm going to be a no. Thank you very much.

>> Thank you.

>> Matt Loesch: Okay. I'm going to exercise the chair's powers and take a ten-minute break here if you don't mind here, reconvene at 10:15. Which is right, I've got a clock in front of me and a clock over here. Can someone tell me? We'll say 10:15. Thanks. [ Recess ]

>> Service medical reports are listed in your packet. Her work restrictions are she should avoid heavy work. She should avoid forceful pushing, pulling, lifting, grasping, pinching, holding, torquing, and fine manipulation activities with both her upper extremities. Her status is prior to separation on 10-16-02 she was on disability leave. There is permanent modified duty available. From a memo from her department, and she is a candidate for alternate employment.

>> Matt Loesch: Dr. Das, anything further you would like to add from your memo?

>> No I don't, thank you.

>> Matt Loesch: Ms. Lilly, is there anything you would like to add?

>> According to the board meeting I guess that we had on May 19th doctor had mentioned -- well we had talked about the stress and the position that had been cut down, from 3 to 1 person's job. Played into a factor into the disability as well. And with all of the medical information, and the doctors that the city had -- had sent me to for the QME, Dr. Mead being one of them back in 2001 he stated that he didn't even see that I would be returning back to the workforce at all at that time.

>> Matt Loesch: Okay. Anybody from the board have any comments or questions? Mr. Kalra.

>> Ash Kalra: Thank you. And just so -- just to synthesize what's in the report dr. Das, it looks like the injuries that this lady has suffered through could be classified as degenerative and not attributable to work restrictions, is that the conclusion?

>> Actually, I think she has got symptoms of multiple factorial origin, meaning that her doctors have said that she has cervical degenerative disease and is responsible for her symptoms but certainly she can have what we would -- for a lack of a better term a muscle tension disorder where you can have muscle pain related to, you know, as she describes, stress or is that your response to stress or that type of work. But as I said in the reports I wouldn't consider that disabling. But I definitely feel she could experience symptoms related to working on a computer.

>> Ash Kalra: So some of the muscle pains and so on can certainly come from working on a computer, but the heavy restrictions that are attributable to the cervical disk disease, which was not something that would be attributable to the work the she was doing?

>> That is absolutely correct.

>> Ash Kalra: And the work -- and the work restrictions, and I guess the question for Allen then, it indicates that there would have been a position as a staff technician even with the work restrictions, but in -- so what was -- was there at the time of -- at the time that she was separated, at that time, there wasn't a position?

>> Ms. Lilly did not go through the interactive process or to my knowledge have any interaction with the return-to-work program prior to her separation. And as such I'm not aware of what her work restrictions were at the time of her separation. My understanding is that the environmental services department did submit, did review these work restrictions and determine that they would be consistent with work restrictions that could be accommodated as a staff tech at the time of her separation.

>> Ash Kalra: I see, so it's been in the same department and they said look we can accommodate it, there was no reason to go through the process of looking for alternate employment options in the city?

>> I believe that's correct.

>> Ash Kalra: And Ms. Lilly were you actually informed they could accommodate your restrictions?

>> Yes, at that time I was informed, but I wasn't physically able to perform the modified position they had offered me.

>> Ash Kalra: What was the modified position? Was it different from what you been doing or was it similar?

>> I don't even know what the position was, to be honest.

>> Ash Kalra: It was just --

>> They just said that they had something they could accommodate me for.

>> Ash Kalra: Did you make an effort to try to find out what it was or what the city was --

>> There was no contact after they found out that you know physically and mentally I couldn't accommodate doing a position at that time.

>> Ash Kalra: Okay.

>> Matt Loesch: Mr. Overton.

>> Edward Overton: Ms. Lilly could you tell me why, the board why you resigned in 2002, and your application for disability came approximately four years later?

>> Well, the reason I resigned is because it was voluntary. I had to voluntary resign because I hadn't returned back to work. I guess when you go out on workmen's comp if you don't return within the time frame of what they give you then they -- you automatically after you run out of all of your time that you have left, then you're -- it's voluntary -- you're voluntarily resigning.

>> Edward Overton: It looks like you were actually offered a job, from the reports we have in front of us, they actually said we have a job for you. Did you go to that job know to see if you could do it?

>> No because at that time I was still under so much medication that mentally and physically I couldn't do any job. And I mean, when they did the QME with the city's doctor he said in 2001 that he didn't believe that I would return back to the workforce at all. And then I had -- there were multiple surgeries thereafter.

>> Edward Overton: Also you had an automobile accident in 1994 which contributed to your neck and back issues?

>> But that had been resolved. Because I came back to work in -- and had been work up until.

>> Edward Overton: Well, the information that is in the packet again, suggests that you could have done the position of a staff tech.

>> Well, that's what the City's doctor said but that wasn't what my doctors had said, the doctor that I was treating - that I'm currently treating with. Didn't agree with Dr. Das's recommendations as well as the neurosurgeon who said I would need, back in 2003, he suggested, recommended that I have an additional neck surgery and also in 2005, because of the neck -- the spine pain, that I have surgery again.

>> Edward Overton: Okay, in a memo to the retirement board to Dr. Das, and unfortunately I don't see a date on that memo for the board's information it's page 7, it says that during a discussion with Dr. Lynn on December 20th of 2006, he reiterated that it was his opinion that her increased symptoms are due to change in ambient temperature as well as a long commute. Were you --

>> Which one --

>> Edward Overton: This is Dr. Lynn in December of 2006.

>> Could you repeat that, please? Because I'm -- I don't think I --

>> Edward Overton: This is a memo from Dr. Das, and Dr. Das may be able to speak to when this was actually written.

>> I think it's dated 12-18-26 in the upper left-hand corner.

>> Edward Overton: Oh, excuse me, yes, it is. Okay, again, it says during a discussion with Dr. Lynn, and this is Dr. Das's writing, on December 6th, December 20th, 26, he reiterated, it was his opinion that her increased symptoms are due to a change in ambient temperature, as well as the long commute.

>> Okay, is this a conversation or is this a medical report?

>> Edward Overton: It's a medical report, relating to you, and your medical situation, as far as ability to work, and having work restrictions placed.

>> In 2006?

>> I believe Dr. Das would like to -- it is Dr. Das's writing of a conversation with Dr. Lynn. If Dr. Das --

>> That's correct. I'm reiterating a conversation I had with Dr. Lynn. I was trying to follow up on a November 9, 2006 report when it says she had an inability to perform her work duties secondary to her work commute and aggravation of her work injury, I wanted to follow up and find out a little -- get additional information as to specifically what the aggravation was at work in particular and he mentioned that the ambient temperature that's external -- the temperature was a contributing factor in addition to the long commute. I was trying to get a little bit more detailed information about the basis for his restrictions.

>> Matt Loesch: Does that answer your question Mr. Overton?

>> Edward Overton: Yes it does. One final question. Are you aware that your medical restrictions say that you should avoid heavy work, and should avoid forceful pushing, pulling, lifting, grasping, pinching, et cetera and fine manipulation, and have you tried to work with the city within those restrictions to see if there's work available?

>> Yes, uh-huh.

>> Edward Overton: And what was the outcome?

>> You're asking me if I was aware that that's what the medical restrictions were?

>> Edward Overton: Right.

>> Yes I'm aware that that's what they were.

>> Edward Overton: Have you worked with the city or attempted to work with the city to find a position that met those restrictions?

>> No, I hadn't.

>> Edward Overton: Thank you.

>> Matt Loesch: Any other further comments or questions from the board? Mr. Busse.

>> David Busse: Well, seems to me that due to a lack of causation, evidence of causation dealing with the City's employment and also the fact that the city in fact did have alternate employment. I would move that we deny this claim.

>> Matt Loesch: I have a motion I believe a second down -- the second was from Mr. Andrews, motion and second. Any further questions discussion? Seeing none, all in favor of the denial? Aye? Any nays, no, unanimous. Thank you, thank you very much.

>> Okay, well -- um -- I guess I can go through appeal process to submit additional medical information?

>> Matt Loesch: I believe that's correct.

>> Okay.

>> No --

>> Matt Loesch: No?

>> There is not an automatic appeal process, Ms. Lilly will need to look at the municipal code in terms of what her remedies are after a board decision.

>> Matt Loesch: Thank you. Moving on to item 2A, this is a change of status of Judith Harsany. Request of change of status, 15.01 years of service. Judith please help me with your last name. Harsany.

>> An H.

>> Matt Loesch: Thank you, Ms. Busse.

>> Judith Harsany is requesting a change in status to a service-connected disability based on right knee and left hand. She's 68 years old with 15.01 years of service. Her work restrictions are, she should avoid repetitive or sustained forceful gripping with her left hand, she should avoid sustained or repetitive kneeling, squatting or crawling. She's currently service-retired effective 4-3-10. At the time of application and at the time of separation she was on modified duty. The department states there's no permanent modified duty available and she's not a candidate for alternate employment.

>> Matt Loesch: Dr. Das, anything you would like to add to your memo in the packet?

>> No, thank you.

>> Matt Loesch: Ms. Harsany anything you would like to add before I go to the board for questions?

>> Yes, according to the subcommittee report of the meeting on the 9th of May, it lists two major reasons why they recommended denial. And I'd like to derive, first, the part about my department's response that there was not modified duty positions available to me, which is true. However it stated that they have been accommodating me with my permanent work restrictions for nearly a year. Several things are not quite accurate in that. I worked, I

came back with the work restrictions, about a year prior to my retirement. I was on workers comp for the other five hours of the day. I was restricted to five hours working a day, I was on workers comp for that. The city, after a certain period of time, noted that Dr. de more, the hand surgeon, had said I could be there a ten-hour day but only five hours with those restrictions. And so they said either I needed to -- I forget what my options were. But the point being, I couldn't -- if the department couldn't accommodate me, with those restrictions, that something else would need to be done. And I was scared to death I was going to have to leave before I got my 15 years in. So the department, with compassion, agreed, and the other workers in there agreed, about the last six months I was there, I also had two and a half to three months of time on the books, which I was going to take. My retirement date had been known to everyone a year before I retired, this past April. And they adjusted schedules and accommodated me so I could stay there until I retired. Which I thought was great. Obviously, that has messed up any disability retirement along those lines. But I'm still extremely grateful to them. Two months after I retired, I got a letter from the city saying there was a position that could accommodate me with my restrictions. I think it was written, the end of April. I don't know when it was written. I got it about the first week in May. I'd been retired for two months when I got that letter. Anyway. The other thing is, the committee found that there was not sufficient evidence to show my injuries, or level of impairment, was directly related to my work as a senior office specialist. The packet is full about the number of hours I worked, the limited staffing. Both my specialist, the hand surgeon, and the neurosurgeon, determined, the hand specialist, even in your handouts, say that it's 75% industrial injury. The neurosurgeon who was the workers comp, I forget what you call that kind of doctor, but he was neurosurgeon, and he too, without a doubt, stated and restated that it was due to the job I had. I'm right-handed by birth. And the job I do, all of the input I did, predominantly used the left hand for all of the cases I went through, for all of the flipping I had to do, for the numbers I was -- I am an oldster but I'm not old as Dr. Das would like you to believe. And I learned, I didn't learn my typing skills with the numbers on this hand. I learned to do them on the top of the top bar. So for the seven years that I was in-court liaison, as the staffing went from eight down to one, I was doing predominantly with this hand. Now, they argue it's because of age, I have trouble with this hand. If it weren't for my work, it seems reasonable to me, if it weren't for the work and the job I had done, I would be having trouble with my predominant hand, not a hand that I never used, if I weren't doing that job. Anyway, that's pretty much essentially it. And I'm -- I just want everyone to know how grateful I am. I know

you get a lot of people who don't like working for the city, and think the city is unfair. But I am very grateful for my employment time here. Thank you.

>> Matt Loesch: We might have some questions so folks, any comments or questions from the board? Mr. Andrews.

>> Arn Andrews: I just had a question, it's about the needle EMG test.

>> Yes I did go through and have that.

>> Arn Andrews: You did have that?

>> Yes.

>> Arn Andrews: Because the information we have seems to think it did not occur.

>> They had me do it with a Dr. Hastings.

>> Arn Andrews: The outcome?

>> The outcome was, I didn't get -- I had an attorney for the workers comp part and he was the one that got the copy. I can certainly get that for you, if --

>> Arn Andrews: I was just curious, thank you.

>> Yes, but I did have it done a month or two ago.

>> Matt Loesch: Mr. Overton.

>> Edward Overton: The information in the packet suggests that your restrictions are precautionary and prophylactic. Both Dr. Wyman, Dr. Rollins, Dr. de Moore, all suggest that your arthritic condition is going to be a problem if you use your hand. But you can do it. It's just that you -- if it hurts, you shouldn't.

>> I'm restricted to five hours a day. I tried working a ten-hour day, and the pain was so intense that that's why I finally filed the report back in '08. The pain was so intense, I couldn't stay at work with it. And once I got in to see the doctor, they cut me back to five hours a day, with a brace. And yes, I could work five hours a day, with a brace.

>> Edward Overton: Well, Dr. Rollins states in the January 8, 2009, report, that you could return to full duty, with a schedule of ten hours per day, four days per week.

>> Yes, Dr. Rollins was the knee surgeon. There are two injuries at work here. I had a knee injury, the January of 2008, I believe it was. The elevators, all three of them were not working in the building, and I was carrying documents upstairs. That's not part of what I need to address you about today, because I know that there are jobs available where I don't have to squat, or kneel, or crawl. That's that part of it.

>> Edward Overton: So your application should be modified to eliminate the knee from your --

>> Well, I included all of them because I'm a novice at this. I've never tried this before and I included all of them. The knee as well as the hand and the nerves. Because they were all -- both workers comp injuries.

>> Edward Overton: Okay.

>> Matt Loesch: Any other further comments or questions? Mr. Kalra.

>> Ash Kalra: Thank you. And I think the knee, the inclusion of the knee is relevant but as you correctly stated that doesn't necessarily mean they couldn't find employment for you with that restriction. Now, the indication is that you have the injuries -- the hand injuries, the one that was -- that was --

>> Yes.

>> Ash Kalra: At least from your perspective precluding you from doing your duty. And Dr. Das, your indication is that although there is an injury there, that it's not necessarily -- that it's not necessarily attributed to work and/or that there are no -- that she could do the job that she was in at the time of her retirement?

>> You know, with respect to the causation issue I do believe that, you know, it's a very common problem, especially, as I'd said in the report, as we get older, irrespective of how we feel. That we develop osteoarthritis particularly in the thumb. As to whether she could do the job, I honestly would need to see the job before I could make an honest determination about whether she can or can't do it. My expectation is, that from what the description is that she should be able to do it. But I always like to observe and see exactly what the issues are. But I do believe that most likely she could do the job. But she -- she would rightly experience some discomfort or pain while doing it because when you have osteoarthritis it can be quite painful. And so splinting may help, medications may help but it depends on what particular kinds of activities you're doing. If there's contact stress that can certainly cause pain, sometimes pinch gripping can also hurt quite a bit.

>> Ash Kalra: This seems an unusual situation where we're being requested to convert a service retirement to a disability retirement. So the question of being able to return to work, I mean, obviously that's one of the questions that has to be contemplated. But you know you've gone through the retirement process now so the real question is, the disability, and to what extent the disability was both caused by employment, as well as you know, I imagine, that not working, especially it seems like there may have been some aggravation or the repetitiveness may have caused or at least aggravated the pain. That by not working, that it will help heal that --

>> Immensely, yes.

>> Ash Kalra: It helps heal the situation. I just want to thank you for your service to the city. It's a very unusual type of request kind of going in retrospect, but anyways, I want to thank you for going through the process working with the city, and you do have your retirement, correct, that you got?

>> Yes.

>> Ash Kalra: Okay.

>> Matt Loesch: Any other comments or questions from the board or for staff? I'll accept a motion. Is there a motion from the board?

>> Edward Overton: I'd make a motion to deny.

>> Matt Loesch: Okay we have a motion and second to deny the service related disability. Any other questions or comments? Seeing none all in favor? Aye, opposed, none. Thank you.

>> Retirement is great you guys. It's much better than it would ever said it would be. Thank you.

>> Matt Loesch: Okay, moving on to our consent calendar, please. We had quite a bunch of changes but do we have a motion to approve the consent calendar?

>> So moved.

>> Matt Loesch: We have a second?

>> Second.

>> Matt Loesch: We have a motion and second. All in favor, opposed, seeing none, thank you. If we could have a moment of silence for those retirees who have passed. Thank you. If we could move on to item 12 please, an oral update on the City Auditor's projects.

>> Sharon Erickson: I think it's still morning.

>> Matt Loesch: Still there.

>> Sharon Erickson: Sharon Erickson City Auditor. The purpose of my being here is just to make sure we have open lines of communication between my office and the board on the few items we're taking on this year. I just wanted to give you a brief update. The first of the projects is the pension sustainability audit. The purpose of that is to assess the long term sustainability of pension benefits and the potential impact of cost increases on city operations. That's the scope of work that I was given by the city council. Given the difficulty of defining sustainability, we will at least be providing background information that can help others make that determination, if we are unable to do that. In part, to do that what we've done is we've gathered actuarial reports, CAFRs, charter and code amendments over the last 30 years. We'll be compiling information that folks can use regarding demographic and economic assumptions over that time. We'll be analyzing actual additions and deductions to plan assets. What most of us would call revenue and expense. The timing and impact of benefit enhancements, demographic and economic trends. We're researching other jurisdictions pension systems and actions that others have taken to address pension and OPEB funding challenges that have surfaced recently. That may include some cost saving information on second tier retirement options. We are also interviewing board members, if any of the rest of you would like to volunteer, we'd be -- we'd love to talk to you, to understand your process, for adopting actuarial assumptions and perspectives on your roles. Our next steps on this review will be to, we're continuing our analysis of the data, we'll complete our research of other jurisdictions, we hope to finish our field work this summer with release of an audit report sometime in the fall. The second project that we've got on our list is disability retirements, timely subject. The purpose of that review was actually to assess potential factors leading to a high disability retirement rate in San José, that predominantly affects the police and fire board, of course. We are looking at the total number of denials and approvals and changes in retirement status, over the last ten years

for the systems. We're also obtaining an understanding of the process definitions, standards, financial advantages, and incentives with regards disability retirements, again, we're interviewing board members to understand the factors that the boards consider in approving disability retirements and the kind of training you get regarding such. Our next steps in that review are, we're continuing our analysis of the process, we're flow-charting the difference between the workers compensation process and the disability retirement process. We'll be looking at a few sample cases, we'll be comparing San José's process to other jurisdictions. I welcome hearing whatever this board does in terms of a study session. Our -- we hope to finish our field work this summer and then again, with release of an audit report sometime in the fall. And finally, the third project is the annual financial audit. The contracts are complete, and the next steps are, the external auditors will be having entrance conference with retirement staff will be complete -- they will be completing the bulk of the audit work by September 30th to meet the City's deadline for the citywide CAFR that covers all the different entities. Your CAFR will come out sometime after that. I'm happy to answer any questions. Again, the purpose was just to keep you informed on what we're doing.

>> Matt Loesch: I don't know if there are any questions or comments Ms. Erickson. I have a couple of questions.

>> Sharon Erickson: Yes.

>> Matt Loesch: About the disability one, order on my list, I'm hoping to schedule it for the August time frame and I'd hope you and your staff would be willing to participate in the discussions on those things. I don't know exactly the forum or how we're going to do it. We're going to work through what logistics we need to. Be available or at least participate in I hope that's reasonable.

>> Sharon Erickson: Yes.

>> Matt Loesch: And ton sustain act one, I appreciate you coming back and some clarification on it. As you noted sustainability is a very tricky thing to define. And the experts you rely on why it's sustainable or not is as

well as very pertinent. Mostly because we've kind of become the public whipping boys for a lot of problems, not just locally but nationally, boards aren't doing things and pensions are problematic. I wanted to make sure there's a very sober study of what's going on so that the politics is somewhat taken out of it. And that -- and it's important to me. Because if it's a fact, it's a fact. If it's not I want to make sure it doesn't become another whip to whip the whipping boy. About the experts and so forth, a key to a lot of the sustainability is the actuaries you note for reference. Did you note the actuaries of the folks you're going to talk to?

>> Sharon Erickson: Yes, we're reviewing the actuarial reports and working close with retirement staff on that regard.

>> Matt Loesch: Are you going to speak to the board's actuary and possibly entertain having comments or questions that you would have of --

>> Sharon Erickson: We haven't set that up yet but suspect we will be doing that.

>> Matt Loesch: That seems like a prudent thing. But also the investment consultants, economists, lawyers and you already talked about the other pension plans that you will be reviewing. Because there's a lot of things there it's a big jumbled mess and how do we dice it up? It's going to be very interesting to see. I do like the idea that you've consolidated a lot of information that I'm going to be sure to pull on for a lot of good reasons. And I welcome the opportunity to participate, and I thank you.

>> Sharon Erickson: Yeah, once we do have this database of 30 years worth of information we hope to upload that to the web to the extent we can and make sure everybody has electronic copies where we can. Because I do think that would be a valuable source of information for people to study.

>> Matt Loesch: That would be a valuable source for people to have around. Anybody have any other questions or comments? Thank you very much.

>> Sharon Erickson: Thank you.

>> Matt Loesch: Moving on to item 13, update on outside counsel for tax qualifications review. Ms. Dent.

>> We have Ice Miller of Indianapolis under contract and we have had our first conference call with them and have given them some of the records that they need for the tax review and are gathering the remainder of the records for them. And are trying to sit up our second conference call right now. And so we'll keep this as a standing item on your agenda. We're considering the possibility of having them come for a presentation to the board initially in September, hopefully. What we are hoping to do for them, since they will be coming from Indianapolis is have them be able to come on one day to present to both boards, both this board and the Police and Fire board. So we may be asking for the boards to either jointly approve a special meeting for that or ask one of the boards to agree to meet in the afternoon on the date of the other board meeting, to just make it more cost-effective and efficient. But we'll -- in August we should have more details about that schedule.

>> Matt Loesch: On that line, and this is kind of a facility question, do we have the capabilities of doing telephone conference calls in this area? Because that's what we used to be able to do, sometimes we had folks out of town that we didn't want to necessarily need to have travel in. Is that a possibility that we have in this facility?

>> I don't believe the chambers have telephone-conferencing capability. But if we set up a special meeting then it would not necessarily need to be in chambers.

>> Matt Loesch: Let's say if we wanted to have it at our board meeting, logistically we couldn't move stuff around

--

>> That is something we can look into, is having a special meeting over at the retirement services meeting room.

>> Matt Loesch: Thank you, any questions on that folks? Seeing none thank you. Update on the board governance changes.

>> I'll do that one, too, really briefly. Well, if I get back early today I hope to have the -- we hope to have the ordinances for the board governance changes on the council agenda of the 22nd. For first reading, which is -- means that they'll simply be put out for public review. The ordinances then would be available for the board's comment at your first meeting in August. And then would go back to council in mid August, with whatever input the board, and the members of the public might have on the draft ordinances. There have been -- there have been some challenges in making sure that the ordinances reflect what staff directs -- what staff recommended, and the additional council direction, but we're trying to get those out.

>> Matt Loesch: Any comments or questions on that?

>> Edward Overton: When did you say it's going to go to council?

>> The goal is to have it go to council for first reading on June 22nd. First reading doesn't mean they've adopted it. It simply means that they have approved the ordinance that our office drafted to be circulated for review.

>> Edward Overton: And we have a maximum 60 days to get comments back to council, as far as what the board thinks of the ordinance?

>> That's right. So it will come to you at your first meeting in August, you'll get it before then. You can -- the ordinance will be available the 22nd. It would be scheduled for board action at your first meeting in August. And it would not be scheduled for second reading by the council until after the board acted in August.

>> Edward Overton: Thank you.

>> Matt Loesch: Any other comments or questions? Thank you. Moving on to item 15, the request to terminate the benefits of James Dowgialo, effective, it should be effective June 2nd, 2010. All in favor? Sorry, is there a motion? So moved, second, we have a second, okay all in favor, aye, opposed seeing none thank you. Number 16, discussion and adoption of the placement agent policy. Is there a presentation or discussion on this?

>> Just briefly. As you can see from the cover memo, state law through AB 1584 proposed certain mandatory restrictions on investment manager use of placement agents, in context of that is the scandals in New York City, and getting a little closer now out in California. Even regardless of 1584, the board in my opinion would be well advised to adopt a policy just of the type attached here just under a fiduciary purpose. Under 1584 we have until the end of this month to adopt a policy. This policy models the policy of disclosure that Cal PERS has adopted.

>> Matt Loesch: Mr. Overton.

>> Edward Overton: Couple of technical issues. Where is the term placement agent defined?

>> And perhaps I'd direct that to the -- it's defined at the top of page 2 of the policy. Right above application, the heading application.

>> Edward Overton: Okay. On page 1 of the actual policy, where it says retirement services, should that be the retirement boards?

>> I see, on the second and third line?

>> Edward Overton: Third line, yes, second and third line. City of San José department of retirement services, shouldn't that be the Federated retirement board? It's the board's policy.

>> Up at the title up above you can see board of administration -- it's actually for both boards. But it certainly could be. The second line talks about consideration. And in some sense, the Department of Retirement services

has a role in consideration. But also the retirement board itself. It certainly could be added. And then down under purpose you can see the reference to both boards. This attempts to be a policy applicable to both boards.

>> Edward Overton: Right.

>> Doesn't have to have that format, but that's the format adopted here.

>> Edward Overton: Yeah, the staff actually recommends to the retirement board consideration. So the actual consideration of investment manager is the role of the board.

>> And that certainly, modification could certainly be made. And then staff directed to come back with a revised policy at its August meeting. But just because of that June 30th deadline it might be nice if the board considered it to adopt this policy conditioned upon board member Overton's corrections.

>> So I could make one little suggestion maybe that would help. If the first sentence read, the policy applies to all current investment managers and all investment managers being recommended for consideration to the board of the two plan system, by the City of San José Department of Retirement services, I think that would get -- that would get in the entire concept that it is the boards that ultimately decide to retain the managers but the staff that makes the recommendation.

>> Exactly. And we have contact and review a much greater number of managers than just the ones that get presented to the board. That's why it needs to be more encompassing because we will have broader contact with managers than you will frequent for example.

>> So is the intent to apply it to people who are only being considered for recommendation?

>> Of course, absolutely.

>> So it does need to be changed to say considered for recommendation.

>> But back to Russ's point, we have a deadline here if we can proceed on with --

>> That's why I think it would be better to go ahead and say that's the language we want and have the policy adopted. It is supposed to be adopted by the end of June under state law.

>> Matt Loesch: Is that okay Mr.--

>> Yes.

>> Matt Loesch: So we'll make a formal motion, keep that in mind. Mr. Andrews.

>> Arn Andrews: I just had one question, under the application section, it says that this policy will be put in place for any new contracts entered into or if any existing contracts are amended and I'm assuming we're using that wording because we're not allowed to apply the policy to any current contract?

>> I wouldn't say that you're not allowed to apply the policy to any current contract. But the legislation doesn't require that you adopt a policy for current contracts. So this -- this -- Russ can correct me if I'm wrong, but I believe this really tracks the legislative requirement pretty closely.

>> And it actually is cribbed rather closely from the Cal PERS version. That doesn't mean you have to adopt every jot and tittle, is that the cliché, of the Cal PERS policy, and you could modify this. But the reason this is in is it is following the Cal PERS version, and it avoids problems of trying to open contracts that you otherwise don't have to. But you could.

>> I would just again suggest in light of the deadline for adopting this, that it is the sort of minimum policy required by law. So it would be a good idea to get this one adopted if the board thinks that it might want to go further in terms of placement agents, that is something you could certainly do.

>> Arn Andrews: I think administratively, I would be curious to know what is taking place with our existing contracts where they're amended or not. I would like to hold our existing contracts to the same threshold.

>> Matt Loesch: Mr. Thomas, questions. In throughout the policy, it often uses just the word plan and I know there's differences back and forth and we've been referred to as the system and Police and Fire have been denoted as the plan. And throughout the entire of the policy all it states is and uses the word plan for the most part. Does that cause us problems as -- I mean if we accept this or approve this, we're saying the plan, and it clearly states in the purpose that that's referencing the Police and Fire plan not the system. Does that cause issues?

>> I think that would be something that could usefully be clarified along the lines you just said. And perhaps as one of the amendments, or the policy being adopted subject to amendments, one of the amendments you could instruct staff to implement is, wherever appropriate, change plan to system.

>> I think you need to refer to both. It probably needs to say refer to plan.

>> Matt Loesch: If we have it at the top. I understand the idea of having a nice consolidated policy if it makes sense to be uniform.

>> It's just as the chair just stated, we do define plan to mean only one of the plans. Or you could do it as Ms. Dent just suggested, plan/system, wherever it's appropriate. But you could direct staff to review this and make those changes and bring back a clarified --

>> Matt Loesch: I think that's definitely the direction the board's going here that they're wanting some clarifications, one in the introductory paragraph but also in the purpose here and also the fact that we'd considered applying this to ongoing contracts. The quarterly -- it talks about a quarterly reporting process. I'd like to recommend that goes to another one on the committee of the whole time, that way we kind of sync it all up with that that we're here in the policy, they need to come back with a quarterly report and along with all of the other things that the quarterly reporting, and also in August, since the staff's going to come back with a reporting plan, and a possible modification of reporting, that they include this as one of the reports that will need to be generated, the note to staff on that. Again, this just -- another one of those cases where a few people do the wrong thing and we all have to change and modify and we are doing the right thing, and our staff's doing great due diligence. And not a reflection of what's going on here at San José, but -- or necessarily in all the places in the state, which is a few people screw up and we have to pay the price. So can I get a motion or would you like me to clarify?

>> I'd just like to clarify that with the changes you've made, we probably will have to do this as a separated policy for Federated. Because Police and Fire already adopted it for themselves so --

>> Matt Loesch: That would make sense, it says plan throughout. Never fly --

>> I want to just clarify that in terms of the existing contracts are you actually wanting this policy to be modified or are you wanting to hear back on maybe a future modification?

>> Arn Andrews: I don't want to do anything that would preclude you from meeting I think you said a June 30th deadline. But I would like you to follow up and clarify --

>> Maybe.

>> Matt Loesch: That way today it's an initial way they are aware of the ongoing new policy. So --

>> Move adoption.

>> Matt Loesch: Okay, we have a motion and second. And to be clear the motion to adopt it with the changes that we've talked about or that they come back -- adopted as-is but then to come back in August time frame with the revised for system. Is that the motion?

>> I would recommend that you just direct that the changes that you have indicated today be made to the policy. And that the policy be finalized with those changes for the chair's approval. And the chair can confirm that staff has done that.

>> Matt Loesch: Sounds easier. Good, so is that the motion?

>> That's what I meant.

>> Matt Loesch: Okay, great. We have a motion and second. All in favor? Aye, opposed, seeing none, thank you very much. Moving on on to item 17. Discussion and notification regarding the administrative implication to the retirement contribution provisions of the City's retirement plan.

>> This is a memo from Alex Gurza, in the past he had indicated that we prepare ourselves for future administrative changes of being able to identify different unions within the retirement system for Federated. We have been working with the finance payroll team, we can now -- we do now put in union codes with all the Federated active members. We are now trying to get some test files from payroll finance to try to test to see if we can take in different contribution rates with the different union codes, so we're still in the process of testing. And administrative changes are just at that level. Once we start talking about if there's any kind of different benefit structure, that would not be an administrative change. But we are preparing for the possibility of different contribution rates coming into the system.

>> Matt Loesch: Any questions or comments? Mr. Overton.

>> Edward Overton: Has Mr. Gurza's office been notified of the status of his request?

>> We've been having a lot of coordination meetings with finance and OER and HR.

>> Matt Loesch: In the final paragraph on page 2 of the May 11th memo to Mr. Crosby, there was a request that the actuary of the retirement system, in this case, confirm that the increase -- has that request of the actuary taken place, are we on track with that also? It says the last paragraph, below the signature on the back side of the first page.

>> So I'll -- just so that I can clarify a little bit the timing on this, the council is scheduled to approve the-d as indicated in the immediately preceding paragraph is scheduled to approve the additional contribution rates on June 27th. They won't be effective on June 27th because there are ordinance changes that are required in order to implement increased contribution rates. So the -- so I'm assuming that staff probably has not dealt with the actuary until they see what council does on June 27th. But I don't think the request has been forwarded to the actuary at this point.

>> There have been discussions with the actuary.

>> Yes, there's been discussions and I know one e-mail went to the actuary to put them on notice that they would have to turn around another calculation if the city council approves those changes.

>> Right. And they're going to be changes -- both -- actuaries for both plans are going to have to approve these -- are going to have to make this confirmation. Because there are some unrepresented employees that are in the Police and Fire plan.

>> Matt Loesch: Anyone else have any questions or comments? Mr. Overton.

>> Edward Overton: Yeah, shouldn't the city council have some indication of the impact of these changes before they make them?

>> My understanding is that when and if these changes were made, there would be a direct offset to the City's contributions. I'm not aware of any dollars having been calculated yet until we know the actual payrolls that are involved. We would need to know the payrolls first to know the dollar implications.

>> Edward Overton: Okay. Mr. Gurza specifically asked if the city council approves this offset, would it be effective, any administrative changes be looked at as well as whether or not the impact the city is looking for is going to in fact come true. In other words, if they're looking for X dollars of savings from this change will they be realizing in? I could be wrong but I think that's the question he's asking.

>> I think at the very highest level the answer is that there is no difference other than when you calculate the refund of contribution effect, which will be relatively modest in the overall scheme of what's going on here.

>> That's correct.

>> All that's happening is the city's contribution is being shifted over to the employees and they are picking up exactly that same amount.

>> That's correct. In the terms of the dollar offset we would only know that when we know which employees are involved in the additional contributions. And sparse I know, we -- we in retirement do not know the exact employees at this point.

>> I would add, the other aspect of this that isn't quite -- hasn't quite been made clear yet is that the -- because of the requirement for an ordinance change, the additional employee contributions won't be able to be implemented immediately on July 1st. So it's not clear. I mean, it's clear that the -- there is an intent that the employee pick --

employees picked up the additional correction. But there may be some time lag and -- there may be something the actuaries will need to take into account there in terms of the time lag and the contributions.

>> And I would just add wearing my other hat, this is also being tracked on another path because it will have implication from the budgetary savings for the prefunding so this is being followed and the original memo talking about prefunding it is discussed to any extent that bargaining groups do make concessions it will impact budgetary savings from the prefunding.

>> So the intent of this is that once whatever is to be done on June 27th, is done, then the actuaries will be asked to make some calculations.

>> Matt Loesch: Okay, thank you very much. Moving on to number 18, this is the review of proposed ordinance amending part 2 of chapter 3.36 of title 3, of the San José municipal code by adding a section 3.36.205, to exclude from membership in the Police and Fire department retirement plan a fire chief or police chief who has no prior service credit in that plan, and provide recommendation to city council on proposed ordinance pursuant to San José municipal code section 3.36 much 485. Staff comment and then Mr. Danaj is here to make a comment.

>> If I could just make a comment about the way the agenda item is drafted. This is really a courtesy notification by the City Manager's office and is not to review and provide recommendation, as is indicated in this. It is really an information item and to make sure that this board is at least advised of what the City Manager's office is up to.

>> Matt Loesch: Ms. Dent. Smiling at me.

>> The board can make a recommendation, just to make it clear, you can make a recommendation. Under the municipal code you are not required to make a recommendation because the Federated code is not being amended. It's only the Police and Fire code that needs to be amended. The Federated will place these individuals in your code by default. So the Federated code does not need to be amended to accomplish this. But it is being provided as a courtesy but if you want to make a recommendation you can.

>> Matt Loesch: Right, Mr. Danaj.

>> Mark Danaj: I don't have any presentation, if you would want me to provide some opening comments, I can.

>> Matt Loesch: You can make comments if you like.

>> Mark Danaj: It's your pleasure. If you would like me to tee it up, or I can just take your questions.

>> Matt Loesch: Why don't we take questions. Mr. Overton.

>> Edward Overton: Wouldn't it be just as simple for the Police and Fire code to provide five year vesting for police and fire chief?

>> Mark Danaj: I don't know if that's simpler but that's what's being proposed.

>> Edward Overton: Just curious.

>> Mark Danaj: Sure.

>> Matt Loesch: Mr. Kalra.

>> Ash Kalra: This came before us and we approved the change, particularly to allow for broader range ever candidates that may not have prior city service to come in and may not reach five years to be vested. Especially the chief level, the life span of the chief level is five year range, five to ten years and it is very rare that chiefs at either police or fire stay longer than ten. It allows somewhat at least to broaden the pool beyond city employees who have either been currently or at some point with the departments, to allow outside applicants that if you are here for five years at least you're vested. There may have been another way it could have been done. But this is

the way the City Manager sought to do it. I think it's appropriate and will allow for us, I think, to have a broader range of applicants when we go through the process for police and fire chief.

>> Edward Overton: I agree with the strategy. It just seems to me that to change the vesting of fire chief and police chief regardless of whether they're inside or outside, you know, if you have some superstar who comes in from the department with two years of service, and you see that and you want that person as your chief, it would work for them, as well. So it just is a broader approach to the -- what you just said. That the chiefs don't last 20 years.

>> Ash Kalra: Yeah -- no, I suppose you're right, there could be a rare exception if somebody only has a couple years, or there could be a situation that there arises, if somebody has a couple years, here and then they go somewhere else, and they come back with only those two years, I guess in that situation they wouldn't qualify at least as far as my understanding, they wouldn't qualify for being transferred over to Federated. And so there may be some kind of holes in this, and I think -- but I think for the most part it probably covers any situation that would reasonably occur and allow for us to offer, you know, a five-year vesting period for outside applicants. And so I think in looking at the applicants that came through, and again, I wasn't on the council but I was part of the community panel for the police chief hiring, when chief Davis was hired, it appears that most of the applicants that were given serious consideration are either internal or they're outside. You don't find folks -- it's one or the other. So I think the far majorities of folks that apply fall into the either-or category. This would probably cover the likely applicant pool for either department. But I don't disagree, there probably could be some scenarios where we're not necessarily capturing everybody, but this broadens our pool somewhat in offering vesting rights for outside applicants.

>> Mark Danaj: If I could also just add, I think that's a good way of putting it. It is not fixing everything from a complete external market attraction standpoint, but it is, in our belief, fixing most of it. After a little more thought of your question, Mr. Overton, the other issue is not just the ten year vesting but the 20 years of service that one has to have to be eligible for retirement in the Police and Fire plan. And also as I understand it, you need have San

José service in order to be eligible for the enhanced benefits, essentially the 3% at 50. So there are sort of additional barriers beyond just the ten year vesting requirement. For external candidates.

>> Matt Loesch: Okay, there's a note and file here. Thank you, Mr. Danaj.

>> Mark Danaj: Thank you.

>> Matt Loesch: Item 19, the approval of the Federated investment committee meeting minutes of April 22nd, 2010. I have a motion and second. All in favor? Aye, opposed none. Approval of the revised statement of investment policy. I have Mr. Andrews, please.

>> Arn Andrews: Just have one comment, on page 7 where it says duties and responsibilities of the investment committee. It's about the sixth bullet down or the seventh bullet down and it says complete investment manager, due diligence visits as needed. I would ask that we strike the "needed" and then write "as recommended by Department of Retirement services." And what I'm getting at here is, I would like our assistance in due diligence visits to be predicated on the staff's recommendation as opposed to predicated on my own desire. And I'm going to actually make the same recommendation when we come to item 23, under the procedure for a manager search. It has a similar language, it says based on onsite due diligence completed with staff alone are trustees, and there I would also ask to add the words, based on the recommendation from the Department of Retirement services.

>> Matt Loesch: When we get to 23 we get to 23.

>> Arn Andrews: I have a motion to approve item 20 with the amended language on page 7, to read complete investment manager due-diligence visit as recommended by Department of Retirement services.

>> Pete Constant: Second.

>> Matt Loesch: I have a motion and second. Any discussion on the items still? Mr. Overton.

>> Edward Overton: I would like to see that say on the recommendation of the investment committee. Although I'm not going to oppose where you're going with that. But I think the committee should have a role.

>> We didn't talk about this beforehand, but I firmly believe the trustees ultimately are the deciding entity here. They are the controlling factor here. I think it's inappropriate for staff to control where trustees can and can't go and if indeed, I understand the problems that existed in San José before, travel and all that stuff. But I think Mr. Overton's suggestion of at least having the investment committee rather than the staff controlling when trustees can go see a manager or pose questions, I think is a more fiducially defensible position than simply to delegate that completely to the staff and never have any position.

>> Thank you, Mr. Overton. I withdraw, and you're right, there is something I'm trying to get at here, and if it's more appropriate to make my motion with the amended language to say complete investment manager due diligence visits as recommended by the investment committee I would like to proceed with that.

>> Matt Loesch: Okay. Any other further comments or questions on the policy and/legislator or the motion? Seeing none, all in favor, aye, opposed, none. Thank you. Item 21, the adoption of the resolution, I guess this is number 6582, revising the statement of investment policy. That's what goes along with what we just approved. Do we need to modify anything in this resolution as a result of the discussion?

>> No, we'll just simply attach the revised policy with the language before we have you sign it.

>> Matt Loesch: Okay, great. Can I get a motion to approve?

>> Motion.

>> Second.

>> Matt Loesch: We have a first and second by a bunch of people, pick your flavor. All in favor, opposed, none, thank you. Okay. Item 22, the approval for the secretary to negotiate and execute an agreement with RS investments to manage the system's small cap valuation portfolio. Is there a discussion or presentation from staff on this?

>> No. Not normally, yes.

>> Matt Loesch: That's fine. Mr. Overton has a comment, please.

>> Edward Overton: Yes, there is a lot of good information that was presented by Makeda with the firms under consideration. The one weakness I find with the report is the comparative data is only listed for the final recommendee. It is difficult if we have a completely transparent process, I don't want to book and I had a little bit of discussion earlier with the chair about this. The investment committee probably did look at upside, down side, ratio capture, beta, average market cap, all of those kinds of things. But were not presented that. And from the standpoint I don't think the public --

>> Can I jump in just a second? It's really an oversight. There is a document, Makeda's 25 page report, Ali and Mary probably put together a 100, 150 page report, and it is the kind of in depth, analytic report you're talking about. We could send that to you. We just made an option that rather than increasing the size of the packet by 50%, that we keep that one out and go with the consultant's report. But we can certainly in the future start sending you the full due diligence package.

>> Edward Overton: All I want is the comparative data so I know that the manager -- I look at IRS, and the average market cap is \$2.9 billion, you know, and that seemed to me to be kind of large. It is more Smid than mid, rather than small, and I would like to know they are in fact the ballpark with the other candidates, and just one page of comparative data that shows the same statistics on the one that was recommended that the others had, so that I can be clear.

>> Matt Loesch: I think, again, staff's coming back in August with some reporting category in general. Maybe this could come back as, this is how we'd like as we're hiring managers, this is how we would like to report-out. If it is a subset of what the investment committee sees, the phone book that Dr. Amiri put together it was very, very detailed but then that's probably too much that gets brought here some consolidation. So maybe in August they can come back with, this is how we're going to present to you, this is how we recommend how we should present to you hiring managers, this is the type of reporting. And then we could have comments then about what the details, good or bad, how does that sound like what you're --

>> Edward Overton: Right. Let me make it clear. I'm not looking for a phone book. One page with the comparative statistical data would have been sufficient. Then I'd be able to say I could fully rely on what Makeda has presented.

>> Matt Loesch: Gotcha. Do we have a motion to proven? We have a motion and second. Comments, questions? Seeing none, all in favor, aye, opposed, none, thank you. Item 23. This is a summary of the March 26th, 2010 meeting and also, that will be the note-and-file, the summary. 23 A is the approval of the comprehensive travel policy as recommended by the policy committee. Mr. Andrews.

>> Arn Andrews: In attachment A, the procedure for manager search. Under item A-8, where it talks about discuss the managers to be hired based on onsite due diligence, completed by staff or with trustees. I would add the words, based upon recommendation from the investment committee.

>> Matt Loesch: That's on sheet 7 of 73? Correct?

>> I believe so, yes.

>> Matt Loesch: Well, that would be changing the procedure of a manager search. I just want to make sure we can change the procedure of the manager search, which is an attachment to the actual travel policy that we're talking about. Is there any issue there, Ms. Dent?

>> Yes, I don't think you have -- I don't think you agendaized the manager search policy. So I don't know that there's any time-curriculum element on the travel policy. I don't know if you want to do the travel policy and bring the manager search policy just back La last tyke with the clerical correction, you could do that.

>> What's really going on here is just the travel policy and the manager search policy is an attachment to it, it is referred in the travel policy.

>> So I think that the proper process would be to go ahead and adopt this and bring the manager search policy back to the next meeting.

>> Matt Loesch: Does that sound good Mr. Andrews?

>> Arn Andrews: That sounds good, thank you.

>> So moved.

>> Matt Loesch: Do we have a motion to approve the policy, we have three seconds real quick, good. I would comment, this has been a long chapter on this travel business you know, and I think the time to step forward move on we got a good policy, the policy committee did a great job clarifying it. And one thing I did want to note is, there's a noted purpose to the continued education of the board. And I think some folks get the idea that travel associated with that continuing education is frowned upon. Not that it -- anything in excess sometimes is problematic. And I just want to make sure that there's not this negative tinge to the continuing education of the folks up here that it's really critical that it happens. The travel in an of itself is not a bad thing for the right reasons and that's really what I want to emphasize in my points and my discussion. But we really -- it's good to move

forward and this is a good policy and I hope this clarifies some things and move on. With that said, we have a motion and second, all in favor, opposed, 2010, note and file, unless there are any comments from the board. Any future agenda items, seeing none. Any public or retiree comments at this time, all six of you, so I'll say no. Move for adjournment. Thank you.