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>> Sean Kaldor: I'd like to call to order the Police and Fire retirement board. Present: Sean Kaldor, Richard Santos, David Bacigalupi, Sean Bill, Damon Krytzer, Drew Lanza, Elizabeth Rounds, Vincent Sunzeri, and Conrad Taylor. We have some orders of the day changes. On Item 4.4b, Barry Staller has a new effective retirement date. He's changed it to April 30th, 2012. On item 2.1, the valuation report, we received the full valuation report just yesterday. So although we had received the PowerPoint presentation with many of the charts and slides, we didn't have the actual report with all the discussion and analysis. So we need to waive sunshine to accept that. We have to do that by a vote.

>> So moved.

>> Second.

>> Sean Kaldor: Motion and a second. Any discussion? We can have a vote to waive sunshine on that full report.

>> Aye.

>> Sean Kaldor: Okay, vote is unanimous, no one's dissenting. What we shall do. Item 2.30, we had received an electronic version, but they now have the full hard copy available but we had the electronic version to review. A couple of amendments to the agenda. Item 7.2A, you'll note that they've clarified the expenses for that trip, will be paid by institutional investor. On item 7.2B and C those have been added for recent request to attend a local Cal APRS meetings. Item 8.4, a, b and c were added for clarification. They were included in our packet earlier, but we've highlighted them just as specific events. And finally, item 4.2B, early service retirement of firefighter Cheryl Goldsmith is withdrawing her application. That completes the orders of the day. Are there any other comments or concerns as far as the orders of the day for today?

>> Richard Santos: Yes, Mr. Chair. I would like the time to say to say to all our armed forces, all the emergency personnel, especially police and fire, thank you for being here during the holidays, taking care of all of us, appreciate it very much.

>> Sean Kaldor: Okay, thank you. We had the swearing in on the agenda today. I just accomplished that before the start of the meeting, so we are good to go there. And we can start into the agenda. One thing I want to highlight. In the past, we had people attending the meetings and weren't given the chance to speak until the end. So I'm going to try to make it the practice, for all meetings going forward on each item, we'll follow kind of a City Council approach of having our presenters present the information, we'll open it up, if there's public comment. And then we'll have our discussions and do our motion as we would. If you have comments on specific items I'd ask after the presenters present, to come forward towards the microphone to let me know that you're interested in speaking. Already, item number 1, investments, 1.1, the CIO update on investments.

>> Carmen Racy-Choy: Good morning, I have two topics I'd like to discuss. The first is the goal of the funds investments and the second is performance. Both in absolute terms, relative to peers as well as relative to the policy benchmark. I'm going to focus on the three year term because it coincides with my tenure at the City of San José. I'm also going to discuss shorter tenure because I think that's where some of the issues might be that I'd like to highlight. So first going back to my first topic the goal of the investment program. At the prior investment meeting, trustee Sean Bill made the comment that the goal of the investment program ought to be to achieve a ranking relative to peers, that is in the top 10% of the relative universe. If in fact it is the wish of the board to rank in the top 10%, this is actually relatively easy to accomplish. You increase the equity allocation, and consequently the risk of the plan. So I.T. ranks in the top 10%. That is very likely going to ensure that you do rank in the top 10% when the equity markets performance well. But you will rank if the bottom 10% when the equity markets performs poorly. I do want to point out that this is contrary to the direction that this board has taken in past asset liability study. As of September 30, 2007 the allocation to equity was with 67%. So 67% of the fund's assets were invested in equity investments. As of September 30, 2011 the actual allocation decreased to approximately 43%. A 24% decline. The rationale for that decrease is very simply to improve the diversification of the plan. The intent was to introduce different risks than equity risks so that the goal is really to achieve the actuarial return

assumption, in any given year. Staff is very supportive of the directions that the board has taken in past asset liability studies, and we people that the goal of the program is over long periods of time, to achieve the actuarial return investment assumption while taking on the least risk.

>> Say that again. Say that sentence again.

>> Carmen Racy-Choy: The goal of the program ought to be to earn the investment return assumption that the actuary has specified over long periods of time while in taking on least risk in doing so.

>> Sean Kaldor: But to be clear we specify the return rate to the actuary?

>> Carmen Racy-Choy: Absolutely. So the board is ultimately deciding on what that ought to be, and the board is deciding on the asset allocation, so this is entirely under the control of the board. But I just wanted to highlight that that goal is not consistent with being in the top 10% and what the ramifications of such a decision would be. Second William with respect to performance. I'm not going to spend too much time on the actual time. NEPC has presented the third quarter of 2011 performance. You already know over a three year horizon as of September 30 you rank in the second quartile, 44th percentile relative to peers, given fact that we've had two very strong years of equity market return and you're significantly under-allocated to the equity market relative to peers, staff does believe that this is indeed indicating that the diversification of the plan is actually working. As of June 30, 2011, you have outperformed CalPERS and San Francisco by approximately 2.25% annually. These plans have significantly bigger teams and are significantly better resourced. Now with respect to performance --

>> Carmen --

>> Carmen Racy-Choy: 2.25 approximately.

>> Sean Kaldor: Sorry what time frame?

>> Carmen Racy-Choy: Three years ending June 20, 2011.

>> Sean Kaldor: Thank you.

>> Carmen Racy-Choy: I'm focusing on three years, because that's my tenure, so I understand what decisions were made and basically the rationale behind the results. With respect to performance relative to the policy benchmark, over the three year time frame ending September 30, 2011, the fund outperformed the policy benchmark by .4% per annum. The key there is not the performance ought to be positive or negative. That number simply ought to be small. If staff is doing a good job. Russell investments transition services, the fact that the board hired Russell investments has helped greatly in making sure that we have a tighter track to the policy benchmark. The issues have arisen over the last year as the deviation over the policy benchmark is significant. There's a couple of reasons. One is, manager detracted value, especially in international and emerging markets. This issue has been resolved in the restructuring, the equity restructuring that was implemented in the fourth quarter. And so hopefully we should no longer have this issue. The other significant issue is the fact that the real estate allocation, in the policy benchmark stands at 10% while the actual allocation to Real Estate stands at 5%. As I'm sure you know, real estate has done very, very well over the past year. And consequently, there is a significant tracking error to the benchmark. Staff perceives that this issue will be resolved in the next ALM. We do not see significant opportunities in real estate. So we feel that we'd like to shift the investments that exist away from core and real estate into added value and opportunistic. We don't however feel that there is so much opportunities in real estate that it actually warrants an additional 5% of assets being dedicated to that asset class. At the stage I would like to say that as we move with greater emphasis into alternatives, it is very difficult to implement illiquid investments with our current staff. I would like to thank the board in their vigor in pursuing the salary rate increase et cetera that would allow us to bring in a few more investment officers at the appropriate level. Thank you.

>> Sean Kaldor: Thank you. Questions?

>> So can you give us a sense of what you think is a realistic return relative to the policy benchmark over a three- to five-year period? Do you anticipate that we should be matching or outperforming the policy benchmark and if outperforming, by how much?

>> Carmen Racy-Choy: I think from your active managers you should expect a certain amount of added value. Currently we have not had a significant allocation to active managers. Due to staffing issues. But I think we do have, in our structure, active mandates that need to be filled, and there is -- there should be an expecting of added value net of fees over a three- to 5-year period. How much, given the existing structure, probably something in the order of magnitude of .5, 50 basis points per annum would make sense. With respect to deviations from the long term asset mix, this would depend on how quickly we can -- this number should neither be positive nor negative. In an ideal sense, it should be zero. And although it will never about zero, I think it -- over a three- to five-year period it should be less than 100 basis points.

>> Vincent Sunzeri: Thank you.

>> Sean Kaldor: Damon.

>> Damon Krytzer: The issue is a timing mismatch, to some extent, too, right, because except for Elizabeth, like most recent board members, we've been here for a year, right? You've been here for three. So we're looking two different timings and our experience over a year, I don't want to beat the dead horse but you understand -- I know you're frustrated with the same thing we are and that's that we made a lot of what we thought were conscious decisions that just weren't able to happen. And there were -- there are things within the beta allocation at least now like I think real estate where I don't think we made a conscious decision to stay at 5%. If we did it wasn't super-clear, it happened to be that way, right? There were things out of our control that affected the performance. And that's -- that's you know where I've been frustrated you know part of it's just my understanding of the timing for a public plan, as well, I mean? We can't just make a move.

>> Carmen Racy-Choy: We can, if it's a liquid investment. So public equities, fixed income. Commodities. You now have a, through Russell investments, an overlay. The Federated plan has approved its asset liability study. We implemented at least the liquid portions within 6 business days, approximately. Real estate is obviously an area where it's an illiquid investment. And really the only way to move towards 10% is actually by making manager selection. Over the three years, I can quay that at no point in time did NEPC come and say you know we've just completed due diligence on the real estate manager. We think it should be added to your lineup. Staff initiated two real estate searches on two different occasions. We ultimately never received a recommendation to invest anywhere. So this is an area where staff doesn't have real estate expertise. We can't -- we can't go out and lead the pack and say, you know, NEPC, come let's do due diligence on manager X. So we're really depending on their staffing, to really accomplish that goal. And so you're absolutely correct, staff did not make a conscious decision not to move to the 10%. But because it is not a liquid investment, we could not chief it by investments through the overlay. Or through Russell investments. It had to happen through actual manager recommendations coming to the board.

>> Damon Krytzer: You know I get that and I'm not knocking. I just -- that's been the frustration both the communication and also you know I mean we have an investment committee now and the investment committee wants to help staff to either better work with the consultants like we talked about and try to move that along or find another solution, whatever that happens to be. And just because like a month's gone by, I just wanted to reiterate that.

>> Sean Kaldor: Any other questions? Just want to get one clarification. You said, the active management might have the opportunity to outperform by .5. Is that 50 basis points or 5 basis points? 50 basis points?

>> Carmen Racy-Choy: 50 basis points.

>> Sean Kaldor: And then the issues and challenges you've identified here, we're working on staffing here as an overall board but some of the other issues you've identified including trying to be in the top 10% are those all being worked on within the investment committee and the actions you have going on?

>> Vincent Sunzeri: We can address that at the committee level, we haven't taken that topic and debated it but we can talk about that at the next investment committee meeting and come back to you and let you know what the decision was.

>> Sean Kaldor: We can get a summary at the board level or address it at the board level.

>> Vincent Sunzeri: Sure, it should be agreed upon with Police and Fire but there should be some consistency if we can with Federated as well since we're trying to work in a uniform fashion.

>> Drew Lanza: So one final question, I'm pretty new to all this. So you would define excellence then as having two components: One, having a policy benchmark significantly higher than our peers and achieving that with a relatively low degree of volatility around that number. Everybody else is already achieving 6%, we set 6.5, we meet it again, again and again every year right on, but ours is slightly higher than everybody else's then we have outperformed if I understand what you're saying.

>> Carmen Racy-Choy: The policy benchmark is really the decision of the board, and it doesn't have to be higher than everybody else, because ultimately -- currently for example the level of risk that the plan is taking is in the bottom 20% of plans. So when you're in that range, when you're taking on very little risk, you obviously can't turn around and say, we want to be in the top 10% on performance. The two need to go hand in hand. From staff's perspective, staff's job is to 23rd help with the manager selection, and try to get to a situation where there is an added value. But if the structure is predominantly passive, then you're going to have a lot less of that. From the point of view of deviations from the long term asset mix, it is staff's job to ensure that we are running as tightly as possible on that aspect. It is also staff's job to assist the board in selecting the policy benchmark. So clearly, there is a role there. But ultimately this is a board decision. And we need to strive to get there. Regarding of whether that's higher than everybody else or lower than everybody else.

>> Russell Crosby: And Drew, there are real advantages to being lower on that spectrum rather than higher. Because across time, if you have a low volatility portfolio that delivers very consistently, you're going to come out a whole lot better than the people that went up and down and sideways across time.

>> Damon Krytzer: What we really want to accomplish in my eyes is, I mean, you look at peer charts, right, and how we rank versus other peers, and it doesn't talk about the risk. We've talked about this but if we could achieve a higher return per unit of risk right then define the amount of risk that we're willing to take. That's kind of optimal.

>> Drew Lanza: Higher and smoother is better.

>> Sean Bill: And I think that's kind of what I was trying to reference, Carmen, was that I'd like to see us be in that top left quartile, like the San Bernardinos of the world, and I think parsing comments in terms of top 10% of performance, top decile performance, I understand what you're saying in terms of a risk-adjusted performance, and that is, I think, the appropriate goal for the plan. That you want to have the best risk-adjusted performance you can and, you know, I take in context what you're saying about the top decile, I think that's a good comment. And so yeah, I mean, I think that's where we want to strive to be is the top left corner of the matrix, really. That's my mission. Maybe I wasn't stating that as clearly as I should.

>> Carmen Racy-Choy: And I think we were there, up until the last two quarters. And part of doing the asset liability study is to address that. And to get us back in that top quartile. So we have been there for significant period of time.

>> Damon Krytzer: And we're going to make that investment decision at the end of January right?

>> Carmen Racy-Choy: Going to come to the investment committee at the end of January.

>> The decision is really to put the plan in place to have an asset allocation that provides a decent return but a lower level of risk, and that may mean that our returns are also lower than peers because of the risk profile. The

key, the more important part in my mind is, can we outperform our policy benchmark? And that's done in one of two ways, either deviating our asset allocation because we deem one asset class to be more attractive than another and two, manager selection. Do we select managers that request outperform and collectively we should out perform that policy benchmark. If we're not then there's no reason to have a retirement staff that we're paying to do all these things. We just simply index, go home and forget about it nighttime.

>> Richard Santos: When I had a chance to sit on the investment committee, what I get that day is raise a red flag sooner, talk about hiring, so on, consistency and get your strategy that I believe you all are going to make a recommendation that we keep up on all that. All the other things are going to fall in place. I think once that's been established we'll be better off than we have been in the past. I look forward to the investment committee to make good recommendation for all of us to catch up and support it.

>> Sean Kaldor: Any further comments? Okay.

>> Carmen Racy-Choy: Just for clarification, the current mandate of the board is for staff to passively rebalance. Whenever we exceed the allowable deviation for a specific asset class that's stated in the SIP, staff has rebalance. And given that current direction from the board, you would not necessarily expect that the tracking error would be positive. It could be negative, as well, given that constraint. So if the board wanted staff to actually make timing decisions, that's a different mandate and that's a mandate that we currently do not have.

>> I would say once the new ALM is done that the big picture goal is slightly outperform your current benchmark, not outperform but add accretive value, whether that's 50 basis points or 100 basis points, we will all discuss that in investment committee.

>> Sean Kaldor: Okay, all right. Thank you for the update. Move on to item number 2.1, discussion and action on Cheiron's June 30, 2011 pension actuarial valuation report for the Police and Fire department retirement plan. Thank our friends from Cheiron for coming up today.

>> These are the same, the one we got today and --

>> Sean Kaldor: There are -- there's one change and this is at my request. And it's the last slide, next to the last slide, slide 13 I think there was sensitivity that was expressed at the last meeting having multiple forecast floating around there. They indicated this was not their official 20-year forecast. It didn't include some things related to the SRBR, as I said, let's -- if we have initial official forecast let's release the official forecast and we can go through scenarios and models in the meeting. That's the only change in the presentation, is that correct?

>> Yes.

>> Thank you. Starting on page 2, we'll briefly discuss the actuarial valuation process, what it entails. And then we'll get right into the results of the 2011 actuarial valuation. We'll show some historical trends and give you the key results of the valuation. And then there's been a lot of changes since the prior valuation so we'll spend some time going through each one of those changes. Then as Sean just mentioned we'll be doing perhaps some modeling, some what-if sensitivity testing and then in light of the recent discussion you had with the investment portfolio, I think it's important to see how sensitive this plan is to returns. It's quite sensitive, I believe you recall our presentation last month when we came here. Once a year the actuary he promotes plans, will collect the census data for all plan participants. Financial information and we'll apply demographic and economic assumptions and then project out all the future benefit payments for each plan member. And that's the tank on the right-hand side. Sort of liabilities. Or the present value of future benefits. We compare that to the assets which is the green portion there on the right. And then what the charter valuation process really is each year is a tweaking of that employer contribution valve to make sure we've got a balance of the whole system. It's the annual checkup of the plan and that's what we're here today to present. As far as the timing for the city, these results are being used to determine the contributions and accounting requirements for the fiscal year that begins July 1st, 2012 and ends June 30th, 2013. It will determine member contribution rates, city rates and amounts for that period, and accounting requirements. But there are some changes on the horizon, on the accounting and next month we'll be back here to discuss those. GASB has some significant changes but I think it's preliminary to be discussing those today. Page 5 shows a historical progression over the last decade of the plan's liabilities and assets. The gray

bars are the plan's liabilities. Previous to 2009, this plan was doing valuations every other year. Since then you've been on an annual basis which really most plans are on today at least most large plans. Yours certainly one of the large plans. The lines are the two different asset measures. There's the market value of assets which is the green line, and the smooth line, asset smooth line is the yellow line. And you can see when markets are going up, we tend to lag that asset value and markets go down, the reverse happens. So those lines there show you that the asset smoothing method has been work. And in 2011 they are virtually the same where the two values.

>> Sean Kaldor: Your footnote there says the assets for health were not counted starting in 2011. That's a relatively small difference though?

>> Yes.

>> Sean Kaldor: Thank you.

>> The next chart shows the historical contribution rates for both the member and the plan sponsor, the city. And what jumps out immediately is the far right-hand side, the dramatic increase of the city contribution, most of that has been driven by the fact that there's been significant decreases in payroll. If the amount stays the same, reduce the payroll, the ratio is going to go way up, that's what's been happening there. And investment returns from the 2008 plan year market drove those as well. And that can be seen in the next chart, slide 7. This is sort of a report card of how good your experience has been according to the assumptions. If you are below the line then you have lost, if you are above it you have gains. So focusing first on the gold bars, we -- in 2005, we had a loss of somewhere, I'm just eyeballing it, 130, 140 million. And then the 2007 valuation there's a $100 million gain above the assumed return and $140 million loss in 2009, 150 in 2010, and continuing in 2011 which really happens, the 2008 markets we didn't fully recognize them in the next valuation so we're phasing it in and that's why you continue to have some losses. But on the liability side, except for the 2009 year you've had gains and substantial gains in 2011 that dwarfs everything on this chart, close to $350 million. Bill will be getting to the details of that but that's a very significant result from this valuation. So now I'll turn it to Bill to discuss the current results.

>> So this table just summarizes some of the key results from the valuation. And compares it to the prior valuation. You'll notice we reduced the discount rate based on the changes made last meeting from 7.75 to 7.5. The actuarial liability remains about the same, it actually goes down slightly due to the changes in the demographic data, the census data. The actuarial value of assets went up slightly, so the result is a lower unfunded accrued liability, and funded ratio improvement to 84%. Now that's using the smoothed value of the assets. The market value of assets had a much more substantial improvement reflecting the investment returns, so that now on an -- on a market value basis you're about 82% funded. So virtually -- virtually the same. The last couple years there's been a significant difference between the actuarial value and the market value.

>> Conrad Taylor: Bill, I have a question for you. Last month you presented to the board that actuarial value and the market value was about the same, and you quoted 85%. What caused the 3% decrease on the market value? And I believe your report -- last month you were using the discount rate of 7.25 and not 7.5 so why is the deviation of 3%?

>> I think you're without going back and looking which I would need to do, I think last month we reported without any changes in assumptions and I suspect the 85% was without any changes in assumptions and then reflecting the changes in assumptions, brought us down.

>> Lowering the discount rate.

>> Including lowering the discount rate.

>> Conrad Taylor: So the report you presented last month --

>> The initial preliminary results were before any assumption changes, is the way I recall it.

>> Yeah, I'm looking at the chart here. We did present results without any changes in assumptions.

>> Sean Kaldor: That was at the 7.75 discount rate.

>> Yes.

>> And the higher inflation rate.

>> So that was -- the idea was to give you just the experience of the plan and then discuss changes and assumptions. And so this reflects the decisions on those changes and assumptions.

>> Conrad Taylor: Thank you.

>> The lower half of the chart shows the aggregate contribution rates. So this is blending Police and Fire and shows the member rates and the city rates. Again, these rates are for the fiscal year ending 2012 and then 2013, the 2013 is from this valuation. The member rate increases from 10.6 to 11.3%. And the city rate increases from 50.4 to 57.5%. However that's -- both of those rates are applied to a substantially reduced expected payroll. The expected payroll declined from $262 million down to $191 million. So the result is actually the estimated dollar amounts are lower. If you make the -- if the City's contributions made at the beginning of the year it's about $106 million compared to an estimate of $127 million from the last valuation.

>> Sean Kaldor: Just briefly on in I see the decline from 127 to 105. The difference between the impinge of the year and the end of the year is that the interest credit we would call it?

>> Yes.

>> 160 last month and then everything really shifted down here quite a bit down to 106 and what have you.

>> So the $127 million or $130 million is for 6/30/2012. Last month we also showed what the expected was for 6/30/13 based on the prior valuation which was an even higher number. And so then, with the assumption changes, and the experience changes, we've dropped dramatically.

>> And that was driven primarily by the smaller workforce and then the lower salaries?

>> Correct.

>> Sean Bill: Thank you.

>> Where you show the expected payroll for 2013, that reduction from 260 million roughly to 191, that's what Sean just referred to, that's the reduction in actives?

>> Yes. It's the reduction in actives plus the change in the expected growth in payroll. Because we're measuring -- we have the data as of June 30th, 2011 and then we're projecting an expected payroll for the fiscal year ending 2013. With the new payroll we're assuming 0% growth in payroll for that period.

>> And then the last month you and staff had recommended 7.25 versus 7.5, and it was 118 the cost?

>> I believe that's correct. So here on slide 9, we showed this last time as well. But because there were such significant changes in the membership we wanted to reemphasize it. There was a 14% decrease in just the number of active employees. And for the pension plan that's offset by a significant increase in the terminated vesteds and the retirees. That's not a complete offset. And the total expected payroll dropped 28% from the prior period.

>> That's huge.

>> Yes, that's a huge change. And the average pay for an active member dropped 11.5%. That is a significant change.

>> Sean Kaldor: So people who stayed, their pay went down by 12.6 or 11.5% overall, 12% pay cuts and them more senior people retiring.

>> Exactly.

>> Sean Kaldor: In addition to that there's 12 per fewer cops and firefighters out there.

>> Ultimately and a lower projection for a year going forward. So you get the 24% reduction.

>> Sean Kaldor: Because those restriction were ongoing. Thank you.

>> Could you help me understand then? This is June 30, 2010 to 2011. The total payroll goes from $251 million to 191 million. The prior page you just showed for fiscal year June 2012, the payroll jumps back to 261. Then down to 190. I'm having trouble understanding that volatile change.

>> So what's going on, in the June 30, 2010 column, here you're seeing $251 million in total payroll.

>> Okay.

>> Then in that valuation, they projected a 4.25% growth in payroll. So that when you got to the fiscal year ending June 30, 2012, the payroll total would be $262 million, with that 4.25% increase. So as of 2010, the 2010-11 payroll was 251. But the payroll projected for 11-12 was 261.

>> So I'm going from 191 million with this projected 4% growth to 261?

>> No, no, no. From 251 to 261.

>> Carmen Racy-Choy: So one clarification. Is that bottom chart, if you see the last column, at the top it's the 6/30/2010 which is the date of the valuation. Then as you go down it is affecting fiscal year ending 6/30-2012. That valuation sets the contribution rates in 2012 and the way the actuary projects the payroll, he takes the payroll in the valuation and then projects it for two years as the board assumed salary growth assumption. And he's doing that for both valuations. So really it's going from 251 to 261.7. And now, the 190.7 is the June 30, 2011 val, and it's affecting the June 30, 2013 contribution rate which here he is showing as an expected payroll of 190.7 because there's no assumed growth in payroll.

>> Thank you.

>> So these changes are very significant. And that's what drove the large gain that we saw on the liability side of the equation.

>> I don't think we've seen declines in payroll of that magnitude anywhere close to of that our other clients.

>> So last month's number I found kind of shocking and kind of left me dazed and confused and took me a while to get my head around this, the drop was so significant. So ax I correct in thinking that the risk to the upside of having that thing, number swing back, is not really the payroll, or staff growing per se in our current environment, but would be significant underperformance in the market would probably be the one thing that could swing the number to really move the contribution rates?

>> It -- yeah, the performance in the market has a -- has the most leverage and the most effect. Now certainly, if pay levels and staff levels bumped back up, it depends on how it actually happens on the effect. But the investment markets are the most volatile.

>> So we benefited from significantly coming in above our discount rate.

>> Yes.

>> Sean Bill: From our investment dollars and that shaved off about $4 million when I looked at that number?

>> Yes, that's into -- that's the current year effect.

>> Sean Bill: The current year because of the smoothing and all that.

>> We're smoothing in that effect.

>> Sean Bill: So if we were to underperform by 10%, had a negative 3% return or something like that would it be reasonable to expect that the number would go in the opposite way by a significant amount?

>> When we get to the stress testing we can show you. That's what we want to explore so you have some sense of the sensitivity here.

>> Sean Bill: Yes.

>> So this slide I believe we showed last month as well. Here we're showing the liability before any changes in assumptions and just to give you the experienced gains and losses before any assumption changes. And you can see that that payroll change, and the salary changes, account for $227 million of the gain. And the -- there was some other changes in benefit service data between benefit service and total service, that counted for some small increases. The termination mortality and disability experience gave some gains. Retirement experience because we had a bunch of additional people retire, created some losses. There was some other experience. The largest in the other column is actually the change in actuary. When we -- when you change actuaries we use different software and systems. And so we reproduce the numbers that were produced by the prior actuary, the standard is usually to be within about 5%. And that's considered a match. We were within 1 to 2% so it's a good match but

there's still a number there for that, that change. The investments are showing as a loss simply because we're still smoothing the entire losses in. So the good investment performance in the last year meant that that loss was smaller than we expected it to be but it's still on the loss side. Now, this chart, it's a chart that we showed last time, but the assumption changes are different because of the decision of the board last time. It's a confusing chart. I will say up front. But it's to reconcile where the contribution rates were, and how we got to where we are with this valuation. So starting at the top, the city rate was 50.4% for the 2012 fiscal year. And was expected to go to 55%, just due to, primarily due to recognizing the investment losses from 2008. So that increase on a city contribution rate was from $127 million expected to be contributed to $145 million. Now you'll notice that the payroll was expected to go from $262 million to $273 million. During that period. So that's part of the increase is the growth in payroll and the growth in the contribution rate. The next section that I'm going to jump to the most confusing line in the whole chart which is line 3B. Where we bring in the demographic experience, the reduced counts, the reduced payroll, and all of that. And that brings our payroll down from $273 million to $198 million. And it makes the contribution rate go down 4.3%. And that combination, there's a number of factors going on in there. But that combination causes a $47 million reduction in the contribution. And so when you have that significant reduction in payroll, and rate, the correlation to the contribution amount is not going to be the same as the other lines where we keep the payroll the same. Because you have those multiple effects. Essentially we are paying -- if you just had the payroll reduction without anything else, you're paying about 54% of pay on $74 million less. So that's a significant dollar reduction, just right there.

>> So it's not as simple as just looking at the city contribution rate, by the projected payroll? That's not where your number's coming from?

>> No. And that -- that will work as long as the payroll doesn't change. But when you change the payroll, that -- that methodology does not work, and is not reflecting what's going on there.

>> Carmen Racy-Choy: Just for an additional clarification, the actuary goes through the process of looking at every single employee and calculating what is the appropriate accrued liability and normal cost for every single

member. And ultimately, what they come up with is the total cost of the plan on the aggregate group by going through the process of the calculation person by person.

>> So in the assumption changes section of this chart, most of the information is the same as we presented last month. The administrative expense and SRBR assumptions we split into two pieces, because last time we had them combined as one piece and there was some confusion about how much was being provided by each one. So we wanted to clarify that. And then, line 4D is the new one, because we adopted 7.5% instead of 7.25. And then with the zero and 3.5% in ultimate wage growth assumption. So that dropped the expected payroll from the 198 to 191 million and has the other effects. So ultimately we get down to a contribution of 106 million, and 57 and a half% of pay. And I didn't follow the member rate down but it increased from 10.6 to 11.3%.

>> Sean Bill: So could you recap the idea of what the idea was you recommending a 7.25 versus 7.5?

>> The capital market situation showed that the expected return was I believe 7.26 so we were targeting that 50th percentile.

>> Sean Bill: In today's pact I thought I saw 7.52. Was that changed?

>> I think 7.52 was an older number with the capital market assumptions.

>> Carmen Racy-Choy: That's correct.

>> Sean Kaldor: So on this chart the city contribution goes from 145 last year down to 106.

>> It goes from 127 last year, and expected 145 for 2013 down to 106.

>> Sean Kaldor: Thought it was going to go up 20 million, it's actually going to go down 20 million.

>> Right.

>> Sean Kaldor: And that includes us adding the cost of more conservative discount rate and now includes SRBR, we are not building in the cost of having the SRBR plan, and we've added those in as well.

>> Russell Crosby: And administrative changes.

>> Sean Kaldor: And administrative changes. We've de-risked the plan. Making slur we were calculating in other expenses even though they were not expenses in the past. And then to go to your full report, this kinds of ties into that on page 26 you talk about the single equivalent amortization period of 13.6 years. So could you explain that a little bit?

>> Yes. That's a required disclosure under GASB. And you have an amortization method that does, for gains and losses, it's 16 years from the date it's recognized. So there's a whole bunch of different amortizations which you can see in the full report. The 13.6 is just if you looked at the unfunded liability, and the payment that's being made on the unfunded liability, what period would that payment amortize over? And it's 13.6 because of the pattern of those past amortization bases and where you are currently. So I'd warn you that that number can bounce around.

>> Sean Kaldor: Absolutely.

>> A lot because you know, if you get -- because it's highly dependent on that pattern, and how the 16 years -- what part of the 16 years you're in on each individual day.

>> Sean Kaldor: So there's multiple layers and if you could sort of resolve those layers you would get a 13.6, it's important to consider we are talking about a 16 year but we are actually effectively paying it off in a much shorter period of time. The actual time would be different but the cost would be different, saying let's pay it off in 13.6 years. I think that's important to consider, it's not a 30-year amortization period you might see in other plans.

>> Carmen Racy-Choy: I think the key thing to consider the thought behind the 16 year is if there is a benefit or a gain or a loss that's been generated the intent is to amortize it over the average working lifetime of the existing demographic group. And so for current gains or losses it is in fact 16 years. But because you have gains and losses associated with past demographic groups and past gains and losses the average number is smaller.

>> Sean Kaldor: Thank you.

>> Vincent Sunzeri: So can we talk a little bit about payroll for a second? Because it's been pretty well documented the city has grown, the number of employees in the city has shrunk and that ratio can't go on forever. And so we're operating here in an environment where we have a very lean city, and I imagine at some point in time as the city continues to grow and get larger we're going to need to boost those resources back up again, or we're going to have a lot more disabilities because our safety is being strained. And so I imagine the payroll numbers are going to shift higher at some point in time. How do you factor that in? Because that's going to dramatically again change the contribution rates on behalf of the city.

>> Well, there are two aspects of that. One is, the individual growth in payroll that you expect from a stable population, and a separate piece is growth in that covered population. The member population. So for an actuarial valuation, we're not permitted by standards to consider growth in the population. So we do not consider that. That actually will kind of -- it is sort of like broadening your tax base. It's usually the result of additional revenues coming into the city so they can afford broader employment population. And that actually helps take some of the risk away from the plan. The highest risk cities are the ones with declining populations. As opposed to growing populations.

>> Vincent Sunzeri: So in reality today, what's happening is this is making the plan look better than it is where in fact in the future we could be facing another problem because there's an element that you can't factor in and that element is we will likely have growth back in that population?

>> I think the other piece of it, you'll notice the contribution rate here is still 57.5% of payroll. And so the other piece of it is, the growth in the pay for the existing employees. And just the average pay for an employee. That's a different piece. We've built in an assumption of two years of zero, followed by 3.5%.

>> Vincent Sunzeri: I guess I'm on the track, I know my numbers aren't accurate but if we have say 2,000 active officers in five years from now or ten years from now regardless of the increase in compensation, inflation-adjusted, we're probably going to have a different number. It's not going to be 2000, it might be 2200 or 2300 which will then change the payroll number which will then change the deficit number.

>> If you have growth in membership it's higher than what Bill is saying is stable it's just going to improve the condition of the plan because you're paying that high contribution rate for a new member. You're covering way more than the cost of the benefits going to be earning you're going to pay off your unfunded faster so any increase in growth of payroll due to enlarged members is only good news for the system.

>> Also (inaudible) so when projecting budgeting and other (inaudible) 200 officers. I mean that's (inaudible)

>> So one way to think about this is, they're really, the cost here the 106 million are covering two things: One is the accrual of new benefits. And the other is the payment for unfunded benefits in the past. The payment for unfunded benefits in the past is a dollar amount. The accrual is really a percentage of pay. So if you add more people, you're going to add to that accrual of benefits, but you're not changing the payment or the past. And so, as a percent of pay, your contribution rate's likely to go down. As a dollar amount, it's going to go up. This table breaks out the contribution rates by member group and between the city and members. I won't go through it in detail. It's there for your reference. But essentially, for the police members, their contribution rate is increasing to 11.29%. The City's contribution for police is about 57%, and then for fire, it's 11.4 for members and 58.7 for the city. So the basic results are really a point in time measure. And if you're managing a pension plan, you need to look beyond the point in time measure, at what projections are for the future. So we wanted to bring our model into play here so that can you see what the projections are for the future. And I'll let Gene talk about that.

>> Emphasize the point Bill made. This valuation is a point in time measurement and you can't look at a valuation result and judge a plan's soundness. What you need to do is look at the direction and the contribution levels that are being called for, are they sustainable.

>> Ask you a question. Could you build into your model the Japanese experience of the 1987-90 where you had a low growth, low interest rate, kind of stagnant equity market? I mean could you go get that data from the NIKKEI and the JGB and give us an idea how that would perform?

>> We can give you an idea here. But let me first explain what you're looking at. This is a projection model that has two charts in it. At the top we are looking at a projection of the liabilities and the lines are the assets. Market and smooth. They converge because we're assuming on the left-hand column you see 7.5, those are the earnings assumed in each prejudices. The market and actuarial value converge and it's a single line. And above those bars if you can read it are funding ratios. That's the ratio of the line to the bar and you see it reaches 100% in 2026. Then down below, we'll be looking at contribution rates for -- and I'll show you in a minute, not yet, contribution dollars. Right now we're looking at rates as a percent of payroll. The member rates are the bottom bars, sort of the teal colored and the gold bars are the city's rate. And we're just showing a comparison of that to what the 2010 projections had shown as a percent of pay. But we can also show the bottom chart in dollar amounts and Bill will click that and now we're looking at hundreds of millions of dollars. So there you see the numbers that we just presented and how dramatically lower they are than what was projected last year.

>> And again those are not inflation adjusted right?

>> Correct, they're not inflation adjusted. Sometimes we're more valid, especially on the right-hand side, because those numbers to the right of the chart are not inflation adjusted.

>> Sean Kaldor: This is different than what was in our original packet. What's the difference --

>> Middle of the year.

>> Sean Kaldor: Okay.

>> You mean the original PowerPoint?

>> Sean Kaldor: Yes.

>> The key difference here is this is a no gain or loss projection which means, not only are we getting 7.5% returns every year, but we are transferring .22% of assets to the SRBR every year. As opposed to in the original packet it was showing essentially -- this model can either assume that .22 just goes to the SRBR or calculate based on the actual returns. And so those are the numbers in the original packet, was calculating essentially no transfer to the SRBR because you got exactly 7.5% each year.

>> Sean Kaldor: So this matches what's on page 10 of the report. Is this now or five year or 20 year forecast?

>> Yes, it is and these are middle of year numbers. Sometimes we show middle --

>> Sean Kaldor: So the prepayment discount will be even less than these numbers?

>> Yes.

>> Sean Kaldor: That's why it's 105 instead of 107 or whatever. Even from the red line you had a different forecast that was even higher than the red line in July?

>> I think the red line hasn't moved.

>> May be earlier projections done.

>> Sean Kaldor: The red line is the July forecast you did?

>> The forecast from July, it was based on the prior valuation, with an assumed change in discount rate.

>> Sean Kaldor: So what did we learn since July to now? That's a big change in our world view.

>> It was done in July but based on the Segal 2010 valuation. So it did not have any of the data for either the investment returns or the changes in membership.

>> Sean Kaldor: But did we know -- I mean we knew about the layoffs and the pay cuts and all that back in July.

>> We did not have any data on it.

>> Sean Kaldor: So we didn't know about the staff reductions?

>> We didn't do anything about it, remember they weren't in the numbers of.

>> No analysis done.

>> Russell Crosby: You go back and rerun your valuation each year based on the population that June 30th. So if you dramatically change the population during the course of that year the next valuation is going to have a dramatic change in it. That's exactly what happened here.

>> Sean Kaldor: That's what I'm trying to understand though. You did redo the forecast just for the discount rate. You changed it to a 7.5%.

>> This time it was changed for the payroll changes too though. Remember we had the long discussion like the zero had a stage in the payroll changes. I'm saying this is new.

>> Sean Kaldor: Every year we take in everything we know about staff changes, payroll changes everything. But that red line was from a mid year forecast where you updated it just to project everything that was from a year ago, but added a 7.5 discount rate.

>> Right. What we did for the red lined forecast was they took the Segal valuation report. We hadn't received any data yet or anything. So it was just what was printed in the report. And created an estimate projecting into the future based on that report. And direction to include a reduction to 7.5% in the projection.

>> Russell Crosby: And the reason why that 7.5% is because the board had very clearly and at one point voted to go to 7.5% and backed away from that but it was very clear that the board was going to go to at least 7.5 this year.

>> Sean Kaldor: If we are going to add that again this forecast went out with that number out there and everyone's focused on that number, and now we've got an entirely different world view.

>> Russell Crosby: But that didn't drive the change. The change was driven by the population change.

>> Carmen Racy-Choy: And the investment gains.

>> Sean Kaldor: The forecast in July, we knew about the staff reductions, we knew about --

>> Russell Crosby: You don't see that in the population until you run the population.

>> Carmen Racy-Choy: June 30, 2010 valuation. It takes data literally as of that date and that's what you run with. Same thing for that valuation. If you know you're going to reduce by 15%, given the fact that the actuary takes member by member, and calculates the appropriate level of liability and normal cost, associated with a

specific member, he's not going to go back and redo the valuation, just because he knows that there's a 10% decrease in payroll. I mean if you want --

>> Sean Kaldor: We redid the valuation because we were assuming there might be a decreasing to 7.5% discount rate --

>> Russell Crosby: No, the valuation was not redone.

>> Sean Kaldor: Well, the forecast was. Do we redo a forecast just for one factor, and not other things that -- I'm kind of concerned because this wasn't the retirement board's forecast, right?

>> Conrad Taylor: Why did we only take one? Why did we only use the 7.5 and not take in consideration the --

>> We had no knowledge of the cutbacks. We had just gotten on board, but we knew that the 7.5% was something that was discussed at the board level.

>> Conrad Taylor: It was discussed with the board, but didn't mean that the board was going to go to 7.5. So we were at 7.75.

>> Russell Crosby: I think if you go back and look at the time and the minutes and the meetings, what you'll find is the board did indeed vote to go to 7.5. And then there's a decision and said let's take that back and wait until the following year. But it was very clear to everyone present that the board was willing to go to 7.5 for this year.

>> Sean Kaldor: I'm not raising a big issue with the 7.5. This number came out from what the San José Mercury News says is the retirement board actuary issues this forecast, and we put in some factors, but not other things that we knew about. Now, I understand, you absolutely might not have been told. Did we ask you to produce that July forecast? This retirement board?

>> Staff --

>> The request came from staff.

>> Sean Kaldor: So was that the retirement board that we asked them to produce that forecast?

>> Russell Crosby: I'd have to go back and look at the actual records, I'm not sure at this point.

>> Sean Kaldor: Again, we just don't want to do forecast where let's include some things but not other things, and use one number, and say everything is great --

>> Damon Krytzer: I think everything's pretty clear, though. From what I recall, they were pretty clear saying this is sort of some stuff, but not all, and we don't have all the information.

>> Russell Crosby: And it was very clearly footnoted in everything that they released, exactly what was the basis, was the population of 6/30/10 and was a 7.5% assumption.

>> Sean Kaldor: I don't think it was our request to have them do that forecast, but it came across as the retirement board forecast is X. I want to keep us -- we do our forecast, these are our numbers, if we're all good with it, then it should be all or nothing, integrate everything we know, that would be the normal practice?

>> Carmen Racy-Choy: I juts want to convey that it doesn't quite work that way. In the asset liability study the first thing you would do is do a projection but the actuary makes an assumption that for example, we are going to earn the actuarial investment return assumption. The purpose of the ALM is in fact to examine that, and what we typically do within the ALM is, we take the capital market assumptions and to the extent these assumptions suggest we are not going to make the 7.5, it actually shows you a projection under that scenario. And then just to make sure that the investment committee and the board has the most recent information, we would typically reflect a return of the plan to the most recent date that we have information on that's credible. So throughout

you're always going to have projections clearly for different purpose than the actuarial projection. But there is information on the table that is -- that updates at least for certain elements.

>> I think we understand your point, just using all the information, we want to do a projection that's available.

>> Sean Kaldor: I don't think this board requested that mid year partial forecast, with some data in it, and not other data in it. If you find information to the contrary we can research that. But it set expectations in a certain way and whether those were high or no, I want to paint the right picture. We are committed to the best view possible.

>> That was a good segue into the really most important point we want to present today has thought been presented yet. You talked about a risk before with a plan for investments. This plan is extremely vulnerable to small changes in market returns. And what we're going to show you shortly, before you go there Bill I'll be there in a second. If -- go back to the dollar amounts and Bill's going to show you something more shocking what I'm going to do. But just take one year as a return and make it early be zero or 15%. So it peaks at 209, versus what was it? That's 30 million. And then if we did 15, so there's quite a bit of jump in that, and the reason is, Bill will take you --

>> These are the leverage ratios. And so what we're looking at here is the multiple of your actuarial liability to payroll, for in the middle, the multiple of your market value of assets to payroll. And the market value of assets is really the one that drives changes in investment return, and their effect on the plan. And so, for the data at the bottom is as of 2009. The black box is your data as of 2010. And the black triangle is your data in this valuation. And so your ratio has gone to almost 14 times payroll, in terms of the market value of assets. So that means that a 10% variance ask going to have an effect of 140% of payroll that you have to amortize over a period of time. Which is pretty dramatic.

>> What would be like a more typical ratio for?

>> The middle is about 3 times the 50th percentile of a national database. Now that's as of 2009. So I expect those will have taken some steps up. I don't think they would have taken quite the dramatic steps that your plan took up. But the database is lagging a little bit. We should have 2010 data shortly. But -- so we can see where that goes. But somewhere in the three to five range is kind of the typical plan. For a Police and Fire plan you would expect it to be higher. And I don't have real good data on it. But my sense is that that should be a couple multiples higher. Because you're typically getting benefits at an earlier age which creates this leverage. So -- but we just want to -- this is just a dynamic of the plan. It's not good, bad or anything else. It's just showing you how changes in investment return are going to affect the plan. And I want to get -- I want to give you an admittedly strong scenario.

>> This may not be the Japan situation but we'll follow up, the great depression.

>> If we put in, let's see I want to get to percent. If we put in the returns starting in 1931, going forward, and our model here is just assuming 70% equity, 30% bond portfolio, we've only got two asset classes and you know, it's just looking at those historical returns on a fiscal year basis. Now, admittedly this is severe because in 31 there was about a 50% loss. And in 32 there's about a 120% gain. So you won't find two more extreme years. But hitting that loss causes this rate in 2014 to go to 120% of payroll.

>> Sean Kaldor: And that again is 70-30, which is not our split, no real estate, no --

>> No.

>> Sean Kaldor: All we're doing is diversify.

>> Gives you the dynamics of it. Let's say we started in 32 instead of 31. Your contributions disappear. Just with that one-year difference. Now, again, that's an extreme difference. But as we kind of wander through time, we see dramatic increases in the contribution rate, depending on --

>> Damon Krytzer: Let me ask you this: Because we know if we are up 50% we're fighting for food as a city, and if we're up 100% we're in great shape. But like what I assume we're using this for is to try to then now in January try to select our allocation mix.

>> Russell Crosby: No, no.   I think what we're --

>> Well, this is kind of a prelude to that. We are just indicating that you are extremely sensitive to volatile returns and it's going to have a pretty dramatic affect --

>> Damon Krytzer: Down 50 and up 100 why don't we --

>> You mentioned earlier that you were comparing your returns to CalPERS and other systems. Our opinion is you shouldn't be. You're a different system than any other system, every system is unique. What Bill is telling you, he got off the 50 and 100 and started going through other periods of history. You'll always see extreme volatility, and you put another plan up here that doesn't have that leverage ratio that he's talking about, they wouldn't have that same volatility. So we're just emphasizing the point that you're --

>> Sean Bill: So how do you mitigate that?

>> You de-risk it. De-risk it.

>> Lowering the discount rate.

>> Right. It's the investment portfolio, reducing the risk in the investment portfolio, that helps mitigate that because it's really the volatility and investment returns that we're showing here. And the impact of that.

>> Damon Krytzer: I think what Sean's asking you is what else? Like what in the plan can we do to reduce that multiplier? I know you went over that, but I don't --

>> Carmen Racy-Choy: I'll just convey that for the Federated plan where we have done the ALM we were able to quantify that a reduction of 1 percentage point on the asset portfolio caused a decrease in the volatility of the employer contribution of 40%. So the volatility of the employer contribution was reduced by 40%, just by one percentage point change in asset volatility. So this is really what he's talking about when he's saying the leverage effect. And so ultimately, that's really your biggest driver and that's the reason you do the asset liability study is to understand that component.

>> Damon Krytzer: Okay, like I said before we're kind of using this to decide how much volatility and returns we want to take. But returns are still a function of other stuff. I guess I'm curious if what else in the plan besides our reliance on the returns which we kind of don't control.

>> Carmen Racy-Choy: The biggest risk in this plan is actually the salary assumption, the salary changes. Typically in a pension plan the biggest risks are the mortality, and investment return. In this plan, it actually is the salary increases. If the salary increases are significantly above the assumption, that has a huge impact on the liability. And that's really the biggest risk.

>> That's the biggest risk on the liability side. But the investment is still enormous.

>> Carmen Racy-Choy: Absolutely, absolutely.

>> Damon Krytzer: I guess what I'm saying again is, we only to some extent control the volatility of the investment. We could select the mix that has theoretically more or less volatility. But there is other stuff in the plan, that's what I'm curious about. What else is controllable?

>> We're really telling you why this plan needs to be more conservative in its investments than the average lines because of your high leverage business.

>> In terms of what this -- there are three basic policy areas that affect things. There's the benefit policy, the investment policy, and then, your contribution policy. And this board controls the investment policy and the contribution policy. Contribution policy are things like our assumed rate of return. All the assumptions that go into the valuation, the smoothing method, the amortization period. So you can smooth things out by for example extending the amortization period, but there are offsetting considerations that are significant in doing that as well. And so what we were trying to show is, given your contribution policy, given the benefit policy, here's the effect of the investment returns. Really, as a prelude to show you how that affects the contribution rates for the plan.

>> Damon Krytzer: So to cut out the weeds a little bit, assuming we're comfortable with our contribution policy, and assuming that we're comfortable with you know, initially at least, our discount rate, the return is the only other thing we control?

>> Russell Crosby: The amount of allocation.

>> Damon Krytzer: Okay.

>> We have a little stochastic model here and I put in 7.25% return. 13.5% standard deviation. And we're looking at the contribution rates in 2020. Here and this is the graph and this is the table. You can see the 50th percentile of contribution rate is 70% of pay. But the range goes from zero to 158%. That is a very wide range, in just you know nine years down the road.

>> Sean Bill: That's 7.25?

>> That's, yes, using an assumed return of 7.25, with a standard deviation of 13.5.

>> Let me show you an exercise. Bill, lower the 7.25 just pick a crazy number, 6, and take expected risk down to 5.

>> Oh, that's extreme.

>> I know. I just wanted to show you what -- how it flattens out that gold bar.

>> If you can do that, you should.

>> While you might raise the cost a little bit, you'd flatten everything out, and you don't have the wide extremes.

>> Sean Bill: How was it that led you guys to say that you would recommend 7.25 versus 7.5, or even 7, if this is kind of the dynamic here?

>> While it might increase the expected cost a bit, we think it will dampen the tail. Likelihood of extreme results and very low results.

>> But let me just clarify the process especially with the discussion that preceded ours. Actuarial standards of practice require us to look at the current investment mix and get the expected return from that mix, to set our -- as the basis for making our recommendation. And so that mix was producing a median return of 7.25. And the reason I raise that is, if your objective when you set your asset allocation, is to meet our return, we have a circularity problem going on where we're both looking at each other to determine what the assumption is and what the asset allocation is.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: When I look at the stress test that you did, and you go back and look at almost any time period, very rarely in that 20 or 30-year period that you're looking at do you actually on an annual basis hit the average return. So if the average return is 8% maybe two out of 20 years you hit it. Going back to your asset liability trends, it's pretty clear in 2007, we were looking pretty good. And 2010, 2011 we aren't. Undoubtedly in

this kind of volatile climate which we've seen which will likely continue for the next five years, ten years, we'll have a time where we're sitting in this room, and things look pretty good. And it could be another year, it looks really, really bad.

>> Exactly my point.

>> Vincent Sunzeri: How do we try and mitigate that? Because it appears that some of the smoothing that's taking place isn't quite working as effectively as we like. Are there other tools we should be using?

>> Damon Krytzer: The only thing I guess is to lower the assumed rate of return.

>> And lower the risk taken by the investment, that's the only --

>> Vincent Sunzeri: So we're definitely changing the structure through the ALM studies we're doing to change the risk of the portfolio, but so the investment return assumptions is a very significant part of that.

>> Yes.

>> The only other thing is, and I'll just play with this, suppose you just hit five years in a row of historical returns. And I'll go back, five years, change the amortization period just to show you how much, instead of 16, you had 30 and we're in no way advocating that so that's a tool, you asked about tools. Now if we did the same period, you still have volatility. You pretty much maxed out on your tools. It is all the to the investment risk you're taking, your investment policy is tighter over time could get tighter but it's all in the investment.

>> If interest rates ever go up to some higher level like 7.25, we'll be out here screaming to tell you to annuitize your retirement --

>> Vincent Sunzeri: Right, no doubt about that. So when you look at this from the perspective of years where the plan is overfunded, and that has happened, would it make sense in our plan creating sort of a rainy day fund so that when in fact things are very, very difficult and strained, resources are cut?

>> We take the position when you get overfunded, maybe use some of that money to buy down the discount rate, which lowers the risk of the portfolio.

>> Vincent Sunzeri: Do we have policies to do that currently for this plan?

>> Carmen Racy-Choy: No.

>> Vince Sunzeri: Would you advocate policies for this plan?

>> Well, I think our role is really to show you those dynamics and help you understand the policy implication of those choices. But I think yeah we've both advocating that when you are well-funded a good use of those funds is to de-risk the plan.

>> Damon Krytzer: If we are going to do that though, then we have to bring down the long-term rate of return, anyway, because we're going to be taking assets away from our asset allocation. So if it's 7.5 it has to be 6.75. If we say we're going to shave off assets when times are good --

>> Russell Crosby: It's going to be a long time before you're fully funded. Why don't you show that graph of when you actually get to full funding again under your current assumptions?

>> That's 2025. Let's see here.

>> What kind of return does it take?

>> Sean Kaldor: Again that's the 70-30, no real estate, no international, no --

>> No, no. I just put in a 30% return next year and that moves your full funding on a smooth basis all the way up to 2015.

>> Market basis is (inaudible) isn't it?

>> Russell Crosby: Let's go back to the 7.5. In this year that's not likely to happen. You'll be lucky to get a positive return.

>> Right, thank you.

>> Vincent Sunzeri: Very, very likely. So what you want is, you want to create an environment where the city is not operating feast or famine, and services are not changing. So at the board level, and I think the strategic retreat is something that's being discussed, it should be an agenda item to talk about thinking outside of the box in how to address this. Other cities aren't doing this, maybe we can take a leadership position in doing that.

>> Carmen Racy-Choy: Vince, I think that's an excellent point in that I think the way the discount rate was set, there was a very small possibility of actually meeting it and the board's actuary and staff has been pushing to move that assumption towards a median level where there's at least a 50% upchance of meeting the assumption. But I think a lot of plans who want to give themselves some wiggle room should probably move it up to the 60th percentile where you have a 60% chance of meeting the assumption. If do you that then you've in fact given yourself some leeway if there's a really bad year, you can change the discount rate, and not cause a huge change in contribution. So you're right on the money, in that there is -- there is -- the board can decide to set the discount rate differently. And that can give you a little bit of leeway to manage the volatility.

>> Vincent Sunzeri: Right, and so at the last board meeting we talked about this, we discussed a discount rate, we debated 7.5, 7.25, the work that we're doing on capital market assumptions was 7.25, your recommendation

was 7.25, we didn't go with 7.25, we have a risk that's riskier than it should be at this point in time. An interesting thing just an article that was written in the Mercury News I found pretty interesting, whether you agree with this or not, the statement was that the assumption about the investment returns is critical. The higher the expected return, the less money that must be contributed now. But here's the kicker. If investment returns don't meet expectations the employer i.e. the taxpayer must make up the entire shortfall. The employee has no risk. We need to be thinking about that when we're setting the discount rate. What's in the best interest of the plan overall? Not who's being impacted by this.

>> So to Carmen and Vince's point I feel like I feel much more comfortable with the numbers. I think last month to be honest I really didn't fully get on this whole idea of buying down our risk. So I'd like to make a motion that we adopt staff and Cheiron's recommendation of 7.25 on the discount rate.

>> Mollie Dent: I'm going to point out that that's not agendized. You made a motion last month and you adopted the motion and it's too late to reconsider that motion. It isn't too late for the board to change the discount rate if it wants to, but you can't do it at this meeting. You'd need to agendize it. As making a change in the assumption. You can agendize it for next month's meeting but that would be the more appropriate motion.

>> Sean Bill: I'd like to request that we put it on next month's meeting agenda.

>> Mollie Dent: If the board wants to consider that the appropriate action on the agenda is not to accept the report, because the report's been finalized with the current discount rate. That's what's been agendized.

>> Can I make one comment or suggestion? Since an ALM study is being performed and you are talking about a retreat, it would seem like getting that information in place and going through everything might be advantageous to complete that process before we revisit the discount rate.

>> Sean Bill: So I would like to make a motion that we do not accept Cheiron's report. As is currently --

>> Sean Kaldor: Second for the motion?

>> Second.

>> Sean Kaldor: Any discussion on the motion?

>> Richard Santos: Mr. Chair, what Sean is talking about is the investment committee going to be meeting between now and next month?

>> Yes.

>> Richard Santos: I hope you would take that into consideration first, put it on the agenda, whatever you like, and then talk about, whether it be 7.25 or whatever you would like to do, I'd like to hear from your recommendation, at least, and then the board will have more information to make a decision, if that's what the board wants to do.

>> Damon Krytzer: Well, I'm a little fuzzy on why, either way, we wouldn't accept the report as-is. Even if we do decide that we're going to change it. I mean --

>> Sean Kaldor: I believe both numbers would be wrong because this number would be used to set the city's contribution rate and the employees' rate.

>> Mollie Dent: It depends on whether you want to make the change for the 2011 valuation. This is the June 30th, 2011 valuation. This report with it be used to set the contribution rate for 2012 if the report is accepted. If you want to somehow change any of the assumptions, that are based in this report, and go back and revisit your motion on the assumptions, then this report's going to have to be redone.

>> Drew Lanza: And when do we need to lock this down by? When does this need to get locked down?

>> Mollie Dent: I believe you need to speak to staff.

>> Russell Crosby: As quickly as we can, that was the reason to try to get it done before December was so that the numbers would be out and available.

>> Sean Kaldor: So looking at this we have a lot going on. We are now going back and revisiting an earlier discussion of a 60% confidence rather than a 50%. My inclination is to move forward with what we have and keep going through this discussion through the year in the investment committee and at the board level, understand this leverage ratio better, understand the risk tolerance. I think some of the numbers we're looking at is 7.3 and 50 basis points of maybe. I would be inclined to understand all that better and do this through the next year when we go through this process again. It seems like going to 7.25 seems like the right direction but we were talking about 7.3. I would say move forward with what we have and let's keep this as our number 1 agenda item as far as the investment committee and where we're going.

>> Drew Lanza: I didn't quite get this all the last time, we have both staff and Cheiron recommending 7.25. But I really get this now. And I think we should do the right thing. I hear what you're saying but I think, lightbulb.

>> I will say last month's meeting I really don't feel I had all the pieces coming together as well as I do now. So -- but happy to discuss it more openly and you know, weigh the impact everywhere that we need to weigh it.

>> Pete Constant: I just wanted to chime in on the timing. The question is where we are on the timing of the budget and the city knowing where they need to be. The mayor's budget message comes out in mid March. And that's when the initial discussion of where the numbers are, and the direction the City's going to go, or that the council would like to go in relation to the budget. So that would be the best time, is to have the numbers prior to then. Now, granted when that message comes out in March there are several things that change in April and May, by the time we vote in June because it's a continual moving target. But I think optimally from the council's perspective it would be nice to have the information by that mid March budget message.

>> So we have an investment committee meeting January 30th. We can agendize this for the February board meeting.

>> Sean Kaldor: So that is a motion right, to agendize it for the February board meeting. Is there any further discussion on the motion? All in favor of the motion William all opposed? Passes unanimously. And with sensitivity to time and given that's the key issue, we've I guess with that we have rejected the report. Was that the entire motion?

>> Russell Crosby: Not accept the report.

>> Sean Kaldor: We're not accepting it and we'll agendize both the report and the discount rate so we can accept the report. And then just watching time and where we're going we have another important presentation on OPEB health care cost. We can move on to that. Is this a comment on the last agenda item?

>> Last item. I know this report now hasn't been accepted but I wanted to comment and question page 6 of the report itself. One of the gentlemen from Cheiron made some commentary as to why the employer's contribution rates and why that spread occurs. Can you reiterate all the factors that go into why that change, because I don't see it in the actual narrative.

>> Go to slide 6.

>> Oops sorry.

>> Sean Kaldor: Of the page of the actual written report.

>> It's in the PowerPoint as well, historical contribution rate.

>> Conrad Taylor: Members historical contribution rate.

>> Drew Lanza: Slide 6 you're right.

>> Two things are driving that rapid escalation of the contribution rate. One we had significant investment losses from 2009 that continued to get phased in and the second part is you're now taking, you're getting a smaller payroll, particularly for fiscal year 2013. So you're dividing a number by a smaller payroll and that Jackson up the rate. Those are the two factors.

>> So a smaller population of active members?

>> Will jack that rate up.

>> And the lower pay rate for active members?

>> No, two things were the investment return, losses, and then the lower payroll.

>> Okay, very good, very about, thank you. I just didn't see that in the narrative. Maybe I missed it.

>> It's --

>> Alex Gurza: Good morning, Alex Gurza deputy City Manager. At the outset of this matter, I think Mr. Bill indicated at the last meeting, he didn't get his head fully around it. I can relate to that because we have been thinking at the city administration long and hard of the valuation. Good news bad news, our contribution rate is not as high as was expected, really trying to understand how that wide swing happened. As Mr. Kaldor indicated although we knew that the estimates were based on the 2010 data we all knew that the city had to take dramatic steps to balance our budget. And unfortunately, laying off police officers and firefighters in the last two years and asking all employees to take a 10% total cut in pay. Including all members of this plan, police officers and

firefighters. We did not anticipate that that would have such a dramatic impact and I think the slide that you reshowed today is a slide that I think I must have spent hours looking at from last month to today, which is that leverage chart. Because I've been in my 17 years at the city have been at countless meetings, board meetings and never understood this leveraging issue, I had never seen a slide like that. I talked to Mr. Crosby. He wasn't really aware himself that the plan had this leveraging issue. And so what I took away from this leveraging issue was that the combination of the 10% pay cut and the reduction of police officers and firefighters had this effect. And that the plan is particularly volatile. So I was very appreciative of the conversation that you had most recently about how do you address that? What are the things in the board's control to address this volatility? Because clearly in the City's fiscal reform plan that the city council has adopted we'd like to rehire those police officers and firefighters back again, that's our goal and as long as other employees that were laid off, and we'd like to get pay increases again and to know that the volatility exists, is something we're significantly concerned about and we really appreciate the conversation and the board looking at what it can do on the risk side to try to manage that volatility so thank you very much.

>> Sean Kaldor: Thank you. All right so move on to item 2.2. Discussion and action regarding Cheiron's assumptions for the June 30th, 2011 other post-employment benefit plan OPEB actuarial valuation.

>> Okay. I'm passing around one additional item that I'll get to as we go through. Showing the expected claims assumptions. But let me -- I'm going to run through some very brief background on the OPEB plan and then talk about the health care assumptions and plan and coverage election assumptions, and expected return assumptions. And then we'll be back, if the board adopts assumptions at this meeting, we'll be back with adoption results for the retiree medical and retiree dental benefits. As background, I wanted to talk about the contribution strategy currently in place for these plans. Transition in the midst of transitioning to fully fund the arc, annual required contribution, over a five-year period. The transition periods are different for police and for fire. The police transition began in 2009, the fire began this year. There are set contribution rates, in the MOUs, with a straight line phase-in, but the rates cannot increase by more than 1.35% for the city and 1.25% for the members. In addition, to these rates, the city pays what's called the implicit subsidy. And I'll go through in a moment what the implicit subsidy is, and why it exists, and give you a sense for that. Then the unfunded liabilities, amortized over a

closed 30-year period, we should talk about the fact that these plans were not initially funded or were funded on a completely different basis, and so their funded ratios are very low compared to the pension plan. There's very few assets comparatively. And so that's essentially funding all those past benefits over that 30-year period that have accumulated. The contributions are split between city and members. The retiree medical benefits are split evenly. And the dental benefits, in a three to one ratio. So the division of contributions is very different than the pension plan, and includes that unfunded liability piece. Whereas, in the pension plan there's just the members just pay just a small piece for some benefit improvements. The assumptions that we use for this valuation are the same as those used in the pension valuation, where the assumptions are applicable. So for example, retirement rates, mortality rates, turnover, disability, all of those assumptions are the same. As is the assumed rate of return on investments, because currently, the assets are in the same trust. And invested the same way. But there are some specific OPEB assumptions that we have to adopt that are separate. The primary ones are the claims cost. Why do we expect the claims to be for medical and dental benefits? The health care trend rates, how do we expect those claims rates to change over time. And then participation, how many retirees are going to actually elect health coverage and have their -- have their spouse or significant other covered. And then, for GASB purposes, the discount rate ends up being a blended rate between the expected return on invested assets, and the expected return on employer assets. And so we have to set a long term assumption for the expected return on employer assets.

>> Sean Kaldor: Could you just clarify what are the employer assets?

>> Under GASB the expected return under employer assets is based on unrestricted reserves of the city. And so I'll discuss that a little more when we get there. The -- well, let me go to the handout first.

>> Damon Krytzer: I have a question while you're doing that.

>> Sure.

>> Damon Krytzer: A lot of this, including like GDP, for instance, are big estimates. Would it make sense for us to maybe look at what a prevailing swap rate on longevity risk would be, or something like that, as a more accurate market base?

>> For --

>> Damon Krytzer: For health care.

>> For health care?

>> Damon Krytzer: Would that be accurate, like have you seen --

>> No, there's a lot of debate over how we should be setting these trend rates. And there are a number of different models out there. But so let me just -- I'll go through the trend rate here. But the general idea is, that, and they are big estimates, nobody disputes they're big estimates but the general idea is that health care rates have been increasing, health care costs have been increasing at a high rate in the short run. But that cannot continue indefinitely. Because health care spending would become all of our economy. And so at some point in the future it would have to level off to be at least the same rate as GDP. Meaning it becomes a constant percentage of our economy.

>> Damon Krytzer: Although GDP is moving too, and I guess all I'm curious about, and it's not a loaded question, is you know, do property and casual insurance companies do an accurate job of pricing longevity risk? Because the swaps market's become pretty developed, right?

>> Well, it's fairly thin and there's a lot of debate over you know how longevity is really going to play out. And part of the problem with the market based is, there are a lot of people who want to insure against longevity, and not a lot of other people who want to take the other side of the swap. So there's a lot of debate about whether the market pricing for those is really appropriate or not.

>> Damon Krytzer: Thank you.

>> So the issue with setting the health care trend rates is, to figure out, we start with where rates are currently trending short-term changes in rates. But how long do we grade down to a GDP rate and what GDP rate do we grade down to? We've generally taken this out to a 15-year grade-down which is longer than the prior actuary was using. There is debate in constant review of how long that period should be. I should say here, because we are the health care actuary also for the Federated plan and both plans use the same actuary we are pushing the recommended assumptions together to be the same for both Federated and Police and Fire. So the one other, let me show you the health care rates. The one other significant change from the prior actuary is, we start with a lower Medicare eligible trend rate. So we split our trend rates between pre-medicare costs and Medicare eligible costs and they did not. Now, the prior actuary ton Federated plan did it, the way we do, and splitting and that's because the short term changes for Medicare eligible have been lower. And are partly controlled by Congress, essentially because you're paying what Medicare does not pay. And so you're affected by what Medicare does pay. In terms of your trend. So we're just seeing lower trend rates for Medicare eligible. This chart, the thin lines and the open symbols represent the prior actuary Segal's trend rates and the solid lines represent our recommended trend rates. The other significant difference is Segal trended to an ultimate trend rate of 5%. We're recommending 4.5 as an ultimate trend. Both are within a reasonable range of what other actuaries estimate as the ultimate trend rate. But our recommendation is 4.5.

>> Damon Krytzer: Do you have a sense of -- I don't want to keep beating this up -- of where swap rates are?

>> I don't right now.

>> Damon Krytzer: I'm curious if we have an arb opportunity just to sell it away.

>> I don't know where they are right now.

>> Damon Krytzer: Okay, thank you.

>> So our trend for pre-medicare starts at 9.17 and grades down to 4.5 over 14 years. We started this trend last year at Federated at 9.5 trending down over 15 years and the experience was matching our trend so we made no change and so we're recommending that you adopt that trend. For dental, we start at four and a half and trend down to 4. I think Segal just used 5. And you can see in your handout in the last year, the dental rates actually went down by about 3.5%. So we're comfortable with our current trend going for 4. Let me switch to the handout, and just say we've got a comparison of claims by age. Between the prior and the current. And there are a number of changes going on here, that you see typically when you change health care actuaries. The way these claims cost, these are assumptions, are developed is we look at the entire claims experience for the plan. And the entire population that was covered by the plan. And we make assumptions about the relation of age to claims. It's called an age curve. And we make assumptions about the rate of claims between gender. And those assumptions are built on much larger national studies. But then we allocate those claims across the entire population that was covered to develop the claims cost at each age. And so what you're seeing here in this chart is an assumption about claims based on age and gender that reflects those age curves, and your actual experience. And overall, in aggregate, what we saw was actually about a 10% reduction in the claims experience from the prior year. So -- and that's -- that's a pretty significant change for this group. But when you look at the individual pieces, you're seeing, some are going down significantly, some are going up. And that's a difference between our standard age claims curve and Segal's. Now, I want to explain a little bit about the implicit and explicit subsidies. And this example is based on the Kaiser plan with a $25 co-pay. The premium for the plan is set to cover all of the claims. As is the claims cost. But the premium does not vary by age, except for pre-medicare and post-medicare which is the change at age 65. The actual claims vary by age. And so the gold line represents the actual expected claims. And we're starting the chart at 45, because it actually would extend all the way down to the youngest employee covered. And so the area under the line, in theory, equals the area that's shaded. Because you have to pay for all the claims. It's just whether they're allocate -- whether you allocate the same cost to a 30-year-old as do you to a 60-year-old, or with the claims cost we don't. We allocate much lower cost to a 30-year-old than a 60-year-old. Since the plan only covers retirees, we don't have the 30-year-olds to balance the 60-year-olds. We have a lot higher concentration of 60-year-olds. So the implicit subsidy where an individual is difference between

the claims cost for someone that age, and the premium that doesn't vary by age. So here if you look at age 60 for example you'll see that the claims cost is somewhere between $700 and $800 where the premium is $500.

>> Damon Krytzer: Here is where we have a big delta from Federated, right, between us and Federated, right? We have a younger retirement population.

>> And active employees, sorry I didn't make that clear. Your premiums include -- the premiums for the pre-medicare eligible include active employees. It's the same premium for both.

>> Damon Krytzer: Okay.

>> So it's not just the Federated versus Police and Fire. It's primarily the dynamic of -- you're looking at all retired population versus the active population.

>> Damon Krytzer: At the same kind of rate for a librarian and a police officer or did that change?

>> The premiums we set the same for a line and a police officer.

>> Damon Krytzer: Is that accurate?

>> Yeah, fairly accurate yeah.

>> Sean Kaldor: Kaiser charges one rate to the city for all employees.

>> Damon Krytzer: That's interesting.

>> Mollie Dent: It's about the slide that was passed out. There is something about the claims assumptions being developed together with Federated. The claims assumptions are just for the retirement plans, though, they are not for the actives, are they?

>> All the assumptions here are being used just for the retirement plan. We have to take the data for the entire group in order to develop claims but the claims are developed for the retirees under this plan.

>> Mollie Dent: Right, I understand this. Is the subsidies though are over the entire --

>> The subsidies come because the premiums are based on the active versus retiree population.

>> Mollie Dent: I had a question between your claims assumptions and Segal's claims assumptions. Your claims assumptions are for both plans jointly whereas Segal's were just for the Police and Fire plan, that is correct?

>> That's correct.

>> Mollie Dent: Is that part of the difference too maybe in the numbers?

>> I don't -- well I don't know how Segal developed theirs but the data we receive is by health plan which covers both groups and so you can't really delineate that.

>> Sean Kaldor: Just on a quick timekeeping note for anyone who's here for a disability retirement, we'll start that at 10:45. Dr. Das has been delayed. So please continue.

>> So here we're just showing the same sort of information for the PPO plan. If someone elects the PPO plan. Now, the explicit subsidy that's provided is still based on the Kaiser premium. And so the explicit subsidy is the teal area and the retiree pays the difference between the Kaiser premium and the PPO premium which is the red area but you still end up with an implicit subsidy on top for some retired members. This slide just shows what

plans are available and what the elections were, in the data, and so your costs end up being an aggregate weighting between these plans. Based on this selection.

>> Sean Kaldor: There's no cost to retirees to go into the medical plans or the dental plans, right?

>> Correct. That's an excellent segue right here. Our first bullet, this really is about participation but it primarily focuses on spousal coverage. But the first bullet is that Segal assumed that 95% of retirees elect medical and dental coverage. And because of the subsidies, and away we're seeing in participation rates, we -- what we're seeing in participation rates we recommend that you assume 100% elect coverage. And then since the dental, spousal dental coverage doesn't require any additional retiree cost we also recommend that you assume retirees, all retirees cover their spouses for dental.

>> Damon Krytzer: Has that been the experience?

>> It's very close to that.

>> Sean Kaldor: Is it 95 or is it 100?

>> I don't have the dental -- actually I'm not sure we have all of the dental data broken out. What you see up above there is, the election for spouses covered in the medical plans. So we had 1500 male retirees under our assumptions that we developed for the pension plan, looking at what percentage are married. We assume 85% are married and that's pretty close to what the experience was. Which leaves us an estimate of about 1300 married retirees. And we've got 1250 covered spouses in the data. So that's about 95%. So we're recommending that you assume 95%. I think that's up from 85% in the Segal valuation. The data for females is very slight, there were only 61 female retirees. So it comes out to a 58%. When we did it for Federated, females were around 70. And we were concerned that 58%'s too low and is just reflecting the few number of female retirees. So we're recommending adopting the 70% assumption for females. The expected return on employer assets. So as I indicated we have to blend the -- to determine the discount rate for accounting, this does not affect the funding

calculations in the contribution rates. But for the accounting disclosures for the city, in particular, we have to develop this blended discount rate between plan investments and the return on employer assets. We're using the plan investment assumption of 7.5%. But then we need the other piece, the employer assets. Typically, the unrestricted assets we have to look at for employers are short duration, fixed income securities. And the assumption needs to be consistent with the long term economic views. So right now, short term investment returns are very, very low. But we're not looking at just what that return's going to be next year but what do we expect that return on those securities to be averaging over a 30-year period.

>> Damon Krytzer: What do we have to assume, short to mid sixth, coming out of the allocation, once it's fully funded will be it allocated?

>> Once it's fully funded we'll be using the seven and a half percent return. While we're not using the full annual contribution then we have to blend these rates to get the accounting disclosure.

>> Damon Krytzer: Have to, according to who?

>> Government accounting standards board.

>> Damon Krytzer: Can't argue with that. I've tried.

>> Yes. We've tried arguing that. So from the capital market assumptions that we used last time, the 30 year return assumption for Barclays capital 1 to 5 year government credits was 4%. So we recommend reducing the current assumption which I believe is 4.75, down to 4% for this. And again, I just want to reiterate, we're not assuming that you'll get 4% this year or next year on those. But over the long, long term we're looking at those securities returning something on the order of 4%. So that's it in terms of the assumptions. We'll come back next month, we'll have the valuation, we'll have a projection model for OPEB so you can see where we're projecting costs to go and some of the volatility around that as well.

>> Damon Krytzer: So are we actually taking action?

>> Sean Kaldor: Yes so any comments from the audience on the presentation?

>> Alex Gurza: John Bartel does have a couple of questions he would like to ask if that's okay.

>> Great, thank you very much. John Bartel, president of Bartel associates. So we really have two questions on the assumptions. And we think it probably requires a little bit more conversation. So question number 1, might be relatively easy. We just didn't see this in the assumptions. Our understanding is, people hired prior to 1986 did not contribute into Medicare and are not eligible for Medicare unless they're eligible for some other reason. So we'd like to know what the assumption for Medicare eligibility is for those folks hired prior to '86, as well as retirees who were not yet 65. So we'll refer to those as earlier retirees, so that's question number 1. And then question number 2 is, the health care trend assumption, the graph that was up there, when we'd look at the Medicare eligible trend rate, that's a little different than what we're seeing other actuaries it's a little different than what we're using. That's a very low health care trend assumption for Medicare eligibility. And as Congress cuts back Medicare benefits, unless the plan changes, unless the plan reduces benefits, we're expecting more claims for Medicare eligible. So we actually are seeing higher Medicare eligible health care trend assumptions than what they are seeing there so Bill did a wonderful job of going through that but I think we'd like to understand a little bit better why there's as big a gap as there is and why that health care trend is as low as it is.

>> So those are the two questions.

>> Sean Kaldor: So to the first question, we assume everyone is Medicare eligible; is that correct?

>> No. I don't think that's correct. We may assume every active is, I need to go back and look into that. But the retirees we know whether they are Medicare eligible or not I believe from the data.

>> Sean Kaldor: You will come back on this next month and look into those two items.

>> Yes, and I can square them up with John in the interim.

>> Sean Kaldor: You guys have met I know. Any questions or discussion from the board about the -- yes.

>> David Bacigalupi: In the calculations of Medicare eligible, there is another factor other than the hiring date of '86, especially for Police and Fire, who have outside employment and become Medicare eligible. Is there any way to track that calculate that into the calculations?

>> It is very difficult. It all depends on what data is available from the city. Which is not going to be comprehensive data on that.

>> Okay, thank you.

>> Sean Kaldor: Any further questions? I'll entertain a motion.

>> So move.

>> Mollie Dent: To what?

>> Sean Kaldor: It seems one option would be to accept the recommended changes. There we go. Adopt the assumption changes. And have them come back to us next month with the actual costs. I would only caveat that whoever wants to make a motion should consider the discount rate, that we will be revisiting that, so we might want to come back to us with two different sets of numbers, the 7.5 and the 7.25.

>> Damon Krytzer: I hate to delay this, but I don't know that we're ready to adopt the trend based on that last statement, right?

>> Russell Crosby: And actually, delay on this one doesn't have the same consequence because the city and the unions actually know how the contribution rate is going to increase. That's negotiated.

>> Damon Krytzer: So I kind of feel like yeah, I don't think we can vote on this yet.

>> Sean Kaldor: You want to make a motion to have them come back next month? Someone make a motion.

>> Richard Santos: I'll make a motion Mr. Chair that the investment committee review this, as we're going to do anyway and then we have the other stuff on the agenda next month so we might as well continue with it.

>> Damon Krytzer: This isn't the investment committee and I don't want to review this in the investment committee meeting. I mean, the issue is the trend assumption. And I think that you guys were going to connect with those guys, and maybe someone could just connect with us. And kind of let us know what, if there's an agreement on that. I mean we're kind of, I feel like we're just going to take someone's advice on this, right?

>> Sean Kaldor: So we don't need a motion then, we can just have them return next month with --

>> Mollie Dent: If the board just wants to continue this item to the next month that would be the appropriate motion.

>> Sean Kaldor: Someone make the motion to continue this?

>> David Bacigalupi: Motion to continue this until next month.

>> Sean Kaldor: All in favor, opposed, none, that being done, we will take item 2.2, take a five minute break and at 10:45 resume with our disability retirements.

>> I like it. [Recess]

>> Sean Kaldor: Okay, meeting ready to come back to order. Okay. We will begin with retirements. Start with service retirements. Item number 4 much 1. Service retirement for police sergeant Robert R. Lopez from the police department, effective January 21st, 2012, with an estimated 21.61 years of service with reciprocity.

>> David Bacigalupi: Move to approve.

>> Sean Kaldor: Motion passes unanimously. 4.2, Mike E. enos, police officer, effective January 21st, 2012, 21.19 years of service. Motion and second, any opposed, passes unanimously. Item 4.2 B was withdrawn so item 4.2C, Octavio D. Morales, police sergeant, effective January 21st, 2012, 23.69 years of service. Motion and second, any opposed? Motion passes unanimously. Item moves us to 4.three, service connected disability in seniority order, item 4.3A Donna.

>> Donna Busse: Police 70 Eric Grimes is requesting a service connected disability based on left shoulder and left knee, 46 years old with 22.35 years of service. At the time of application and the time of separation he was on modified duty. His work restriction is that he should avoid sustained high-impact activities with his left leg. Permanent modified duty we have several memos in your packet. The most recent one is no, due to the voluntary vacate, vacating of the position.

>> Sean Kaldor: Mr. Boyle anything to add?

>> Good morning. We went through all the disabilities last hearing. This is continued from last session. So what I would like to do is do just a brief recap. And then have officer Grimes speak a bit. And if that's satisfactory. We continued for clarification last time, if Dr. Rollins eight hour restriction in the modified duty, that's no longer relevant since officer Grimes has accepted the police department's offer to vacate his position. So now all we're dealing with is full duty patrol. Officers Grimes has over 22 years of service as a police officer for the City of San José and he's requesting a service connected disability retirement based on his left knee. He first injured his left knee in February 18th of 2004 when kicking in a door. He felt weakness in his knee. That's on pages 227 through

229 in your packet. On April 8th, 2009 while on duty and walking out of the house he missed some additional steps, stumbled and again injured his left knee. That appears on page 233 and 234 in your packet. Dr. Rollins on April 30th, 2009 operated finding an osteochondral defect, chondromalacia and meniscus tears. Officer Grimes was eventually placed in the exempt officers program due to his inability to do full duty patrol. At the time of the last hearing Dr. Das on page 1-8 indicated Mr. Grimes should avoid sustained high impact activities with his left leg due to his work injury at the police department. There is no contrary medical evidence. Officer Grimes vacated his position in the exempt officer program. Lieutenant Schroeder's letter on page 246 says there is no position available for him. And officer Grimes would like to briefly address the board at this time.

>> Good morning. I've been a San José police officer for nearly 23 years. I've done my job with honor, pride, and integrity. I've worked as a patrolman, a gang investigator, a narcotics enforcement team officer and assault investigator, a field training officer and an undercover officer. I am proud to have served the citizens of San José and the work that I've done. During my career I've had four major surgeries due to on the job injuries. I will continue to battle the cancer for the remainder of my life. My knee injury has disabled me to the point where I could no longer perform my duties. As hard as I've worked at rehabilitation my doctors have told me my knee will never recover. The daily medication I take is hard on my body and I worry about the long term effects. Sitting here before you today, has been the hardest decision of my life. All I ever wanted was to be a policeman. Due to my injuries, that's no longer possible. Thank you.

>> Sean Kaldor: Dr. Das anything to add?

>> Dr. Das: No.

>> Sean Kaldor: Open for discussion.

>> David Bacigalupi: Mr. Chair, based on the medical evidence in front of us, the memo from the police department stating that the modified duty positions are full, and officer Grimes has vacated his position, I move to accept the petition.

>> Sean Kaldor: We have a motion and second. Discussion on the motion. Any questions for the applicant? Okay, I'll entertain a vote. All those in favor of the application say eye. All those opposed say nay. Passes unanimously. Officer Grimes thank you for your service to the community.

>> Thank you.

>> David Bacigalupi: Eric we worked side by side in patrol for years. I wish you good luck in retirement. I know you kept plugging after you were injured and couldn't work the streets anymore. You remain a real asset to the police department. I hope you enjoy your retirement.

>> Sean Kaldor: Item 4.3 B. The applicant's packet says it's a non-service connected disability. Yet the application says it is a service connected.

>> Mollie Dent: I think it's incorrect. It is a service connected.

>> Donna Busse: Eric Navarro, police officer Eric Navarro is requesting a service-connected disability based on his right ankle. 42 years old with 18.2 years of service, medical reports are listed in your packet. Work restrictions are that he can only use crutches and perform toe-touch weight bearing for his right foot. He must have the opportunity to elevate his right foot at the time as needed. At the time of application and at the current time he is on medical leave and currently no modified work available.

>> Sean Kaldor: Mr. Boyle.

>> Thank you. Eric Navarro has been a police officer for the City of San José for 18.2 years. He injured his right ankle on June 30th, 2010, jumping a fence to capture a fleeing suspect. Landing on some uneven surface and causing a deformity and open fracture of his right distal tibia. He was admitted to the hospital and had surgery for his right ankle fracture by Dr. Huff, on page 14 of your materials. On July 20, 2010, Dr. Abede, did a second

surgery involving open reduction and internal fixation and other extensive procedures which are on page 19 of your materials. On December 22nd 2010 Dr. Abede again operated on the right ankle doing an arthroscopy and debridement and many more procedures that are listed on page 25 of the materials. On January 11th, 2011, John Kaufman, an infectious disease specialist, concluded there was a Staphylococcus orthopedic related infection, and recommended aggressive treatment, including intravenous IVs and a three too five month course of treatment page 33. On July 12th, 2011 the UCSF doctor recommended an additional grafting surgery because of the nonunion in his ankle. Dr. Das on page 7 concludes that even if Officer Navarro eventually gets the fusion to his right ankle and staph infection issued resolve and he does improve postoperatively, some day he will likely never be able to resume full duty police works. Dr. Das assigns the restrictions of he can only use crutches and perform toe touch weight bearing on his right foot, and also, that he must have an opportunity to elevate his right foot, as needed. Lieutenant Schroeder on page 10 says there's no position for officer Navarro and officer Navarro would like to briefly address the board.

>> Please.

>> Good morning and thank you for allowing me to speak. About a year and a half ago when I did this injury, I knew I'd hurt myself pretty bad when I saw my foot backwards laying next to me but I figured six months maybe a plate and screws I would be back to work. Even when Dr. Abede told me where the break was and how bad it was I basically had a one in ten shot at ever coming back and doing the duties of a police officer and healing good enough and that I would in the near future need a fusion and/or ankle replacement kind of played it off and said no I'll be that one in 10 and heal. Well as you can see unfortunately I have not. I've continued to have setback after setback after setback. Tried everything, grafts, bone stimulators, orthopedic boots, everything to try and walk. In July of last year, I got referred from Dr. Abede who was the specialist on feet, and he kind of threw punted the pass up there saying you know he couldn't figure out why I wasn't healing so I met up there and met with them they reviewed everything and they again told me that you know if I continue doing what I was doing and the path I was doing I took a great chance breaking all the hardware loose inside my leg and causing bigger damage and my best option at the time was to have my ankle fused. Knowing and telling me and having the fusion that I would no longer be able to be a police officer. Well, after 13 months of not walking, severe pain and a

pain in the butt basically, I had to throw up the white flag at that time. I decided to have the fusion, and being the way that this has been, I had another setback. Right before the fusion operation, they found out that I still have an infection in my leg. In October they went in and removed -- Dr. Kaufman removed all of the hardware inside, hoping that the bacteria was attached to the hardware inside there. The tests came back that the staph was on the plate and screws and in my bone in my leg. I just completed 8 weeks of very aggressive antibiotics, met with the doctors in December and we discussed all the options. He informed me the normal person when they have their ankle fused has an 80 to 90% success rate. Because of my circumstances, even if the infection is gone I fall into a 50 to 60% chance of a success rate but they feel that going forward with an ankle fusion is really my only and last option because, if it doesn't work, I'll have two more options that are a lot more drastic. They'll either have to remove the large piece of bone in my leg, put me in a fixator with poles sticking out of my leg for a year and a half to two years, or amputation for a better quality of life. As I sit here today, this coming Tuesday I'm scheduled for surgery, and my best case scenario and what I'm hoping for is infection is gone, the fusion heals and in 12 to 16 weeks I start the slow painful process of trying to put weight on my foot again and hopefully get rid of these crutches that I've been on for the last 18 months. That's my best case scenario. I'm literally in front of you kind of on my last leg both physically and financially. In June of this past year my 4850 disability time ran out and I began using all of my sick time comp and vacation to supplement my income and continue my benefits and insurances and pay from the city for me and my family. In December that time ran out. Due to the fact I was hurt on duty, I found out I was ineligible for my long term disability insurance through my union. And or any time donations through the department. So what I'm here kind of asking and hoping is that you'll grant my service disability so I will be able to take the time to hopefully heal as best as I can and be able to support my family during that time that I am trying to heal. Thank you.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Dr. Das do you have anything to add?

>> Dr. Das: Yes, I just wanted to point out and reaffirm that the restrictions that are pointed are a best case scenario in terms of with his current situation. It doesn't incorporate the fact in terms of treatment and healing and postop recovery and healing. I have a new found sympathy for him as well.

>> Thank you.

>> David Bacigalupi: Trying to duplicate it?

>> Sean Kaldor: Baci.

>> David Bacigalupi: Mr. Chair, thank you. As well as the excellent prognosis by Dr. Das which really makes it clear for me I move to grant the application for a disability retirement.

>> Conrad Taylor: Second.

>> Sean Kaldor: We have a motion and second. Any discussions on the motion? Any questions of the applicant? Okay we'll entertain a vote then. All those in favor, say aye. All those opposed say nay. There are none opposed motion passes unanimously.

>> Conrad Taylor: Mr. Chair, if I may.

>> Sean Kaldor: Please.

>> Conrad Taylor: Eric, we go back a long way, we worked shift together. You were always there to help out. You take care of yourself. I'm sure Dr. Das -- if you have any problems, Dr. Das will take care of you. You take care of yourself.

>> Thank you.

>> Sean Kaldor: Okay we can proceed to item 4.3C.

>> Donna Busse: Francis Keffer, police officer is requesting a service connected disability based on his neck and shoulder. He is 39 years old with 13.08 years of service. Medical reports are listed in your packet. His work restrictions are he should avoid sustained repetitive forceful use of his left arm. There is no permanent modified duty available. At the time of application he was on modified duty.

>> Sean Kaldor: Mr. Boyle.

>> Thank you. The original injury that caused the problems with officer Keffer's surgical spine, left shoulder and maybe brachial plexus problems occurred on April 4th, 2006. As far as the injury of April 4th, 2006 is concerned, it occurred as follows. Officer Keffer was chasing a suspect, and he got up and climbed on a wall, laying his upper body on the top of the wall, and reaching down with his left arm, over the wall, while he grabbed the suspect by the shirt and held onto him. The suspect was trying to pull away. With officer Keffer's chest lying on the top of the six foot wall and his left arm stretched out to the maximum, downward, while trying to hold the suspect who was pulling and tugging on officer Keffer's left arm, in his attempt to escape. Dr. Julia Cahan who began treating the right ankle sprain in a report of September 8th, 2006, although in your materials on page 234 and 235, there's a typographical error that says 2005, she indicates that he also injured his shoulder. The following reports of February 6th -- I'm sorry, October 6th, 2006, on page 233, and November 3rd, 2006, on page 232, also discussed the shoulder and its treatment early on and close in time to the April 4th, 2006, injury described above. By February 29th, 2008, Julia Cahan the treating doctor had diagnosed impingement syndrome of the left shoulder and possible rotor cuff tear and an MRI was done on March 17th, 2008. Medical records reveal that there has been a medical workup for several years trying to decide if this is a brachial plexus injury, a shoulder injury or a cervical spine injury. On materials on 48, 49 and 50 you have the neurosurgical consult of Edward Rastomazda, dated April 25th, 2011. The doctor interprets the MRI showing a disc herniation paracentral to the left impinging on the nerve root at C-5. Dr. Rastomazda also informed officer Keffer of the risks of surgery which include but are not limited to the risk of infection, bleeding spinal fluid leak, neural damage, pseudo arthrosis which is nonhealing

of the fusion, hardware failure, spinal chord injury, hoarseness, dysphasia, and blood transfusion requirements. Dr. Alfredo Hernandez who was the agreed medical examiner in the workers compensation case indicates on page 31 of your material the following: Pertaining to the cervical spine and left upper extremity 100% of the disability is apportions tod finite event of April 4th, 2006. There is no contrary medical evidence. Dr. Das, in his report on page 1-7 says as far as his restrictions he should avoid sustained repetitive forceful use of his left arm. Dr. Eugene Della Maggiori, the treating physician, on page 74 and 75 of your materials for the shoulder, and page 53 and 54 for the neck, has indicated what his restrictions for officer Keffer are. Recently, Dr. Della Maggiori on page 214 of the materials released officer Keffer from disability to light duty effective January 1st, 2012. At this time, there are no exempt officer positions available for officer Keffer. If you look at the new page 264, Lieutenant Schroeder's letter dated December 21st, 2011. There are it is respectfully requested that the board following Dr. Ravistas's restrictions and lieu tend Schroeder's indication of no exempt officer positions available, grant officer Keffer disability retirement. Officer Keffer would also briefly like to address the board.

>> Sean Kaldor: Please.

>> I spent my whole life wanting and preparing to be a police officer, as my father and grandfather. Before my injury, I worked out, I boxed, I played sports, and I was in great condition. Then on April 4th, 2006, while investigating a grand theft case, I had to chase, climb six foot fence, struggle and fight with a suspect, who end up being a parolee at large and driving a stolen car, to arrest him. I continued to treat for two years, to expect to get better because that's how I was raised and that was my work ethic. During that time, I was involved in several more fights, including one with a drug suspect, in a small hotel bathroom which I fell on my bad shoulder. Finally in 2008 October while driving a patrol car in a busy street my arm went dead. I couldn't even hold the steering wheel to drive. I knew then I was more of a danger to myself and my teammates than I was being a body out on the street. I then took a desk job for the last several years. Not only did I hurt my shoulder at the time I also hurt my ankle. Since my injury I can't ride my motorcycle, I have not worked out at all, I have problems sleeping, I can't even hold my three-year-old daughter in my arms. If you can imagine hitting your funny bone, times that by 20 to 30. Have it last 24 hours a day and seven days a week. That's the condition I'm in. I've done over 40 sessions of physical therapy. Over 12 sessions of acupuncture. Trigger point injections and medications, I use a special pill to

sleep. I've had two ankle surgeries, hand surgery, and the consultant with the neurosurgeon from Stanford who stated I need a disk replacement and fusion in my neck, that will relieve my pain but not fix the problem. With this surgery within ten years I'll have to have another surgery to replace the disk around the fixed area. I've had to struggle mentally, accepting the fact that I can no longer be a policeman. Physically, the struggle also, but the biggest thing that hurt me, was ironically, the day after the October board when I was here, my son asked me, daddy are you going to have any more surgeries? I told him I don't know. He said, aren't you better yet? I said, not yet. And he goes, well when are you going to be a policeman again? I said, I don't know. That has hurt me the most. Outside of the physical injuries and the mental anguish. Is what it's done to my children.

>> Sean Kaldor: Thank you for that. Dr. Das, anything to add?

>> Dr. Das: Just, from purely a medical perspective, it's difficult to kind of reconcile the mechanism of injury with the current clinical presentation. Typically after an acute injury if something's torn or there's soft tissue injury you experience more difficulty at that time than you do subsequently one to two years later. The issue is not whether Mr. Keffer has those symptoms, that's not the issue. The issue is how those symptoms relate to the mechanism of injury. Because if there was an acute brachial plexus injury, typically the symptoms are more severe early on in the injury course as opposed to one to two years later. Same thing with the neck injury, and so in particular in terms of trying to he relate how a disk herniation from the mechanism described occurred. So those would be my only issues from a medical standpoint. More explanation, I don't understand how those -- the clinical progress of the case and how the relationship between the neck, disk herniation and the mechanism of injury described. And the doctors haven't explained that in the medical record.

>> Damon Krytzer: Do you have any alternative idea? I mean it kind of seems like there's no other reason.

>> Dr. Das: I don't --

>> Damon Krytzer: I hear what you're saying.

>> Dr. Das: I don't have a medical explanation.

>> Damon Krytzer: It's not like it's hereditary. It's not --

>> Dr. Das: If you are looking at other explanations other diagnoses that could cause numbness in the hand would be something like multiple sclerosis, you wouldn't expect it to stay like that for a long period of time. I mean a stroke, but to have that kind of a stroke would be very, very rare, where it only affects your left arm. So from an acute injury process, it's kind of difficult to reconcile it. There is a -- there is some -- multiple sclerosis is a diagnosis that comes to mind where you have that kind of clinical presentation, but obviously that's not been diagnosed in this circumstance, so I can't think of anything off the top of my head that would explain it. You can have small little infarcts in the nerves, it is all theoretical stuff, nothing that I would -- it would be more zebras rather than a horse if that makes sense.

>> Sean Kaldor: Let Mr. Boyle respond to that and then Conrad.

>> I just wanted to point out that the agreed medical examiner which is just an orthopedic surgeon Dr. Hernandez, has already said 100% of the left arm and cervical spine problems are due to the specific injury of April 4th, 2006. I just wanted to remind the board about that.

>> Sean Kaldor: Conrad.

>> Conrad Taylor: Dr. Das, this question is probably going to go to you. I'm just trying to put all the pieces of the puzzle together, and that discrepancy of the injury. It looks like it's not a shoulder injury, and this is based on Dr. Wall, he says it's not likely a shoulder injury, and that's on page 1.5, and then we have just possible maybe tendonitis in the shoulder. We have the -- let me find my point -- on 20 of 75 we have, from Millard, it's his problem is not cervical in the origin, and then we have the other issue with the brachial plexus. Do we have any findings on that? Because let me go back. And then we -- if we go back in 2008, we have an MRI saying that they have no

disk protrusions in May of 2008, and then we had no disk protrusions in November of 2008. So do we have anything that's showing the brachial plexus, and if it is, what category is it?

>> Dr. Das: Like I said typically when you have a traction injury to the Brachial plexus, you'll have more an acute clinical presentation with the numbness and the weakness. It is not something that stays dormant for a year or two and presents itself one to two years later. And so that's -- and when you are talking about something like that with the brachial plexus, it would be easier when the clinical presentation shows numbness in a nerve root distribution or weakness in a distribution according to a peripheral nerve or a nerve root coming from the neck because it helps you kind of pinpoint where the problem could be. So when you're talking about a brachial plexus traction injury you typically get focal weakness like if you're in a motorcycle accident or something like that you get weakness in the whole upper extremity and it's a wait and see game to see whether you recover or not. And not everyone recovers. So there's no real evidence pointing towards a brachial plexus injury. I'm not really sure what kind of imaging test or what kind of functional test would be sensitive enough to detect a problem that would have this clinical presentation. And so that's where my struggle is and I understand that the orthopedic surgeon said that it's all related, the only issue to me is that there's no explanation. And so it's nice to have an opinion supported by an explanation.

>> Conrad Taylor: Thank you, Dr. Das. I don't have anything else.

>> Sean Kaldor: If we can't pin down what's causing it, are the symptoms real? I mean --

>> Dr. Das: Excuse me as I said before these are subjective symptoms. So in terms of trying to -- trying to see obviously soft tissue damage it's not present. Trying to see anything clinically obvious based on the imaging studies there's nothing that hits you over the head. So as a clinician trying to figure out what's going on, this is a very perplexing case. As an evaluator trying to assess disability you look for a smoking gun, as far as where is the pathology, where is the physiopathology. I don't have an explanation for the symptoms that would explain the disability.

>> Sean Kaldor: You talk about the pain in the arm, the arm going numb when he's driving there's no test to say that --

>> Dr. Das: Well I mean the sensation of numbness is, it can come from two different reasons. One from the brain or the central nervous system, where you can have like an infarct or damage to the neuron and so you no longer receive that sensation from a peripheral nerve. Then you can also have a peripheral nerve injury to the sensory component of that nerve where you no longer have that signal travel along the nerve. Those are the two primary issues. So if you got -- if you obtained an MRI of the brain, maybe you could see something. If you got -- if you obtained nerve conduction studies, but to be honest with you, neither of those tests are going to be sensitive enough to detect a lot of times something subtle like this. So I hesitate to say whether you know symptoms are real or not. I take all symptoms as real. The issue to me is trying to explain why. And if there's a nice progression from mechanism of injury to pathology to clinical presentation that makes itself very easy when there isn't that progression it makes it much more difficult to explain why. And I don't have an explanation as to why. And the medical record and the doctors, evaluating doctors haven't been able to explain either. They have bent pointing at different fingers, different diagnoses but not that is going to explain the symptoms that he describes.

>> Sean Kaldor: Would you release him tort line?

>> Dr. Das: Purely on medical, or just as a perspective, if someone feels they are not able to go back to the line as a physician it is something I wouldn't want to put someone in that situation. So I don't release anybody back to the line if there's a question in their mind about whether they're suitable or not.

>> Sean Kaldor: Thank you. Mr. Boyle.

>> Dr. Das, doctor -- the neurosurgeon who reported on April 25th, 2011 pages 48, 49 and 50 in the materials, says when he reviewed the cervical spine MRI he showed a disc herniation paracentral to the left and causing impingement on the exiting nerve root at C-5. Is that objective evidence?

>> Dr. Das: It's objective evidence of a possible radiculopathy but it doesn't explain the symptoms and it doesn't correspond to the mechanism of injury. And so that could definitely be a -- that could definitely be an issue and the only way to truly figure out whether that's the source of the problem is to decompress it. And I don't know that you have to have a fusion for that particular problem. You know for that particular diagnosis but that's you know that's a treatment decision.

>> Sean Kaldor: Baci do you have a question?

>> David Bacigalupi: Dr, would you hire him in his condition today?

>> Dr. Das: Legally or medically?

>> David Bacigalupi: Either. I know we're not doing any hiring, but physically would you hire him today with the information you have?

>> Dr. Das: As a medical professional, I honestly -- let's put it this way. If Mr. Keffer wanted to apply and be a physician here, I mean be a police officer here at the City of San José, I would have no basis to deny his application, unless he was reporting that these symptoms were significant in terms of -- so if he wasn't complaining that his arm hurt and he had problems I would have no objective evidence to say we cannot hire him. So I would prefer not to clear someone medically when they report these kinds of symptoms, but at the same time, if he wanted to work as a police officer for if City of San José I would not -- for the City of San José I would not have the ability medically say he cannot do the job because of X, Y and Z. There's nothing that would stop him from being a police officer based on the objective medical information that I have in front of me. Now if he reported those symptoms and he was agreeable with me I would definitely not clear him. If that -- I mean if he reported symptoms that would -- but how do I put it? If he was -- if he didn't -- if he felt he could do the job, I would not have a basis to deny, to not medically clear him. If he didn't feel he could do the job, I would agree.

>> David Bacigalupi: Even with all the information you've seen in the MRI reports and X rays and stuff?

>> Dr. Das: Yes.

>> David Bacigalupi: Okay.

>> Richard Santos: Thank you, Mr. Chair. Dr. Das, I've been listening, I guess, we are not sure what's related, ankle, shoulder all those things derived from that, was that job related and did all those things come from that?

>> Dr. Das: Yes, that's what he reports, the sequence of events, he describes an appropriate mechanism of injury and describes symptoms after the mechanism injury. The issue I have is trying to reconcile the pathology and the course but 90 no, you're absolutely correct.

>> Sean Kaldor: One last question, are there any tests or studies or things that can be done to determine what's causing this, is there something we haven't done?

>> Dr. Das: You know, this would be something very subtle and I'm not sure there is anything that you could hang your hat on that would affirm or deny the existence of a problem.

>> Sean Kaldor: Thank you.

>> Richard Santos: The only other comments Mr. Chair that's the predicament that I get. Is that it's either non-service or it's service connected. And so if this person had all the miracle surgeries and everything would they be able to go back to work, that's an assumption.

>> Dr. Das: I don't see any objective information at this point that precludes him for the injury he described to his neck or his shoulder that preclude him from going back to work on an objective standpoint. When you combine, when you include his symptoms, that's where it gives you pause.

>> Richard Santos: Thank you.

>> Donna Busse: Sean can I just ask just for a matter of consistency, and we put these in order, and his was a modified duty that we understand is no longer available, can we hear from the department that the approvals don't change that situation.

>> Sean Kaldor: Thank you for bringing that up. Can we hear from the police department as to whether a position will now exist in the disability retirement system based on the past two disability retirements?

>> Ed Schroeder, as of right now there's not a position open for officer Keffer in the exempt officer equality program.

>> Sean Kaldor: Inclusive of the action we've taken today?

>> Correct.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Mr. Chair, based on the information in the packet including the restrictions by Dr. Das, the agreed medical examiner who was not officer Keffer's treating physician but is an outside examiner, issued by the state, that asserts the injury as 100% work incurred, and with those restrictions, and the department telling us that there are no open, modified duty positions, I would move to approve the application.

>> Sean Kaldor: We have a motion. Do we have a second?

>> Damon Krytzer: I'll second.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion?

>> Vincent Sunzeri: I guess just to share this with my fellow board members. This was a case that we saw in front of us previously. And I was opposed to it. And this is a situation where I really detest this part of what we are responsible for. We're not medical experts. Particularly as individuals, that are independent, are not police officers, we don't completely understand what we're doing in the line of duty and what that entails. I've actually spent time doing a little bit further investigation on my own, and having conversations with individuals that have been faced with these types of situations. My initial concern was that at the time of injury, you're fairly young, 34, 35-year-old guy, you're in great shape. How can this injury happen? And frankly, it can happen. And I see that there is some inconsistencies. I see things that don't totally add up. But at the same time I can't understand why somebody would not want to passionately go back to work unless they really are injured. I believe he really is injured. And I'm going to vote in favor of this.

>> Sean Kaldor: Any other further discussion on -- Mollie.

>> Mollie Dent: I just want to raise the issue and I'm sorry I can't recall if we heard testimony on this at the November hearing and continued it or did we just defer it. I'm asking for the board member that wasn't here for the November meeting in terms of whether or not there was testimony in November.

>> There was no testimony.

>> Mollie Dent: Thank you very much.

>> Vincent Sunzeri: I'll also add, and this was talked about on the disability committee, the black and whites and gray, and this is a really, really, really dark gray area for us. It is so difficult for us to be put in this position to have to make a judgment. It's very challenging. Obviously, it's emotional for you, it's emotional for us to have to make these kind of decisions. I hate being put in this spot. But I think that there's enough that I'm assuming the wool is not being pulled over my eyes and I'm making a good decision here.

>> Sean Kaldor: Okay I'll just add my comment that I'm kind of feeling the same way about sometimes you don't have all the tests and studies to prove and we can't get all the evidence lined up. But I believe he's sincere in the symptoms he's having. And I believe those symptoms are serious enough that he shouldn't be carrying a gun. And if the department's unable to give him a modified duty position where that wouldn't be required, wouldn't be required to do all the responsibilities of a police officer, then I'm inclined to take him on his word.

>> David Bacigalupi: Mr. Chair, just one comment that I heard mentioned here. Vince I think very accurately, you know somebody that wants to work, would do everything they can to come back to work. And as to his character, the medical evidence created a lot of problems for me. That's why I needed more information before I made my motion. But as far as officer Keffer's work ethic, he's worked for me, for many years. Prior to my retirement. And one of the best officers I ever had working for me. And he -- no task was ever -- I can't do that, or I mean it's how can I do it, I'll do it. You know if possible. I mean he's just -- he was a great guy to have working for you. Made me look good. And that's what you know it usually takes is the people actually doing the work and Frank was one of the best so I speak to his character on that. I know, not going back to the police department, is tough for him. And that's going to carry with him for a long time.

>> Richard Santos: I think through the chair I think that's the value you bring Dave is those are the things that people don't know about being a police officer or firefighter. Those are the little things that do make a difference. And obviously I feel the same way. So thank you for that input.

>> Sean Kaldor: Any further discussion on the application? Hearing none, we'll vote. U.S.A, say aye. All those opposed say nay. Hearing none opposed the motion passes unanimously. Thank you for your service to this department and this community.

>> Thank you very much.

>> Drew Lanza: Best wishes, good luck with that.

>> David Bacigalupi: Frank, in all seriousness, I appreciate all the years you worked for me. I understand how good soldier you were and when you were out on military leave as well, protecting this country. Thank you for your many years of service. Thank you for working for me those years you did and good luck in retirement buddy.

>> Conrad Taylor: Frank we've never worked together but you take care of yourself.

>> Sean Kaldor: Okay with that, I will finish off item 4.4 and then we'll return to the main agenda to administrative changes, change of retirement date, 4.4 A approval of change of retirement date of Robert S. Bennet, fire captain for the fire department from January 21st, 2012 to December 31, 2011 giving him 25.25 estimated years of service.

>> David Bacigalupi: Move to approve.

>> Second.

>> Sean Kaldor: All those in favor, say aye, opposed, passes unanimously. B, approval of change of retirement date for Barry Stallard, battalion chief for the fire department, from December 24th, 2011 to April 30th, 2012, April 30th, 2012, with 25.34 years of service.

>> David Bacigalupi: Move to approve.

>> Sean Kaldor: All in favor, opposed, motion passes unanimously. So we'll return to the regular agenda and commence with the audit report, item 2.3 A discussion and action on the audited financial statements for the year ended June 30th, 2011.

>> In your agenda packet you received the communication from Macias, Gini & O'Connell which was item B. What was missing from your packet was the hard copy of the audited financial statements, which is also the comprehensive annual report. You've since then received a hard copy. This is the final version of the draft that

you've seen in November 2011. And I'd like to invite Macias, Gini & O'Connell to join, here to present findings and answer any questions you have on the audit process.

>> Thank you very much for the opportunity to speak to you today. I apologize for my voice. I'm a little bit under the weather here, but I'll get through this thing just fine. You know, it's interesting sitting back watching these meetings. I come from a military background and my father was in the police force for many years, as well. And I tell you, I like listening to these things, and these guys are real heroes, so I appreciate everything that's being done by the board for these folks. My name is Rick Green. I'm the partner in charge of our Sacramento office. And I have Annie Louie who is the senior manager on the engagement. We were engaged to audit the financial statements of the Police and Fire retirement plan for the year ending June 30th, 2011. As part or as a byproduct of our work we issue our independent auditor's report on the stand alone financial statements. And you'll also have a second document that will include a second report on -- that we report on internal controls as well as a compliance. And you'll see additional discussions that we call required communications. These communications are required by our audit standards. And they are pertinent and important elements or items that the standard-setters believe those charts of governance should know as part of our audit process. It is important to understand the roam and responsibilities of the independent you auditor versus management in an engagement like this. Our responsibility is to plan and perform the audit to obtain reasonable assurance that the financial statements are fairly stated in all material respects and presented in accordance with underlying accounting standards. You heard the actuaries refer to GASB, those are the standard setters for a governmental entity like this. As part of our responsibilities we also obtained an understanding of the internal control structure primarily for the purposes of planning our audit, as opposed to rendering an opinion as to whether those internal controls are operating as designed. That is the distinct difference between the public and private sector. The Sarbanes Oxley Act required the independent auditor to opine on the effectiveness of the internal controls over financial reporting, where on the public sector side, we simply obtain that understanding in order to ultimately assess audit risk in order to design our audit procedures accordingly to mitigate that risk. The risk I'm referring to here is the risk of material misstatement in the financial statements. Management's responsibility is to prepare the financial statements in accordance with GAAP. Ultimate reported upon. They also management is responsible for establishing or designing and implementing the set of internal controls or financial reporting to ensure these financial statements

are fairly stated and also that the organization is in compliance with laws, regulations that if they were not in compliance would have a material impact again on the financial statements. Those are general roles and responsibilities. Now I'm pleased to report to you we have completed our work. We have gone through and subjected the financial statements to the audit procedures that were designed as a result of our assessment of audit risk and we issue an unqualified opinion which again means in our opinion the financial statements are fairly stated in all material respects and presented in accordance with the underlying accounting standards. Now, during the course of our work, with respect to material controls, when we did our work in this area, we noted no material weaknesses in internal control, okay, and had we noted it, and we would have to report it to you but there were no such instances. However, we did see an opportunity to improve internal controls, and Annie will speak to that. And that comment is included in your required communications package. Let's see, with that said I think I want to turn the rest of the presentation over to Annie where she will go through and speak to you on the required communications. Actually, let me speak to one other report. Our -- we also follow government auditing standards which require us to report on internal controls and compliance. And in that area there you will see the report, we noted no instances of reporting problems at well. With that I'll want Annie to speak to you on the required communications of course.

>> Good morning. So if you will now turn to this other package that you got with the required communications. There are three main sections of this report. The first report is the government auditing standards report that Rick just mentioned and we are happy to report that. Is this better? Great.

>> Really close.

>> Okay, better? Okay. So backing up, what I was saying was, this package that you have in front of you includes three main sections. The first section is the government auditing standards record that Rick has just mentioned and this is where we have documented that we noted we did not note any material weaknesses in terms of internal controls over financial reporting. The second section which starts on page 3 is the required communications. Under our auditing standards we do have a few items that we have to report to you. On page 3, you note all the qualitative aspects of accounting practices that we believe are material to the financial

statements. And we list out those estimates that we think are crucial due to financial statement including the fair value of investments and the actuarial data and what kind of basis they were determined on in how they were reported in your financial statements.

>> In this one area let me just emphasize that you'll see in the first paragraph there, that we comment on the accounting policies that are used and reported and noted to to the financial statements. It's important for you to know that these accounting policies and practices are proper, given the nature of the entity and the underlying accounting standards that this entity must follow and that they are also consistent with that of last year. So for comparability purposes of your financial information you want to make sure that the accounting practices are the same, okay? Unless you have an implementation of a new accounting standard, that didn't happen this particular year. So the accounting practices and policies that management selected are proper, are grounded in the accounting standards and they were properly applied to all major transactions and consistently applied from last year to this year, okay, so I just wanted to highlight that that's a particular part of this message here.

>> Okay. And then the rest of this section goes on to items on whether we had any difficulties in terms of the audit process, any disagreements we may have had with management, whether or not they were resolved through to our satisfaction and we are happy that we have not during the audit this year.

>> Also one other item I want to point out too, one of the areas of sensitivity in the nature of the estimates is the actuarial information that's contained in the footnotes. Funded status and you heard a lot obviously today by your actuaries on their 2011 valuation. I want you to note that although the 2010 valuation is what are in these financial statements, we hire our -- as part of our audit team we have an independent actuary come in and look at the valuations done by your actuary. And make sure that from their perspective, the actuarial standards were followed, that the methodologies and assumptions are reasonable and grounded. Again in actuarial standards as well as the accounting standards that govern these kinds of transactions, in this case it would be GASB 25 and 43. It's not just an auditor's view on the actuarial information because we don't have the expertise to opine on it quite frankly, so we bring in outside experts to help us in this area.

>> Okay. And then, the next session that starts on page 6 is our recommendations like Rick has mentioned we do have one comment where we have made an observation for improvement in the financial reporting process. And comment to us in 11-1 relates to adequate staffing for the financial reporting function at the department. We noted that out of the departments there are five positions that are in the accounting division that handles the day-to-day operational task Sum as recording transactions, and that includes the financial reporting function at year end as well. Out of the five positions one is currently vacant and the financial reporting functions essentially concentrated in one particular person. And if in that case in the case that that person leaves employment or chooses not to perform that function, we see a risk that the financial reporting could be delayed or may not occur as timely as it should. And so we have a recommendation for the department to visit the need for additional staffing and additional resources in that area.

>> This goes also beyond just the financial reporting. It is the day-to-day accounting, on behalf of the organization. This organization is no different than many other governmental organizations because of budgetary constraints you've got a restrain on human resources. But the fact of the matter is we have ever increasing demands for services on our governments, in that we've got to make sure that we have not only sufficient but properly trained personnel in place in order to do the accounting. And really, proffer steward ship of the resources of this entity. And again it's just our observation that it's pretty thinly staffed. And if possible, it would go a long ways to increase that staffing to ensure that we have the resources to do the jobs right. Going forward.

>> Right and on the same page you'll see management's response to our comment.

>> Sean Kaldor: Do you have a comment?

>> I just want to comment maybe I'm the only geek that sits around reading reports, you go to the footnotes, that's where the heart of the data is and the comments. And I actually read through this particular page, page 6. And this is a topic that's been brought to our attention in the past. Now we even have it more documented clearly for us. That it should probably roll into agenda item 2.4 for the future, that our staffing problems are not only on the investment side, but clearly, on the accounting side. And they make note of the fact that you have an individual

who's really handling four to five plans, we kind of have superwoman right now, and I hope we don't lose superwoman. We need to support superwoman with maybe that woman.

>> Sean Kaldor: I couldn't agree more. That's the big thing I took out of page 6 and also page 7 where an issue seems to revolve around our staffing. It says a lot to me when our independent auditor says, you need to work on your staffing, and this is in an area where we hadn't been especially focused, we knew it was kind of an issue, but to think of what could happen and how subjected we are on a single person to do the work for two plans, and now the trusts and health cares and all the other plans that got involved, I think it's a serious exposure for us as an organization. Baci.

>> David Bacigalupi: I think everybody on the board is agreeing with the same thing. Our staffing is hampered not only by not being able to fill positions because of compensation levels, but just the lack of depth in the staffing. And you know, we hear a lot about financial risk, but this is something else, I think we need to be aware of around part of the problem is our structure. You know, how much is in our hands and how much is taken out of our hands. Because we can't say to our CEO to go out there and fill those positions and do what you need to do to get the depth of the staffing but I think it's another form of risk that this board is taking by having such a shortage, you know of people to do this. So I thank you.

>> Richard Santos: Mr. Chair, this would be to Mr. Constant, is that remarks by Dave, I've read Mr. Richeda's comments, and all these other different things about control, and it's always seemed to be that when the city says so, whatever I understand, there have got to be partnerships and working together, and I think I know, you said a couple of times we are taking that to discuss. Where are we at, in terms of things like this, where we need to take -- we'd like to take immediate action, obviously the investment committee has said this, our government committee will be meeting today, and I'm sure addressing these same issues, and we all have one thing in common: How can we make this plan more financially sound.

>> Pete Constant: So I have brought this to the attention of the council in each of my reports-out that I make in the council sessions usually the Tuesday following our meetings. I will again point out that it has now reached a

level of coming into our audit report as well. But as you know the decision making in this lies with the City Manager to approve the positions, the classifications, the pay structures all those things to bring them to the city council. I'm sure there will be a lively discussion around this during the budget process which is already being kicked off for the next fiscal year.

>> Richard Santos: And not barring our government committee which will meet today, I was just thinking why can't our director of this service meet with the City Manager immediately, you know, bring back some information through the council whatever it takes to get these things moving, give us the authority we need or joint authority we need for, me personally I believe we have but again working together is the thing we're trying to do and I just want to speed things up like everyone else. I don't speak for myself, I'm sure I'm speaking for everybody to get the things going, to use your help to speed this up.

>> Sean Kaldor: If we can 3.3 is exactly on that so we can go into detail on that. Thank you very much.

>> Okay. On the next page you will find a current use balance of a prior comment that we have reported to you in our prior audits, and that relates to the compliance with the conflict of interest policy. As part of the policy there's certain required positions including board members who must file an annual form, a statement of economic interest form, to report any reportable interest to be filed with the City Clerk's office. So this year what we did was, we again performed the testing to make sure that all the required positions have filed a form by the required time lines and out of our testing we did note the listed positions all of ten management and staff positions that were selected for review we found that there were four forms that were not considered in compliance, and out of nine board members there was list for review at the time three members did not submit the form timely. And so as you see in the management response a lot of that had to do with staffing changes at the department. So we wanted to bring that up to your attention, to notify you that the same condition we had in the prior audit had not been remedied in the current year.

>> Sean Kaldor: Little embarrassed that with all of the time lines that this organization has to meet we are not doing so well with the one thing we have to give to staff, filling in our form 700. If it's getting within a few weeks of a deadline, make sure you tell me and make sure we accelerate it.

>> Drew Lanza: Are these type of control deficiency are you seeing these commonly with governmental organizations?

>> You are seeing them more than you used to and again primarily driven by budgetary constraints.

>> Sean Kaldor: This budget, we pay for the administrative expenses, so if it's something we need to do, we'll discuss it.

>> That concludes our presentation. I do want to thank the board and staff. As you all know you have got a great team in the thank you very much for the hospitality during the course of our work. Thank you.

>> Sean Kaldor: Any discussion from attendees audience? Does staff have anything to add? Anything?

>> David Bacigalupi: You need a motion to accept the report.

>> Sean Kaldor: Do need a motion.

>> David Bacigalupi: So moved.

>> Second.

>> Sean Kaldor: We have a motion and second to accept the report, is this for A and B, are we doing this together or is that going to be separate?

>> David Bacigalupi: Most inclusion both A and B.

>> Sean Kaldor: Motion and second, any discussion on the motion? All those in favor, say aye, all those in opposed, 68 nay. That is accepted unanimously.

>> David Bacigalupi: Thank you superwoman for doing such a good job.

>> Sean Kaldor: Why don't we take a five minute break. If everybody wants to grab their food we'll adjourn back here in five minutes, keep going with this. Thank you. [Recess]

>> Sean Kaldor: Next item is item 2.4, discussion and action regarding the board retreat. This was put on at my request, a few people are interested in doing this. I think it's necessary for us to get together as a group figure out our goals and priors over the coming year. Good way to do that is to go offsite and work for a day. I wag hoping to get our schedule, I think my recommendation would be if we could come up with a rough time line of when that would be, we could ask staff to nail down the exact date that would work and ask everyone to send agenda items or topics or suggestions to Russell within the next couple of weeks and I'll sit down with him a recommendation to bring forward to the next board meeting what I think we can accomplish within a day and the priorities, everything that is submitted so you can see all the list on there and move things back and forth based on an overall vote of everybody. Does everyone think that's a good idea or propose another way of going at it? (inaudible).

>> Sean Kaldor: All right, neighbor work with staff to take roughly a month.

>> Richard Santos: Question I have Mr. Chair.

>> Sean Kaldor: Yes.

>> Richard Santos: Is it possible people can sit in the audience or a board retreat?

>> Sean Kaldor: I think it's intend Ed as a board retreat. Unless --

>> Mollie Dent: It will have to be Brown Act id. Accessible 50 public.

>> Sean Kaldor: And recorded and all that.

>> Mollie Dent: Yes.

>> Richard Santos: I'm not interested, ah you heard it --

>> Sean Kaldor: Sounding less and less interesting.

>> Mollie Dent: It's really a special meeting.

>> Sean Kaldor: So if we are in right now January. Would people be interested in kind of February or early March rough time frame?

>> Richard Santos: You got the Cal APRS February the 23rd.

>> Sean Kaldor: Last week of February first week of March.

>> Richard Santos: Uh-huh.

>> Sean Kaldor: We'll ask staff to call and coordinate schedules and figure out which date works best. 2.5, policy or the election of chair and vice chair. I added this at the request of members, first election we had held, there was no pre-discussion how it had worked in the past. I think it was interested in having a process where people can be nominated or nominate themselves and then we can explore those different president and vice president

options or chair and vice chair options. In the governance committee today at 1:00 and can other board members attend that? Perfectly caught Mollie in the middle of a bite.

>> Mollie Dent: They can sustained but not participate.

>> Sean Kaldor: Okay, to hear that discussion any one of you are welcome. There is one or two ways of handling it. Specifically handles one of the options that addresses one of the concerns, is that month X there is a nomination process where you can either say I want to do it or I think so-and-so should do it and the following month there would be an election, who is interested in doing the job and sort those things out. So my recommendation is just let that governance committee move forward with that process, come back to this board with its recommendation and discuss that in detail at that point. Okay?

>> Could I have a comment on that?

>> Sean Kaldor: Please.

>> I'm an alternate for the governance committee. I guess I can attend but not participate so I'll make some comments now, that we had a real opportunity this last time to show a sense of unity on this board. By creating a structure where you have both safety and independent as a chair, vice chair, whatever order that happens to be. And I think that should try to be worked into consideration. If why can. So you have an alternating structure over time of the chair alternating from a safety to an independent. And in my mind it creates an opportunity for us to work together as a team to strip out politics and I think the last meeting represented the exact opposite of that.

>> Sean Kaldor: Okay so we can discuss that. Are you going to be at the meeting?

>> Vincent Sunzeri: I'm not sure if I can stay around that long. I'm an alternate I won't be able to participate anyway.

>> Sean Kaldor: Only thing brings up issue of terms and mandatory swapping terms, no one could serve longer than a year. Put it out there for discussion and all this will come back to the board for full discussion and review of the board. It is a thick packet of government policies and procedures. Luckily our attorneys are recommending not doing so much but I think there's useful stuff in there. That will immediately follow this, if anyone is interested in hearing.

>> Vincent Sunzeri: I'd be curious to know if there are any other board members that maybe are not part of that governance committee that concur or disagree with those thoughts?

>> Bettina Rounds: I agree with it completely, too.

>> Sean Kaldor: Sean, please.

>> Sean Bill: I was just going to say, I just think in the spirit of unity, I don't want to all go Kumbaya here. But if you noticed, on the federated board they did mix it up, and they had an independent and one of the representatives. I think it shows that we are trying to keep some balance and that I think the big picture long term if we ever want to get this plan to where it is an independent plan from the City's grasp and actually have a separate entity, thinking now five, ten years from now, we're going to have to show that we're moving in that direction by how we interact. So that's where I'd put that.

>> Sean Kaldor: Baci.

>> David Bacigalupi: The only thing I would say is, I don't think there's -- I hope not, but I don't feel adversarial positions within this board. I think we all serve, I think everybody brings certain skill sets to this board. The new financial members bring amazing skill sets that I've never seen on this board in the 11 years that I've served this board. But I'll repeat something and maybe it's a prejudice on my part. But there are some of us board members, even though we are all equal, have a vested interest in this plan. And many board members could get a better job in New York City tomorrow and be gone tomorrow. Whereas, there are four board members that have -- are

either on their way or have put in 30 years of their own money, and this is all they got. It is too late for them to do anything else. So and the only other thing I heard a comment, it looked better to the city if it is blended and I can't argue with that. Because I think city trees keep a adversarial position is going on within this board. So that does look true but I think there are people that have a vested interest and no other place to go. And besides that, I don't think the positions hold that much more than all the rest. I mean still one vote, fortunately the chair, I tell you from the experience, it's hard to run a meeting and eat a sandwich and it's hard for the chair to run the meeting and eat a sandwich and I'm enjoying mine.

>> Sean Kaldor: I'd get concerned that we subdivide things too much, retirees and actives and police officers and firefighters everyone wants to say well, shouldn't there be a cop's turn and a firefighters' turn and a public employee's turn? I get concerned we shouldn't segment it too much and go down that road. I also would want to talk about what would happen, if you get a situation where none of the public members want to be chair but somebody has got to be chair that year but several people are anxious and willing to do it. We're trying to make it an administrative task, that's what the governance rules are turning it into, operating the meeting and coordinating the agendas for the year. Those are things that need to be discussed, in my opinion.

>> Damon Krytzer: I actually think that the -- my issue isn't around the structure. I don't disagree with either of your comments. It is kind of in the rationale, for me. Maybe discussion and that was my issue and -- I mean it just all of a sudden we're like oh --

>> Sean Kaldor: That's the feedback, that's the reason I put it on here, that's what I was seeing.

>> Richard Santos: We'll discuss this, like it was on the agenda for discussion today on the governance committee. Perception is one thing. I think the board voted properly, and considered everything, that was best for the board members at the time. Making people feel good is not where I'm at. With having a history with the Police and Fire retirement system, tradition has been the police officer or firefighter doesn't mean it can't change. When I was at the time the vice chair we did assign a civil service person at that time, we had a five member board to become the chair. The first non-officer uniformed person. But that person also had experience. I don't know what

y'all come from but I've served on numerous boards and committees and it's on the agenda just like it was here and you made the decision the next month so there was nothing new. So that's unless you are running for election as mayor or something but most committees and boards I'm on, as soon as January comes up Police and Fire or whatever it may be vice chair, chair, you run for it and you make that decision that day. It's put on the agenda the following, you know, so nothing new there. I think experience is an issue that you got to take a look at. Just because you come in one day doesn't mean you're the best person to serve at the time when we're going through a heck of a transition. Once we get established and get to know each other, if somebody wants to be chair, go ahead and do it. But you've got to have experience with investments, you also got to understand the Police and Fire sensitivity, what goes on people's lives are at stake. Not a popularity contest. I this the it was a great job but the testimony also helped from experienced person, as former chair Bacigalupi state thread that also swayed you or made you feel whoa, now I know things I didn't know. And Dr. Das also brought back as much information as he possibly could. Experience, knowledge, having respect for the uniforms, was one thing. You all got to take after you get that experience and you want to step up to the plate you have my support.

>> Sean Kaldor: Dave.

>> David Bacigalupi: Just to piggyback what I said earlier, I don't want to beat this to death. I probably took on 20 phone calls since last month and the questions came to why did I nominate a fire guy? So you talk about politics, why did I nominate a fire guy for this position? Because I thought he was the best qualified. And then, I also got a couple calls, well you know, you were holding it as a retiree. Now we're all board members and that's the way I look at it. I didn't look to another retiree I didn't look to a police guy, that had to be the police guy. I nominated who I thought was best. So -- but I got at least 20 calls.

>> Jim Spence, president of the association of retired police officers and firefighters. And I think Dave spoke, Bacigalupi spoke very well about the fact that there is a vested interest that the retirees feel with the people who have been the president or the chair and vice chair of the organization for such a long time and this is our only, this is our owning retirement and so that is a situation, but I've seen all of you work together and I don't really see any difference between service and those of you who have been appointed to add to the board. But it does make

the retirees and the issues here a little bit more relevant for us when we do know that people who somewhere a real vested interest and who aren't going to be -- and who have to have part of this as their livelihood are the chair and vice chair so like to make -- have you look at this as part of your consideration for this.

>> Sean Kaldor: Thank you for that. Any further discussion on this? Okay, move to item 2.6, discussion and action regarding trustees' attendance at the Cal APRS Stanford law school institute for trustees.

>> Russell Crosby: The issue is where each trust fund said it's a member of Cal APRS is allowed two seats, and we have one two three four potentially five trustees who would like to attend the Stanford program.

>> Good.

>> Russell Crosby: Yeah, that's a good thing. Potentially there's one position open in Federated, so I may be able to shuttle somebody over to Stanford as a Federated, but Federated needs to meet in two weeks to determine whether anybody is going to go or not. So I have Drew Lanza, Bettina Rounds, Vince Sunzeri and Damon Krytzer. And then I wasn't sure about an e-mail you sent that said --

>> Conrad Taylor: I sent an e-mail. There's a part 2, I believe, to this course, that starts in July. And I don't know -- it's not this, but I think it's a continuation.

>> Russell Crosby: You're not talking about the Wharton investment alternatives?

>> Conrad Taylor: No. It's at Stanford.

>> Damon Krytzer: You could scratch me and have those other guys go, as well.

>> Conrad Taylor: If I may make a suggestion, Russell, just to make it for simplicity, just how the people went onto the board, just do it in some type of seniority, so whoever came on the board first, they go, and just go down the list that way. Just makes it so much simpler.

>> Sean Kaldor: That's the only thing that occurred to me. Because if you've been here for a year and haven't been able to get in the class, and someone comes in a month ago, and says I want into it, well, you're never going to get into it if you don't let someone who's been around for a while get into it. The only thing I thought is someone going to ten classes should they also go to this one, I don't know if that's so much of an issue. These are all the Stanford class, the Berkeley class, the Wharton, these are all good, good premier classes to go to. So is that a motion or a proposal?

>> Conrad Taylor: I'll make a motion, just go by, I guess we could call it seniority, who was placed on the board first and just go down the list. I don't know obviously -- I don't know who that would be.

>> I'll second.

>> Sean Kaldor: We have a motion and second. It's open to discussion. I think the only down side that occurs to me, is someone who has been on the board for ten years, always get their choice of every class they want to go to.

>> Conrad Taylor: Not by that, no. Just for this. So whoever's come on the board, so on the order that's on that list. Russell.

>> David Bacigalupi: If I could just -- to the maker of the motion, I think this and the Wharton school are the only ones restricted on how many we can send. I would say for this and the Wharton school we go by seniority.

>> Sean Kaldor: And usually it is one you kind of only go to once, not have a second --

>> David Bacigalupi: Unless they have a second edition.

>> Damon Krytzer: I'll still give my chair to Elizabeth.

>> Having gone last year it is handy if you're brand-new. You guys have been sitting here for a year you probably picked up a lot of it. For the new new new people there is I think a little bit of a benefit there. In terms of getting up to speed faster. Kind of throws a monkey wrench in the idea of seniority but --

>> I agree.

>> Sean Kaldor: If you're chosen you are welcome to review the agenda, to see what's available for you. It is a count.

>> David Bacigalupi: I thought it would be beneficial for all the new folks coming in even with vast outside experience that you contribute. That's why I didn't put in for it.

>> Is that by tenure or by age?

>> David Bacigalupi: Ow ow ow, both.

>> Russell Crosby: So if you haven't voted yet go ahead. By that logic if you'd end up with Vince Sunzeri and Drew Lanza being your two. Because Damon has said send somebody else.

>> Sean Kaldor: All those in favor, say aye, all those opposed? None is opposed, motion passes unanimously, congratulations, it's a good class.

>> And do see if you can finagle Bettina in.

>> Russell Crosby: I will try to fit Bettina in, depending on what happens at Federated.

>> Damon Krytzer: Do you prefer Elizabeth or Bettina?

>> Bettina Rounds: Bettina.

>> Damon Krytzer: So I'll stop calling you Elizabeth. I was the only person that was still calling you Elizabeth.

>> Sean Kaldor: Moving on to Item 3, old and continued business, Item 3.1, discussion and action on counsel's memoranda concerning trustees role in an environment of discussions and negotiation on vested benefits. Item A is a memo from Russ Richeda, Saltzman and Johnson, regarding responsibilities and role of board of administration with respect to modification plan benefit design dated October 26, 2011. Item B, memo to city attorney from Arthur A. Hartinger, Meyers Nave, Esquire, regarding response to Richeda Opinion regarding retirement board's duties pertaining to benefit modification dated November 10, 2011. And item C, memo from Russ Richeda, Saltzman and Johnson, regarding reply to response to Meyers Nave, to this office's internal memorandum on board rules and responsibilities with respect to external plan benefit modifications dated December 19, 2011. So a reply to the reply to the reply. Russ do you have anything you wish to add?

>> Russell Richeda: I don't. I'm happy to respond to any questions the board has.

>> Sean Kaldor: Do you want to summarize kind of what your letter --

>> Russell Richeda: Sure. Well, remember, the background issue that the board wanted looked at is if something comes down the road that may alter plan benefits, and I think behind everyone's mind on this, was the potential for the mayor's ballot measure to actually get on the ballot. And get passed by the voters. Under that scenario, what role and responsibility, if any, does the board have? And in my memo, it dealt with three issues, what role if any does the board have when a measure like that is on the ballot, for example. As to which the law is relatively clear. Number 2, what role and responsibility does the board have assuming that kind of ballot measure

is enacted by the voters. And number three might be, if there is litigation arising with respect to the ballot measure, what is the role and the responsibility of the board with respect to administering the plan, during pendency of the litigation, which given litigation, could be five six seven years. So my opinion tried to deal with those. I think there's relatively clear guidance to give you with respect to what you can do if you wish, during the ballot phase. I think there's much less guidance for you in what I consider an even more important phase when something is enacted. Particularly when something enacted is even more unclear, you have serious questions as to how to administer it. Or number 2 either you or other stakeholders think there are serious questions as to the legal viability of what's been enacted. And you can see I proposed certain covers action for the board under that situation. With some reference to private law analogies as reflected in restatement of trust. But I would be the first to admit that there's surprisingly little guidance for you on what to do. But it is not an issue that is trivial. It is a very significant issue that you are going -- that you would be faced with. But unfortunately neither courts nor anyone else is particularly helpful. I laid out what I think would be a reasonable course of conduct for you to pursue under those circumstances. And I also dealt with the third issue. But my basic goal or basic point to you as to that issue is, you need clarity. You need to know how to administer this plan. And the only way you can get clarity, in this kind of situation which is going to be full of controversy is from a court. So that's the bottom line of my advice. Probably, there will be litigation initiated by other stakeholders. In which case you can intervene probably. Not necessarily could be carrying a torch for either side, but trying to be an honest broker, and also, to protect the board/system's interest in any kind of litigation. For example, making sure there's a judgment that deals with the issues that you need to deal with, in administering the plan. It seemed a reasonable approach to me, since more minds are better than fewer, the city attorney's office had a follow-up opinion from a well respected public sector employment firm Meyers Nave. I personally did not think it advanced the discussion significantly but --

>> Who did they represent? I was going to ask.

>> Russell Richeda: They primary represent management.

>> Okay.

>> Russell Richeda: They are a well respected firm.

>> Sean Kaldor: To Damon's point this is a letter advising city council? Or --

>> Russell Richeda: We have what's on the memo.

>> Mollie Dent: The memo from Meyers Nave is advice that our office got for the council. Not for if board. You are receiving a courtesy copy of the money because we said if we received an opinion we'd give you a courtesy copy of the memo.

>> Sean Kaldor: Thank you.

>> Russell Richeda: There's still an underlying opinion that I think the board needs. I think my perspective is a good one but this is a complicated area that I think the board could benefit from receiving input from different perspectives. I however do not think that the Meyers Nave opinion advanced the -- or provided any helpful input to you in considering the complex decisions that might be forthcoming. So you have my response where I basically say that. And suggest if you feel appropriate, Federated did not feel appropriate to seek further guidance from anyone. Now, we all know at this stage it's hypothetical. Nothing at this point is happening. Things the could happen quickly and at that point time may be of a premium. If you feel it appropriate to get further input on this issue, you may not feel it, Federated did not feel it but if you do this might be the appropriate time to obtain it or at least request it. At their own expense, by the way. I'm not suggesting you should bankroll all the attorneys in California.

>> Sean Kaldor: Damon Then Drew.

>> Richard Santos: Same issue we've been dealing? Bake through the late '80s and '90s and I think we're back to square 1. I think Orange County's decisions being attacked or different opinions or things come out of it we're

going to find out more and more, are we really fiduciaries, are we really going to do our responsibilities? To me all evidence that Russ speaks about, because he's the person that later on, when Dave came aboard, we hired, became our conflict attorney. At the time I remember the city said, can't happen in any kind of way. So now here we are, long time later, supposed to be independent doctor. When I come back, now it's not, we're paying for it. It's not independent. So many things have changed. Again, going back the way it was. Prop 162 says, you know, do different things, and we're back to do it. But as I am repeating as Orange County decision goes I have another agency I work with and that's being challenged right now and we're a board of directors, do we uphold those things, what do we do? I always believe that we're independent but it's obviously we can fight in court. I really don't want to do that. Just my opinion. And that's why I look for Councilmember Constant see if we can work together and speed things up but I do agree with Russ that 'nother matter what we are going to need legal counsel along the way, whether it be conflict or outside whatever have you, hopefully we can speed things up and work together. Litigation is not the best way. We have the Cortex thing, that was back in the '90s we had those things and here we are again still dealing with it. Until it's either the city relinquishes total control or we have a total partnership and work with our counsel and do things faster and get everyone on board, we have great challenges. I watched the board they're new, I watched them be pretty aggressive things that I like along the way it's been happening. Mostly in the investment issue. When it comes to something else I see board members trustees get a little nervous, so on. I really believe you're in charge you just don't know it. Why test the courts? I'm repeating myself it will just waste time. I hope we speed up somewhere good communication work with the bargaining units our retirees and work with the city especially the City Manager's office and their staff to speed things up and don't have as many challenges as we have. I don't think we have a -- there's some big issues but overall I just see us making some good movement and I do applaud the new members who seem to be pretty aggressive and want to move on in the areas of investments. So I'm excited and I just hope we have -- but again I think Russ is totally right. Since I've been here 33 years total of 44? City always objects but I think we can work in harmony, we'll be happy today and do a better job especially when it comes to efficiency and when the council starts seeing those numbers increase in the finances and we start doing better things of course that works out faster. So those are just -- again it's always good to have legal opinions, and then hope you don't have to test them out. So that's just talking about it.

>> Sean Kaldor: Okay, Damon.

>> Damon Krytzer: I guess, just to that point the thing I take away from both of you is that we just need to have an opinion as to the scope of what? You know that seems to be an issue is, what are our powers over what is our responsibility. And are we overstepping our bounds. That's sort of the issue. The Meyers Nave says you know what deal with the investments, the benefits, the distributions, we'll tell what you to do and operate in the scope of this box. That's kind of sounds like a great answer. But obviously not to everyone. But is that the right answer? Like because it seems like when we got into and I was new but when we got into the SRBR for instance, you know woo were under the impression originally that we had to act within certain guidelines and then all of a sudden, it was like well, this is -- the guidelines were sort of vague. So actually, you guys need to define the formula in the first place. Something like, what the hell is that? So I don't know, for me I'm not taking away still, you've explained it really clearly. But where do our responsibilities really leave off? And what -- we're doing that in the face of a whole bunch of what ifs.

>> Absolutely.

>> Russell Richeda: Just a quick comment. The what ifs are going to be critical depending how they fall out you may clearly decide there's no real issue here, either everything's clear and you have no doubts about what you need to administer or no doubts on material significant issues or that there are no real legal issues. That it's been fashioned in a way that's consistent with a reasonable interpretation of existing law.

>> Damon Krytzer: Can I give you a real example first, and tell me if this is not an accurate one. But -- okay so the cola was with ballot, right, and that's voted down, but it's not collectively bargained.

>> Russell Richeda: We vote it down? You mean it passed?

>> Damon Krytzer: It's passed, exactly. So on one hand we have you know a bargaining agreement, that we're operating under, on the other hand we now have a ballot measure that was voted by the taxpayers. You know is the scope, is this Meyers Nave letter saying you just have to listen to the taxpayers or you're saying --

>> Russell Richeda: I'm not sure what Meyers -- remember, they spend a lot of their report saying you don't have benefit-setting authority. Remember that's what they push. I'm pretty sure that when you were first on, Dick and Dave, the board asked me to prepare an opinion on that a long time ago and I concluded just like Meyers Nave did, you don't have benefits setting authority. But just like the council, the bargain units set benefits, we don't set benefits unless the bargaining units tell us to do something as in, to some degree, in the SRBR ordinance.

>> Damon Krytzer: But a ballot measure is not bargained.

>> Russell Richeda: Let's put the meet and confer -- there's law, which I don't remember all of it, on -- sometimes out of San Francisco on ballot measures that affected terms and conditions of employment. And I frankly forget whether there's a meet-and-confer obligation. But let's put that to one side. Let's assume there's a ballot measure that says, right now there's a fixed 3% cola. The ballot measure is to get rid of that fixed 3% cola. It passes. What then? Depending, that's probably not going to be ambiguous. That cola is gone. A lot of people are going to be doing vested rights in this context. And trying to put life into elements of the vested rights doctrine as discussed in prior court cases, the lawyers call dictum that was just sort of comments that weren't really part of the holding or the real instruction of the case. It was just something put in there. But it suggests but because it was put in there it suggests a judicial sympathy or interest in that possible tangent. Well, now, as you can see from the preamble to the ballot measure, there is, and we know the reality, but I just mean, in terms of the legal context, that there's a strong, strong effort to say, there is a significant pending urgent fiscal financial emergency. And that if this emergency is not addressed, the city will -- I'm exaggerating, will not be able to provide a central services. In a substantial degree. There's a real municipal crisis. And the only way we can feel we can deal with that crisis because we've done everything else, is to cut retirement benefits, and this is how we're doing it. That's what I infer the argument is. And as I understand it certain management attorneys

throughout the state thinking outside the box have been both proposing that as an argument and writing articles on it. So that, to me, is a huge issue. And whether, I think, most lawyers who do this work would say that at this point, that argument is knot well founded in the law. And you can go back to cases from the depression that deal with this and deal with the anguish of public agencies and cities in the depression on these kind of issues, and the court's saying, courts at different levels basically saying tough luck. I don't know if those are well reasoned. I haven't reviewed all of them. But I can tell you it's a complex area. But there may be life in that doctrine. I don't know. You know, given the facts. So that -- so even if the issue is, a simple one, can the 3% cola be taken away? The surrounding legal arguments are going to be quite complex, quite factually intricate, and will bedevil up to the California Supreme Court.

>> Damon Krytzer: What we want though, maybe I'm just speaking for myself, is here's who we listen to or here's where we have leeway, you know here's how we circulate respond. If we do I mean, I could rightfully see the voters you know saying okay yeah, we're reducing the cost of living adjustment. And the beneficiaries retired or active or whatever, saying no, pound sand. We didn't agree to that and that's not part of our agreement and both of them saying okay a big free time moment, what are you going to do?

>> Russell Richeda: I just think in that, you should at least be active in the litigation because you want to be sure it's fairly done and accurate facts get to the court. And you want to make sure that any judgment one way or the other is clear and deals with all the issues you want dealt with. So you know, it's not -- so you have an interest that you -- that I think would be unwise to ignore. In that litigation. Even on that. But as -- but depending on what is presented to you, I think you may have no duty, or you may have some duty. If the ballot measure said, we will no longer pay benefits to black people, and that's by the way, people might remember the litigation on the Rumford act out of San José about 45 years ago. If that rings a bell, that went up to the Cal Supreme Court that was a charter amendment passed by the voters and overturned by the Cal Supreme Court. This is not just made up out of whole cloth. Would you likely go along and say oh, it's fasted, that's what it says clear as a bell no ambiguity, would you enforce it? Would you say that makes sense?

>> Damon Krytzer: Meyers Nave says you at to.

>> Russell Richeda: But no longer your general counsel, you notice that Meyers nave didn't even support their conclusions with arguments. I don't want to be overtly pejorative. I think I responded in my response that I don't think they announced certain conclusions. You might wish to ask them to provide substantiation for those conclusions. Perhaps if they provided substantiations they would be persuasive to you, and more persuasive than mine. That's certainly possible.

>> Sean Kaldor: Drew.

>> Drew Lanza: So first let me thank you, Russ. I thank you every time I see you. This -- from my perspective this is probably the single most important cultural future of the board thing we need to be working on. Really good boards know there's a storm coming in a week, and they start to figure out what to do with it. They may decide I'm going to cut and get a bunch of wood, I'm going to nail it to the house, I'm going to do whatever. They may say, I'm going to wait and see what happens, maybe the storm will bypass. But really good boards make that decision on day 1 and I think we see three pieces of this come together. Dick talks about how do we independent, and this bears on that. I think Dave talks about how do we all work together effectively, and this bears on that. I'm making the point of how do you get ahead of something. I think the most important thing to do is decide whether we're going to -- I think as Damon says, are we going to say here's our rules, here's what we're going to do, we figured it out, we talked to the lawyers, we don't know what's going to come on the ballot. We don't know whether we're going to sue somebody or not, but here's our rules for figuring that out. Or are we going to say no, we're going to kind of hang back in the background, be political, and figure it out later? I would argue compellingly, that doing this out in the open, making this decision now, here are the rules, and Russ is starting to lay those out for us, and putting them in front of the city council and putting them in front of the unions and putting them in front, here's how we are going to do this, right? When something comes to us we will do X, Y and Z, figure out if it's legal, talk to other counsel, go to a court and ask for injunctive relief. I think Dick would gain an enormous amount of independence by broadcasting to everybody what we're going to do. Dave would gain an enormous amount of power as you say by all sticking together, let's figure it out ahead of time before it becomes political. And I think we gain an enormous amount of power by showing people we are capable of reading the tea leaves and getting

ahead of something. So this to me is critically important. It obviously should get punted to the offsite, probably, or maybe to a longer meeting, but I've sat on -- I've probably sat in 500 board meetings in my life. I have sat on over 2 dozen boards, and you don't get these kind of things too often. And the measure of a board is whether you can really get ahead of it, do something you can get everybody to rally around, I agree with Dave, and then stick to it. And I know we're going to have the union probably pounding us, we're going to have the council pounding us, we're going to have the retirees pounding us. I think we get a lot of power when we say to people, we already told you how we're going to act. We're going to act in accordance with our own rules, we were very transparent, here we go.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: I have a little bit different take. If there's a gun fight, I don't want to be in the middle of it, okay? And I think the initial request that we gave Russ Richeda was if we get put in the middle of it, what do we do? And so in my viewpoint, being put in the middle of it is the voters come to one conclusion and the let's say for example the retired association of police officers decides that they're going to sue but they're not going to sue the city, they're going to sue the board for implementing the changes that the taxpayers approved. That's where we are now in the middle of it. So I'd rather wait to see the outcome before I start throwing my hat in the ring about where I stand on these issues. But I do think that a lot of the general foundational work is extremely helpful. I'm not a CPA I'm not an attorney either, I look at the stuff and Russ I really liked your response back. Because there were some things to me that implied that we were seeking guidance on whether we can determine benefits or not. That's not where we're coming from at all from a board perspective. We know that, I think we're pretty clear about that. It's a matter of in benefits change how are we required to respond to that, if it was done out of a normal format of collective bargaining. In addition to that, the statement is pretty clear that they're stating that the city attorney's telling us what to do. But yet, kind of interestingly enough the City Attorney pretty much came to us a few months ago and said by the way, we're no longer going to be your attorney for the plan. So it was rather frustrating for me reading through this. I'm comfortable with the information we have. I'm not so sure we need to take it any further. I think when we are faced with something we now circulate a document to go back to, and

then decide, what specifically we want to dig into and how we want to respond. I'm very comfortable with the general foundational work that's been done.

>> Drew Lanza: I think we are basically saying the same thing, Vincent. Let me be specific. We talked about cola. I absolutely don't think we should take a position on cola right now, not at all. But I do think we need to codify the work -- what Russ has done so we can say this to the parties, that if somebody brings this forward in six or 12 months and says we're going to change the cola, here's what we're going to do as a board. We're going to talk to outside counsel, if -- a couple of counsels. We may go to court for injunctive relief and if those people tell us don't do what the city council's told you to do, then we are saying now, we are making a rule now that says we will fire lawyers, right? We're not taking a position on the cola. We're taking a position on what do we do if they say okay, we're changing the cola. And I think we gain a lot of power by stating our process right now. What you're saying, Russ has laid out a lot of rules but we haven't codified this. In changing ourselves and trying to live with them, it priests us in generating politically when the time comes. I know there will be an enormous pressures on parties around this table, right, to pick up a gun and join that gun fight. It would be enormously destructive to this board. If we agree to rules ahead of time, we follow the rules. To some extent we are giving up some of our power, but I think in the main we are gaining a lot more power by sticking to each other, and by stating our rules ahead of time. It's an interesting debate. These are the kind of things that boards do.

>> Sean Kaldor: Pete.

>> Pete Constant: Just want to know if the board ever officially received the ballot language that was approved by the city council. Because the arguments that I've heard here and what Russ was speaking to are not necessarily what's in the ballot measure that's bin approved by the council. So if that has not been -- if the council action has not been provided to the board I suggest you make a request to have that provided to you. Because that may change your discussion. Because that ballot measure has had quite a bit of movement in it. And there's still room for movement. So I just think that before you make any decision, for example, the cola, there is no provision to just eliminate coal as for retirees. There is a provision for a reduction or a temporary stay, based on a

potential future action and fiscal emergency. So it's complex. So I would just suggest that if you have -- if you don't have it, you should make a request and get it.

>> Sean Kaldor: So I would ask Russell if he could just read that we'll take a --

>> Mollie Dent: I want to respond. I specifically referred Mr. Richeda to the City's Website when all of that is posted when we started the discussion and do I think the ballot measure is up there on the Website.

>> Sean Kaldor: It is, I don't know if every board member has read it.

>> Mollie Dent: So I want to respond just real briefly.

>> Sean Kaldor: Could you speak closer to the mic.

>> Mollie Dent: To the role of our office. Sorry did I interrupt you?

>> Sean Kaldor: No, just speak closer to the mic.

>> Mollie Dent: I want to respond briefly to the role of our comes we are on an item later on on the agenda in the process of looking for new outside council for the retirement boards so that our office will not be general council for the retirement boards in the future. We will continue to be the City Attorney though. And in the context of the Meyers nave opinion, with respect to language in the municipal code or ballot language, there is clear California Supreme Court history, that accords deference to the opinion of the City Attorney on that language. Just like they accord deference to the opinion of the attorney general on state statutory language. So that is the context on which we indicated that that is a role we have as the City Attorney, is to interpret the municipal code. It is not to say the court has to accept our interpretation, but they do accord deference to our interpretation. So it is kind of the first stop for an interpretation of the municipal code. That's a different issue than whether or not you agree or disagree with the language. So I think you have to be very careful in terms of picking through what it is you're

trying to accomplish and whether you think things are unclear versus whether you simply want to know whether they are legal or not. There's a difference between those two. And the -- the question I think for the board on the interpretation issue, as I say, we're going to -- we're going to have to render an opinion on the interpretation issue so that will happen. With respect to challenging the decision that was made, if it's enacted, and whether or not you think it's legal or violates vested rights or think it doesn't violate vested rights, the Meyers nave opinion wasn't at all talking about a situation where the board is sued. We weren't -- it's not talking about a situation -- it is talking about whether or not in a vacuum you would initiate litigation.

>> Sean Kaldor: Thank you. So I'll throw my name into the talking list here. I think this is one of those things where a paper cut is not big deal and you have trouble getting worked up about it, but a significant stab wound clearly seems to be an issue. So I take all of this to the extreme. The ballot measure would set the discount rate, so if the city council can simply pass a ballot measure that sets the discount rate at 20% or 10%, we would all sit here saying this plan is doomed, we're not going to achieve those results over the long term. How can I sit here as a fiduciary, and am I providing for the rights of people who are, knowing there will be no benefit there. We are not proposing to do that but assuming the city can do that if it's allowed to them, what can that do with the plan and our responsibility here? The ballot measure says for colas, the citizens give the city council the authority to consider making a change in the future. But again I take that to extreme. What if city council said, well, if we could change that, we could change the benefit. Maybe we can cut the benefits in half. You instantly cut the benefits in half, then the plan is massively overfunded. If it's massively overfunded, the city's contribution becomes negative and they're pulling money out of the plan. I would believe that would be not appropriate and I believe we would have to take a stance there. If it's just a cola or just a little change or here or there, it doesn't scream out at you like the big stab wounds. But it's the same legal principle whether it's a little cut or a big cut.

>> Damon Krytzer: Those are two different things though. Like one I think is directly speaking to our fiduciary responsibility to guard the plan assets, versus sort of defining the benefit. And I actually think they're totally different.

>> Sean Kaldor: I hear what you're saying. I think it all comes down to when is that -- we're not going to go out and negotiate a benefit, but a benefit has been agreed to, so where is that contract? Is there under a contract, not a contract, does a retiree not have contractual rights? We need an attorney to tell us what to do there, right? I'm not going to say that, but if an attorney says they have a contracted right to that, you got to pay them, they're coming to you saying we want our money, you got to pay it to them and the city is saying, no, don't pay it to them, then we're in the middle. None of this triggers, to everyone's point, until there is actual harm, right? So we don't need to jump out in front of this right now, but I think to Drew's point I think we need to -- we have some of the documentation about the issues at hand. We need a framework for when somebody says no I still want my cola or no I still should get this or when the city comes to us saying -- remember, in this it sets up a whole new retirement plan for another tier of employees. We're going to have to administer that and just the cost and aspect of doing all that. This is going to impact us in many ways, even ways that may be completely legal. Just new hires all get a new plan. Do we have a new, you know, annual report for that, are we going to have to have an all new -- or are the assets all going to be intermingled, what -- people who transfer from one plan to another, we have a lot of work ahead of us even stepping outside of that legal versus illegal component of this.

>> And no staff.

>> Sean Kaldor: And no staff to do it with. And begging for staff. That moves on to another point. Those are my comments on it. Dick, did you --

>> Richard Santos: I'm really pleased with what I hear. I think when it's all said and done, we're going around saying the same thing. Whatever jeopardizes this plan, we are the fiduciaries. I'm not worried about some gun fight, I'm not in the middle of that. I'm here to take care of this plan. But like Russ said, there may be an issue, whether it be the Mumford act or whatever, if something's wrong, it's wrong, and we have to sit down and majority rules and go from there. But along the way it's obviously we're going to need continued opinion legally and so on until one more time, this Orange County works its way out. I know right now, the other agency I work with, that's being challenged and there's people on the -- that believe one way and there are people that believe another way whether there are vested rights or not. And so it is a tough situation and it's being challenged. But what we did,

and I was going to ask Russ and Mollie, I think we took an exploratory action where we are investigating to see how it does affect. And those are things that we may have to do legally when the issues come up. In other words, the interests of the court, our interests, to be you know investigated or whatever have you, without going to court per se, against anybody, but protecting the rights of the plan itself.

>> Sean Kaldor: Damon.

>> Damon Krytzer: To Vince's point, I guess, it sounds to me, and forgive me for sounding ignorant, but we take direction from those types of issues from city council. Is that how it's supposed to go down on benefits? That's not how it worked out with SRBR, but --

>> Mollie Dent: The role of the council is to set the benefit, I mean, and they do that in a meet-and-confer process, normally. Going -- having an election is another way for the action to be taken. But there is in our and the Meyers nave opinion points it out, pretty clear case law that it isn't the role of the board to set benefits.

>> Russell Richeda: That the council in the exercise of the authority that Mollie indicated that it has can delegate some or part of the benefit setting function to you.

>> Damon Krytzer: They can compel Del gate it to us.

>> Russell Richeda: Surety but it's likely to be in a delegated structure like the SRBR. A bit of it is you take care of that retirement board.

>> Mollie Dent: Some retirement boards for example would have the ability to set the cola by looking at some sort of CPI adjustment.

>> As directed by the city council.

>> Mollie Dent: But that had been if they had delegated that authority.

>> Damon Krytzer: So I'm not frankly convinced that outside the fiduciary responsibility of setting the discount rate and doing those kind of things, really just to oversimplify this, that it really is our legal fight. Who could sue it frankly if we're taking direction from the city council, and any leeway that we do have in how we calculate benefit payments for instance is granted just by city council?

>> Drew Lanza: The problem is this is a trust, we're trustees, right? We're trustees for beneficiaries, the city council is doing this weird thing, telling a trustee to do something. Adversely impacting a beneficiary, last time I checked and we're fiduciaries --

>> Russell Richeda: That's why I referred to the restatement of trusts, which is kind of a collection of judicial guidance on private law trusts, as an analogy, it's just an analogy. But it suggests that private law trusts have dealt with somewhat similar issues. And yes, you ultimately do what the jargon for private law trusts, what the trustor or trustor or settlor tells you to do, and that's all you're supposed to do. But sometimes a trustee is not sure what the trust instrument says. So it goes to court to find out. That's the analogy I used to say what you could do in the event of significant ambiguities in whatever's been enacted. There's really no other place for to you go. So the analogy to private law trust seems sensible, same thing with illegalities to an extent.

>> Sean Kaldor: I think we've explored a lot of this. For the sake of time, does anyone want to make a specific motion? This will, pretty assuredly, be on our retreat agenda for discussion because the time line will be relevant. At that point the city council will have approved the ballot language.

>> Drew Lanza: I won't make a motion, but I'd be happy to sort of pick this up and run with it to get it ready for the offsite, if Russ is willing to help me. And maybe grab somebody else from the board and we'll work on it.

>> Russell Richeda: For what it's worth, and I hope this isn't my mistake, I thought I was directed, the last time you considered this, to come up with a policy, which I did, and I e-mailed it to Russell and to Tom Innuci. I don't

think it has the same front burner role, maybe, as the policy you're going to consider today, but for what it's worth, I've already taken a stab at it.

>> Drew Lanza: I can tell we're already sort of 80% of the way there for the offsite. I'm happy to sort of pull it together and a presentation if Russ is able to work with me.

>> Sean Kaldor: Let's do that, and we'll have it at the offsite, and we can bring it back to the board agenda after that. For those of you who are here for the governance meeting, it's looking more like 1:15, maybe 1:20. Sorry. Okay, we can move on then, no real motion needed there. We will address it at the off site, deferred. Item 3.2, discussion and action regarding legal services request for proposal.

>> Mollie Dent: So we have interviews set up tomorrow, and on the 20th, for the top ranked firms. And we have one candidate, one of our panelists, for your board, is not available for the interviews tomorrow, so if other board members would like to serve on the interview panel, the times tomorrow are tern:00 to 3:00. And the time on the 20th will probably be in the morning. You would need to see the resumes of course and go through the curriculum vita of the firms we are interviewing.

>> Sean Kaldor: And attend both meetings, right?

>> Mollie Dent: And attend both meetings. So we've already selected the firms to be interviewed, and it is a combined panel with Federated and the director is on the -- will be interviewing, so will Mr. Kaldor. But if there are board members that would be available and want to be an alternate, to Mr. Bill --

>> Sean Kaldor: Do we have another board member who is available and so motivated to attend meetings both on the sixth and the 20th.

>> Damon Krytzer: Not so painful, the heavy lifting has been done.

>> Mollie Dent: I'm sorry, it's Damon that's not available not Sean. I'm sorry.

>> Sean Kaldor: Friday the 6th and January 20th also a Friday. Probably in the morning on the 20th. If you are available that's tomorrow short notice if you're available, let Mollie know or -- yes.

>> Mollie Dent: Yes, if -- well it's up to Sean to appoint.

>> Russell Crosby: 8:00 tomorrow morning.

>> Sean Kaldor: Russell and I will there be to make sure our interests are upheld. If anybody else --

>> Mollie Dent: They will be in our offices on the 16th floor.

>> Sean Kaldor: Okay, let us know. It's been a great process, lot of applicants, lot of heavy reading. Number 3.3. Discussion and action on the City Manager regarding staff salaries. All the big items. So can someone --

>> Damon Krytzer: What action are we --

>> Sean Kaldor: So what I got out of this letter, we received the letter on December 20th addressed to the board chairs from the City Manager's office responding to our concerns about adequate staffing and the need to address staff salaries as a means to recruit and retain staff. Alex, did you want to talk to this, or is this --

>> Alex Gurza: Good afternoon, again, Alex Gurza Deputy City Manager. And I also just thought it would be important to mention that besides my role as deputy City Manager I'm also the director of employee relations and also the director of human resources as the City's fiscal situation and cost cutting. But I bring again to the particular discussion my various roles including in HR. So the action that I see agendized is actually discussion and action on the letter to the City Manager, although I understand linked to the packet was our response. So I'm really here to answer any questions you may have on our letter. .

>> Sean Kaldor: So just to star it off from what I highlighted, the City Manager was proposing several potential solutions, as were identified in here. One was to amend the City's pay plan, to add the classification of retirement investment officer. That would change the top step range to the 135 to $140,000 range. Versus what numbers were we -- did Cortex come back with? Something higher than that, 160 or so. And that she's asked the human resources department to work on the creation of the job specification and that would take about 90 days. Number 2, was to address the chief investment officer position by instead creating an assistant director of retirement services. And that position to be between 104 and $163,000, and that people both internally and externally would be eligible to apply for that. And number 3, was the specific request of us, wanting to understand whether the boards were interested in using city employees or consulting services to provide those services.

>> Alex Gurza: Mr. Kaldor, I know a lot of people are new to civil service, new to the civil service process. I think most of you know this but I think it's important to point out that the Department of Retirement services is a city department. Over 95% of our employees are represented by a bargaining unit. That means that compensation, is determined through the bargaining process. Wages, hours and working conditions. And that includes most of the employees in the Department of Retirement Services. Civil service, and the civil service rules and processes are separate and apart from the meet-and-confer process on compensation, in addition to that, we have our city charter, which determines what employees are classified as part of the civil service and which are unclassified. So I could probably spend a whole day talking to you about that and I certainly won't go into all the details and intricacies. It is simply our system, it is not just San José's it is the civil service system and I think however it is very important to understand the foundation under which we operate. So for example, if I look on page 17 of your financial report that you looked at this morning and you looked at your organization chart although it is a small department, compared to large city departments like the police department it is not dissimilar in its structure in that most employees here are for example civil service represented by a bargaining unit. In fact I was one of these just for sake of background for those of you who may not know when I was hired into the city, I was one of the analysts here, civil service represented buy bargaining unit. So that's an important context to understand. The other thing and I think the City Manager mentioned this and listened to the discussion of the challenges you are facing. Unfortunately these challenges we are seeing throughout the entire city in terms of as in fact the auditor

mentioned they're seeing this because of those -- the strains on local government, many of the core services have been cut. And in the city we have been at this unfortunate cutting for years. And years. With trying to lessen the cuts in key areas, like public safety, so that means areas of strategic support, our finance functions, our information technology our human resources functions have been dramatically cut. I can't tell you how severely those have been cut. Those have consequences. Just as you talk about the amount of staffing. The situation got so bad that we've had to even lay off police officers and firefighters. So as we talk about compensation, I think it's important for you to hear from us, as you look as surveys and things like that, that we didn't all take a 10% pay cut because that was a market based decision. The police officers and firefighters who ratified a 10% pay cut didn't do that because they look at other police departments and fire departments and say that they were paid 10% too much. I think it's very, very important to know that. The compensation cuts that we have table have been to lessen the cuts we already have to take. As you manage this Police and Fire plan and talk about the impacts of the reduction of police officers and firefighters in the pay cuts those are not desirable outcomes. So we really are, the issues he you are struggling with are issues that we are struggling with now. We have these struggles. The issue is how do we solve them in a way that we can within our current system? So the letter tries to articulate maybe not your ideal outcome, it doesn't achieve the Cortex salary survey. The many important part about salary surveys, I have done salary surveys for many, many years. We completely understand that an employee in the market looks at how many dollars are going to be paid. But we in the letter think it's very important for the board to understand that we have a total compensation here that has a disproportionate amount of our compensation dollars going towards retirement benefits. And it does put a strain on how much the city can offer in pay. When our contribution towards retirement is so high. And the Department of Retirement services staff is not immune to that because every employee in the Department of Retirement services that is full time is a member of the Federated retirement system. So it's a complex issue. We want to work with you to solve it. And so the letter identifies what we think in terms of the investment officer classification that we could do most easily. The reason we raise the issue as to whether or not you wanted to solve the issue by current city employees or consulting services, there are some you do in house and some you do outside. But we can move forward relatively quickly on the creating a retirement investment officer specific classification and we do make some -- have some specific recommendations on where we think we can slot the salary in within the current Department of Retirement services salary structure.

>> Sean Bill: So Alex, looks like there's a distinction between investment officer and retirement investment officer. So the retirement investment officer you guys would be looking at a range of 135 to 140 is what you think would be suitable to get it done quickly?

>> Alex Gurza: Yes, because as I pointed out historically, the city had originally created a classification that was specific to retirement. It was retirement investment officer. Subsequent to that, it was the retirement word was dropped and it was investment officer that then the incumbents could be both members of the Department of Retirement services or our finance departments. So what we're suggesting here is going back to creating a retirement investment officer position that would be specific to retirement and we would be recommending the salary to be higher than that, that other investment officer or the current investment officer classification with a salary range that as you mentioned that we've mentioned in the letter that would be higher that would go to approximately between 135 and 140.

>> Sean Bill: And how was the 140 number determined as a cap?

>> Alex Gurza: Part of it is if you look at one of the attachments to the letter which is a chart of pay, you see this chart that says annual base salary at the top. So it was done multiple levels, not just looking at this but looking at the current salary of investment officer. And also, looking at the structure here. Now, obviously, if this whole structure changes, then that could be a different conversation but these classifications of deputy director assistant director or director exist in all city departments. So the director of retirement services fits in a classification that is the same pay range as the police chief, the fire chief, the director of any city department. So what we try to do is slot in the investment officer within that current structure that exists. So if you look at the investment officer here it's 88 to 125. What we're recommending, that we would recommend is, a high of 135 to 140. Which the idea would be, the retirement investment officer reports to a deputy director who also has investment oversight so it slots in, in that structure.

>> Sean Bill: So you would want to keep it to the 151 Max, obviously an investment officer would make more. Would there be room to push that number higher into the 145, 150 area? Not to be -- assume this is your configuration offer. [Laughter]

>> Alex Gurza: And I do do the labor relations function so I do negotiate as well. We could look at it but generally you know, from my HR perspective we like to keep some amount of room between an incumbent and the supervisor, and in my discussions with Mr. Crosby has indicated that a deputy director would supervise sort of the investment officer function. And having it almost the same would be really not our recommendation.

>> Sean Bill: And then our current investment officer, would they then switch over to this retirement investment officer how does that work?

>> Alex Gurza: We could be, that could be a step that would be taken would be to move when we create a new classification we could delete the old, the incumbents in the old classifications and move them into the new classification structure.

>> Russell Crosby: Would that necessarily change their salary?

>> Alex Gurza: Not necessarily. That would again be an issue we would have to follow the civil service issues and process. Because there are already rules in place for when you delete a classification and move incumbents from one to the other. But I'd have to look a little further into the exact rules and what leeway there is in doing so.

>> Sean Bill: And I think the board would be somewhat concerned about how the current employees would feel if some new people came in at a higher salary than what they were at. In the same role.

>> Alex Gurza: What we understand is that actually happens now, when you have a salary range you have incumbents, when somebody new is hired they could be hired in the bottom of the range, the middle of the range or the top depending on experience. So understanding that does cause issues but that does happen throughout

the city very frequently depending on where someone is hired within the salary range. One other thing I wanted to just mention, we did in the letter put out for consideration that the Department of Retirement services does not have an assistant director position. And one of the things for the two boards to consider in an assistant director position again, it is in one of succession planning. We hope of course Mr. Crosby is here but at some point the boards could look and the city could consider that as a position for somebody who, whether could step into also the administrative function not just the investment officer function, the administrative function that a director really has. So that's just another option for the boards to consider.

>> Sean Kaldor: Damon Then Bettina.

>> Damon Krytzer: So to take that a step further, is there a reason -- I don't know if they would want this as current staff but is there a way that we could just assume that entire function within I mean and have them not be city employees?

>> Alex Gurza: There is a way to do that. I'll defer to Mollie about that but I think it would require a change in the city charter I believe because of the way that the current city charter is written. But I'll defer to Mollie.

>> Mollie Dent: I don't -- you can't directly have employees but you can certainly contract out the services if you want to. I think that's pointed out in the letter.

>> Damon Krytzer: We can't have employees because of the charter or because of what?

>> Mollie Dent: Because of the way the -- yeah, because of the way the charter reads in terms of how employees are hired, for the city.

>> There have been charter amendments, right?

>> Mollie Dent: There are charter amendments. You are actually not a separate legal entity from the city. The board is an entity of the city.

>> Russell Richeda: Be that as it may, a point, interpreting the California pension protection act stops CalPERS from implementing its own parallel personnel system when they couldn't get what they wanted through the state process. And to the degree may or may not be good law but the only law we have on that point and it's pretty darn close to what you are saying, that the board doesn't have that authority.

>> Damon Krytzer: Who would be adverse to that though? Like why, why would anyone be averse to that?

>> Russell Richeda: The state controller didn't like it when CalPERS did it. I don't know who wouldn't like it if we did it.

>> Damon Krytzer: I can't think of a reason why the city for instance maybe I'm just naive but why do you want to have this discussion constantly right? Like you'd as soon be somewhere else I'm sure. You don't want to keep getting letters. We don't want to keep sending them. Right? I mean who wants to have a fully funded plan that's operating well and I think we all want to try to be in the same place here, right? I don't want to take this down a road that's just useless but I just -- it just begs that question. That no one has an answer to.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: I'm very new here and I'm going to say probably some ignorant thing. But I heard all morning that one of the only levers that there is to make any advances on the plan is through investment side. The actuaries were incredibly clear on that. You were very clear about that, Carmen. And so to me, the real issue is that this is probably, for all the stakeholders, for the fire and police retirees, for the board, for the taxpayers, the most significant area that anybody can do anything on. And it's one of the only areas that there's any leverage at all in the City of San José. And you know, it just, to me, I guess I'm just confused, coming out of the private sector, in HR, why there can't be some way that all of us get together, to solve this problem. Because it's critical, to get

the right staff paid correctly, in this job. And in the private sector, we always all face this too. I was in banking before working for Visa. And when -- we could all argue about the -- at this point but they would have the traders, or the new FX guys or whatever it was and they'd be paid more than the chairman, you know because they were making the money. And in the public sector, where the cuts have all come, because of the problems in the pension plans, that's so critical, and so obvious to me, that this is one area that we really have to address for every stakeholder.

>> Alex Gurza: And we would agree with that. I think the issue is as you just discussed in this discussion here there are longer term and shorter term solutions. Looking at a charter change and going that is not something that I don't think you're going to be able to accomplish in the next 30 to 90 days. So the question is as to whether or not the boards, the two boards would like us to continue pursuing sort of the shorter term maybe not going all the way but at least increasing that salary, you know, somewhat and while still working on the longer term solutions. That's what we're trying to put out for you is both shorter term and longer term solutions.

>> Mollie Dent: And I want to be clear on the charter issue. The board does not have the authority under the municipal code now to be an employer. The council, there is no -- your authority is set out under the code and one thing you're not authorized to do is employ people. The municipal code is an easier change. There play be structures, it kind of depends on what you're trying to do. You have a number of employees, though, in the Department of Retirement services, that are civil service employees at the City of San José. So you have some that are not. And there are difficulties sometimes in having civil service employees reporting to somebody employed by an outside entity. So I don't want to overstate what the obstacles would be. It's something that we would need to look at in more detail. But the question really, for the board, is what would your ideal outcome be. Would your ideal outcome be that all of your employees are not city employees or is your ideal outcome only that certain employees are board employees?

>> Alex Gurza: You could also add to that in terms of who is civil service and who isn't, the charter does define that. And in city departments the only ones that are unclassified meaning non-civil service are the director, an assistant director if there is and a deputy director, that's all. Every other employee within a city department other

than those are civil service and then some of those are represented by a bargain unit and some are not. So civil service and unrepresented are two different things. So again you're only going to have very few employees under the current city's charter outside the civil service system and civil service rules.

>> Mollie Dent: The board needs to have the discussion of what kind of structure you would like. But the employees would be public employees. It was not that they would not be public employees even if you employed them. You would have that whole structure to work within and becoming a public employer is no small task.

>> Russell Richeda: They wouldn't necessarily have to have a property interest in their job.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: I'll try not to belabor that too much. First of all I appreciate the response and thought that has been given to this because it is an important issue and there are some solutions thrown out there that may help on the short tell, as you talked about. What I find when you have major issues that you're dealing with, is that really, it takes a crisis to make change. And no one needs to look any further than the government shutting down, because they're going to raise the debt ceiling or they're not going to raise the debt ceiling. I think we're faced with a crisis. I think this is our opportunity to look at a longer term solution to not to try to work within the confines of the block of box we have but to blow the box up and say how can we work better? Many in the reduction in services are the result of the fact that we've had underperformance in the plan, assets have gone down, we have a huge unfunded liability and, oh, let's deal with this by cutting services and we're not going to try and fix that unfunded liability because we can't. That's not the solution I would seek. To use a layman analogy, we're in the bowl season. Sugar bowl and orange bowl. I want a great football coach, I don't want to lose a great director. I was to retain a great director for this program if we have that opportunity. I think we need to look at this outside the box. I find it very interesting that we're discussing alternatives. That is, do we use current staff or do we use consultants? If we talked about using consultants, could we pay them what we wanted to?

>> Alex Gurza: I would defer to Mollie on that.

>> Vincent Sunzeri: And would that pay be more than some of these numbers we're talking about?

>> Mollie Dent: I won't say you could pay them what you want to but you could pay them what you found to be the appropriate amount to pay them.

>> Vincent Sunzeri: Market rates.

>> Mollie Dent: You would decide what the compensation would be.

>> Vincent Sunzeri: Right, so if market rates bear for a consultant, we're going to pay at a level of $250,000 a year, that's what we would pay them. But within the confines of the box we could go up to 140,000 possibly.

>> Alex Gurza: But I think that I would assume if you hired consultants, they would not be in the Federated retirement system. So the actual cost at the end of the day and those numbers you just gave may not be that far off.

>> Vincent Sunzeri: You're right, actually that is something that you brought out in your report, which I think is very important, is that you are going to do an analysis of the numbers separate from what Cortex did. So I think we need to see that data when it comes back from the city that includes not only just the compensation but also the benefits that are offered which could be a significant part of the package that maybe isn't looked at when Texas is comparing everything, maybe they did maybe they didn't but I appreciate seeing those results. I'm not sure how quickly we could anticipate that. I also appreciate the fact that you talked where in this report the constraints that are placed upon a director of retirement services because there's other directors of other departments. But the one comment that was made is that basically, you wouldn't be an obstacle to considering other solutions. So I think there's room, there's opportunity to find a solution. I want to focus from a longer term solution not so much on the short term solution. I really believe the short term solution can be resolved very easily

by going out and hiring a bunch of consultants and we get up to speed. That's not where I think we should be necessarily on a long-term basis and maybe that's what we should explore, could be a very long board retreat.

>> Sean Kaldor: So throw in take my turn in the speaking route here. I would much rather have city employees managed through all the processes we have here, the HR department everything, performing at top-notch filling all the positions, easy recruitment, easy retention. That would be my preference. Without a doubt I'm not looking to create an organization here. But we're required to deliver a certain amount of results and operations and we're not able to do that right now. What you're proposing in terms of salaries are kind of coming to us saying will this do it for you I'm turning the question around. Will you be able to fill the positions with those salary ranges?

>> Alex Gurza: Again I think it's a challenge. I think this is like other services in public service you could go out and get a job in the private sector and make multiple times more. That's a fact. In some areas. So and it's not just unique to the retirement services where that can happen. So the real issue is, trying to attract people that also are dedicated to public service. So is it going to compete to what somebody can make, like somebody said they may move to New York and go work on Wall Street. Absolutely not. But Russ 'em has done as he has been here has done a very good job as you've seen hiring people at the salaries that were here. So I can't tell you how many applicants more you might get at the salaries we're recommending but I think it's important to know that we are in public service whether you work for the Department of Retirement services or finance department or our police department or fire department.

>> Sean Kaldor: So I ask staff the same question. At the salary ranges proposed here will we be able to fill these positions?

>> Russell Crosby: (inaudible) in particular you might be able to find some public plan people with call it mid range experience. But you're not going to find the alternative asset folks. That's the real problem.

>> Damon Krytzer: Well I don't really know what to do. There's action on this but I can't tell you what the action is.

>> Sean Kaldor: Looks like the city is saying it's going to be 90 days to redefine some of these positions.

>> Alex Gurza: In terms of the retirement investment officer, we gave 90 days in terms of, I already have in my HR role have staff work on the job specification. It isn't something that takes a lot of work because we had somebody before. When I say 90 days I'm talking about the job of creating the position, sending it to council, sending it to the civil service commission. We had this process started already, I am mindful we have another board, would prefer we not go further on that, board retreat or working for other solutions we're happy to put that on hold as well.

>> Sean Kaldor: I don't know whether we would want to wait for the board retreat but would the investment committee --

>> Vincent Sunzeri: I think the investment committee could address some of these at the next meeting if we can.

>> Sean Kaldor: So if the investment committee could do that and then come back at the February board meeting, that will still be a month ahead of when we do our board retreat. If we have to take aggressive action we have to take aggressive action.

>> I'm sorry when will we have results of the surveys that you are doing?

>> Alex Gurza: We should have it within 30 days.

>> Sean Bill: And Alex, can you continue working on this if we don't end up with this is the best we can do.

>> Alex Gurza: Absolutely, simply moving forward and not taking final action until we come back.

>> Richard Santos: You have a valuable resource in Bettina, who was obviously in that field before, I don't know how she can be brought in to do it like if we are a committee, if it gets too big. But -- I'm not volunteering her but I think she may have an interest, sounds like she does, how can we incorporate that into --

>> Sean Kaldor: Would we exceed our max on the investment committee? This is a joint committee with Federated, right, because this is common problem, common solution.

>> Wouldn't governance really be the appropriate place to address HR issues? Isn't governance kind of -- maybe --

>> Russell Crosby: The question is could you have Bettina join the group? You're already at max on both governance and investments.

>> Mollie Dent: I think one of the governance recommendations is to have a personnel committee.

>> Sean Kaldor: So if the investment committee could advise us, can you -- with what the City's proposing have them move forward, do you think that is going to solve the problem or not? Talk it through look at the numbers, the board meeting's only a few days after your investment committee meeting so we're not losing too much time there, you could use is many time, we will know by the first week of February.

>> I would just throw in that I'd be happy to step off the governance committee to make room for Bettina to come on to the governance committee.

>> Sean Kaldor: We'll address that separately. Being very mindful of time annal we're half an hour over for another meeting here, thank you Mr. Gurza for your questions and answers. I'm going to recommend if no one objects that we defer items 3.4, 3.5 and 3.7. Those are all updates. Item 3.6, how long do you think this will take? I hope to have a big robust discussion.

>> Donna Busse: It just depends on how many questions you guys have, whether you want to suggest, we put everything in the analysis and the memo.

>> Sean Kaldor: Let's see if we can tackle it. Then Item 3.6, authorization for the secretary to negotiate and execute an agreement with Sire Technologies for agenda management software for an amount not to exceed over three years in phase 1 Sire Agenda plus and Sire Minutes plus $60,000, phase 2, Sire Meeting Management and voting system for $40,000, both phases are shared 50/50 with the Federated city employees retirement system.

>> Damon Krytzer: Making the assumption that they've already spent months and hours laboring over this, I would make a motion to approve.

>> Second.

>> Sean Kaldor: So we have a motion and second. Any discussion? I can say I attended the session, I saw all the competing products out there. There is definitely some that were more advanced and some that were less advanced. All have unique aspects to it. These solutions deliver a lot not just in terms of what we see in our little packet, but the back end management of setting up the agenda, basically you press a button, it spits out the agenda, any changes, everything is automatically carried over. It allows for all the notes during the meetings and then voting we do electronic voting if we want to go that far, or simple packet accordance technology. Sire to me definitely seemed to me far and away the most widely adopted and well integrated and intuitive solution. Any other discussion? I'll entertain --

>> David Bacigalupi: The committee's done the work on it and there's nothing I could add to it so I would support the recommendation of the committee.

>> Sean Kaldor: Okay. We'll vote all those in favor? All those opposed, none opposed the motion passes unanimously. Good work on that I know there's a lot pulling in all the vendors and talking to them and I know the

City Clerk's office was involved and everything. So item 3.4 5 and 7 we'll carry forward. Item 5, death notifications, definitely the saddest part of our process, 5 much 1, notification of the death of Thomas G. nagengast, died November 10th, 2011, survivorship benefits go to Carol E. nagengast, take a moment of silence.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Yes.

>> David Bacigalupi: Great sergeant, great man. Sorry for that.

>> Sean Kaldor: Attached the minutes of that committee do we need a motion to accept this? Do we have a motion? A second?

>> Mollie Dent: The committee -- you don't have to. The committee should do it.

>> Sean Kaldor: So we note and file.

>> Mollie Dent: Yes.

>> Sean Kaldor: Note and file. Item 6.2, the ad hoc committee for disability determination process, the next meeting to be determined, I know that's --

>> Conrad Taylor: Mr. Chair, that's been set aside, I think we should start reconvening and moving forward. If members of that committee can e-mail me, we will get an agenda together. It is a work in progress type of ad hoc committee and we've made some stride but we still have a lot more items to do to find solutions.

>> Sean Kaldor: Actions to e-mail Conrad your availability. Item 6.3, ad hoc governance committee the next meeting will be 34 minutes ago. Moving on to the consent calendar, we normally accept this as a single motion to accept all items does anyone want to remove any items.

>> Drew Lanza: There is an error in the board minutes from last month.

>> Sean Kaldor: Yes so we will remove item 7.1. Does anyone have a desire to remove anything to be discussed separately? I'll accept a motion.

>> David Bacigalupi: Move to accept consent calendar minus 7.1.

>> Sean Kaldor: We have a motion and second. All those in favor, all those opposed, none opposed motion passes unanimously. Item 7.1, monthly board minutes, there are I spotted one thing as well. Who has changes?

>> Drew Lanza: I checked the video, it says I arrived at 8:57. It was actually Damon who arrived at 8:57.

>> Sean Kaldor: Instant replay.

>> Sorry buddy.

>> Sean Kaldor: Trustee vacant, I believe bettina was present and voting. First agenda item. I knew you were there. Anything else in terms of corrections? I'll entertain a motion.

>> David Bacigalupi: No corrections, item 3.2, if it's moving along, I didn't see on the agenda any update on that. Of the request of the city council to amend the ordinance regarding non-assignment deductions.

>> Sean Kaldor: Didn't we forward to city council, can we add that to the agenda for next month and get an update? I know there's some time pressure for them and we should be following up on that.

>> Donna Busse: (inaudible).

>> Sean Kaldor: Okay.

>> David Bacigalupi: I'm sorry I deny hear the answer.

>> Donna Busse: The turn around between the December meeting and January meeting because of the closure.

>> David Bacigalupi: Holiday, okay.

>> Sean Kaldor: Hopefully we will see good progress on that because I know it's important for them. Was there a comment as well from the public, thank you, sorry.

>> Half a leg like everybody else here today. We just wanted to make sure that the request that was sent by Bacigalupi and Santos on this was fold up on because we received no information about anything from the city with regards to the increase to our dues to our membership.

>> Sean Kaldor: Changes that would be necessary to allow that and the notification of that.

>> Thank you. It didn't make the agenda for a follow-up so that's why we're asking.

>> Sean Kaldor: Make sure it's on the agenda for next month. So we're at that point now for the minutes.

>> David Bacigalupi: Move to approve 7.1 with the amendments.

>> Sean Kaldor: We have a motion and second. All those in favor, say eye, all those opposed, none, motion passes unanimously. unanimously. Item 8, education and training you have in your packet the attachment of education programs and courses, 8.2 you have the attachments.conferences and seminars and to save a few trees could we start to delete the ones that were from October, November, December, 2011? Okay.

>> You can also take out the ones in Lake Amsterdam and Cambridge.

>> Sean Kaldor: Just teasing us with those. 8.3, attachment of research papers and articles. 8.4 we need a motion to approve -- no, let you know about upcoming stations, trustees double tree hotel mere in town few blocks from retirement services building very convenient to go through, good discussions about local plans. Generality assembly, March 3 through 6, principals at Stanford end of March. Are there any general comments from the audience the public? Are there any proposed agenda items that we've not already addressed?

>> David Bacigalupi: It is not really a proposed agenda item but can we get an update of the board contact info? We have a new board member so for phone numbers and e-mails and so forth.

>> Sean Kaldor: Any other items?

>> Richard Santos: Just comment, again I'm repeating myself I want to say to David and Conrad thank you for your last year of services and you got six months of probation, you did a great job.

>> Sean Kaldor: I'll take a motion to adjourn. All in favor? Thank you very much.