The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> David Bacigalupi: Good morning, ladies and gentlemen, I'm going to call to order the board of administration of the Police and Fire retirement plan. I'll take the roll. Chair Bacigalupi is here. Vice-Chair Taylor is here. Trustee Bill is here. Trustee Kaldor is here. Trustee Krytzer is here. Trustee Lanza is here. Trustee Sunzeri is here. Trustee Santos is here. And the ninth trustee will be appointed I understand in the council. And Donna is going to be acting in Russell Crosby's position today, and Toni is going to be acting as Donna today. Okay, orders of the day. Okay, we have a closed session item today, too, and I'll discuss that in a minute, but there's a request to move the closed session item up to the first of the disability retirements, so we'll take that when I get to it. But first of all, under orders of the day, 1.1 and 1.2 are both being deferred at the request of staff. Item 7.3A, deferred till next month, yeah, they're not prepared to go today.

>> Donna Busse: They found some errors or questions they had for NEPC, so they wanted to defer it.

>> David Bacigalupi: Those are under investments, and the 7.3 plan expenses, that is also being deferred. Staff just ran out of time to get that prepared for the meeting. And then item 4.2F, the application for disability retirement of by police officer mosto, that's deferred at his request. And then item 4.2A, and it's the application for a disability retirement for police officer Edward talley and there's a typographical error, on page -- let's see, one two three -- the fourth page in on your packet, and it's the City of San José, disability application review, summary of details. And down towards the bottom is permanent modified duty available, if you review through the packet, the department's answer from the San José police department was there is modified duty. So that should be yes. It was a typographical error on our part. So it says no, third line up from the bottom should be yes.

>> Richard Santos: Mr. Chair.

>> David Bacigalupi: Go ahead dick.

>> Richard Santos: Are any of those recommendations changed?

>> David Bacigalupi: The 30 positions agreed upon by negotiations and the court have been reduced to ten. So there's only ten positions left for modified duty.

>> Richard Santos: Thank you.

>> David Bacigalupi: And then the request was item 4.2M, the application by police officer Vince Williams, there's a request to move that to the beginning. That's a closed session, we'll have to go into the room next door. We can go in there and handle that matter and then come back up into open session. Okay, any other requests? Okay. Then we will start off under new business with item 2.1, approval of a policy for the utilization -- oh, excuse me, there's one more. One more order of the day and that is 3.2. And I received an e-mail, I had forwarded to council and all board members, that the retirees association has withdrawn their request. So item 3.2 will be withdrawn. There should be a copy of that letter either in front of you or in your packet. Okay, now.

>> Chair I just have a question on 1.1. Is there anyone from staff here to tell us why they could not review the performance?

>> Donna Busse: I don't think anyone is here on the specifics. Carmen has just let me know that they had some -- they thought there were some errors so they wanted to talk to NEPC about it before delivering it to you.

>> Just from the record I think this data is all from June 30th and I think that, you know, they should be able to get the data here sooner. Three months after the final strike day of the evaluations is a long time. Would I request staff have quarterly data for us at the following meeting. And I would also like to request that going forward that we get a monthly you update on performance. So I have not seen anything for August or September or any of that stuff and I'd like to see data on that stuff as those months are struck.

>> David Bacigalupi: Okay, Donna can you pass those on to Russell the requests and to Carmen as well please?

>> I think that was an outstanding item they were going to look at the form and what that would look like and the charts and the graphs. I don't know if that got dropped off our ongoing --

>> David Bacigalupi: Okay. So we're at 2.1, approval of a policy for the utilization of the board's contracted actuarial consultant. And Donna.

>> Donna Busse: Right. At the last meeting well based on the requests from the retirees association there was discussion on and under what situation the board would approve requests as for actuarial work from outside parties. And you know what situations pay be where the board would pay for those requests out of plan assets. And so staff's just drafted a policy that kind of you could approve or modify as you see fit right now, on suggestions of when it would be appropriate to pay and when it would be appropriate not to pay. Or when you should even order the work. And basically you know basically you have discretion to do as you see fit. As a fiduciary of the board you if you think the plan is served for paying I.T. out of plan assets you could do that. But in cases of negotiation or when benefits have already been approved I think you do have to approve -- we have to do the actuarial study to put the cost in so in those particular cases you might -- you probably would pay for those. But in cases where they are still negotiating you may or may not want to pay or you may want to pay for the first one and not subsequent ones so I kind of gave you the ability to decide which way you want to go in each particular case.

>> David Bacigalupi: Thank you, DNA. Conrad.

>> Conrad Taylor: Mollie, Russ, have you reviewed this?

>> Russell Richeda: I think this is a fine way to go to clarify the issues. One teeny clerical issue. Number 3 it says the board may approve, under the following conditions, I think it is any of the following conditions. If you found A to be the case, then you could grant it, B, C, et cetera, I think that's the intent of the policy. I think in general it draws an appropriate line between when the board should pay, and when the board in its judgment could decide whether or not to pay.

>> Mollie Dent: I agree. I think it divides up the conditions under which board approval is not required, under which payment by the requestor is required, and under which the board may approve the payment. So I think it's clear. It's -- I would say that it's not necessary for you to have a policy. You could have it come back to you on a case-by-case basis. But it is a -- I think it's consistent with looking at whether or not the expense is in the interest of the plan.

>> David Bacigalupi: Thanks Mollie. I think the board was interested in having a policy. Because otherwise if we get a request then the first question is, well, why not. And so -- Vince?

>> Vincent Sunzeri: When we were reviewing this last time my concern was consistency. And that we're not just taking them on one-off basis trying to make a decision, whether we should review one and reject another one. We should be consistent in how we do it. And secondly, when we are making a decision, to spend funds from plan assets to do something like this it should be a request that's coming from multiple parties rather than just one individual party. So I think it would be valuable for us to consider agreeing upon how we want to proceed with this moving forward.

>> David Bacigalupi: Sean.

>> Just for clarification what's the difference between B and C? Sorry, item 3, B and C, I think C would be inclusive of B.

>> Donna Busse: The only reason I distinguished B and C, it would be generally automatic that the plan ask going to pay for those because we have to implement. The other ones might be we're thinking of a thing how much this is cost and maybe they come back with several iterations and you may or may not want to pay for them.

>> So under B both parties have agreed to it we're going to have to price it out because they've agreed to the change. Under C if they're still negotiating we have agreed they want to cost it out they both sign onto it and we'll cost it out.

>> Mollie Dent: I think under both circumstances it's may, but I think where Donna has pointed out the before changed has grated upon at some point it has to be pointed out.

>> They shouldn't have to come to us with a separate memo, please price this out we've agreed with this change.

>> Mollie Dent: You do have to let them know you've agreed to it, what the parameters are, I think this is a good idea.

>> Okay, this seems like extra work but --

>> Donna Busse: Usually the actuary is going to require all the details, we get a letter from the requestor outlining what the parameters are going to be. This gives us at this point and we can send it to the actuary.

>> If everybody agrees it's necessary, I would consider it an extra step. If the bargaining groups and the city agree, we are now agreeing on a separate plan, we know we have to price it out but we can ask for the extra letter, thank you.

>> David Bacigalupi: Dick.

>> Richard Santos: Yes, Mr. Chair, there's always going to be a cost item, especially in these times, everybody's cost cost cost. I think what the key is what Vince said here is what's best for the plan. We take every case by case. We like consistency, no doubt about it, we don't want to make the actuary make up for whatever it is,

whatever it is, negotiations or whatever the board may want. For me, whatever is best for the plan, whatever the board desires, that's the issue.

>> David Bacigalupi: Okay, anybody else? Any other questions? Anybody want to make a motion? Staff has prepared the policy for us. At this point, if the board is satisfied that this policy may work, I'd entertain a motion to approve the policy.

>> Can I ask one more question?

>> David Bacigalupi: Sure.

>> This is if other people come to us and ask for things to be priced out. If we as a board want to understand a cost or a change oorn idea the board could approve something independently of someone coming to us.

>> Donna Busse: Yes, absolutely this is outside parties and I put in some language regarding you being able to cost out the work for the actuary. If you have some things that you already gave them and a request comes in you may say yes you're going to do that but we're going to do our stuff first and we can give it to you in three months. I gave you guys some leeway there as well.

>> Based on the fact that the actuary is an outside actuary it does cost the plan, every time we have something priced out. Based on the spirit of cooperation I would make a move to recommend the policy for actual work done by the board. With a change by Russ, sorry, thank you. Item 3, would be amended to say, under any of the following conditions.

>> David Bacigalupi: Correct, the second agrees with that motion. Okay we have a motion and second. Is there discussion on the motion? Vince.

>> Vincent Sunzeri: So you know I just want to clarify. This item A really leaves it very wide-open in my view and the terminology I was using was a unilateral request and I wonder if we should be more specific in that regard, on whether we're going to accept unilateral request, because they can come in on an ongoing basis and that can cost the plan a lot of money. Is that something we're willing to agree to, or not? Point B and C are talking about all negotiating parties. Our most recent experience was, a single party coming to us.

>> Russell Richeda: Vince, isn't that addressed by number 2, a payment by a requestor, a party other than the board? The requestor has to pay, staff has to recommend it and the board has to approve it. And it has to be in the context of the actuary's workload. Is that satisfactorily --

>> I do agree with you on that. Thank you for clarification on that.

>> David Bacigalupi: Any other questions on the motion? Hearing no further discussion all in favor, all opposed, motion carries unanimously. Thank you. Okay item 3.1. This is the update of status of board and trustee roles and responsibilities concerning proposed before changes including negotiations on benefit changes for active members and retirees. And there's a memo in your packet from Russ Richeda. Russ would you like to --

>> Russell Richeda: Sure just a brief overview of the memorandum. It had two purposes. One to just come up with a possible list of questions. You'll remember the board at the last meeting thought one possibility would be to submit questions on this topic from board members to director Crosby and then at this meeting to consider what they really wanted looked at. So on Page 2 I just came up with a possible list that -- for you to consider and revise or amplify as you thought fit. And then I thought it might be helpful to the board in coming up with those questions, to see what's sort of out there in this area, which included number 1, the response by the Orange County retirement board to the 3% at 50 litigation. And then number 2, and more general, the July 2011 publication by Cal PERS with respect to vested rights. And it is somewhat evocative but unclear a final page indicating what it might do which I summarized on page 4 of my memorandum. And with respect to Orange County, I've since talked with the then general counsel for the retirement board. And I think I characterized the approach with respect to that litigation by the OCERS board as inactivity and that's inaccurate. It is more correct to say they

participated in the litigation as sort of a so-called honest broker. They did not advocate but they tried to provide information on factual issues germane to the litigation, may be correct inadvertent misstatements by the county and by the association of Orange County deputy sheriffs that were actually the prime litigants in that matter. And so in this memorandum, I did not think it was appropriate to come to conclusions, because I was really focusing on the questions that I sort of request direction from the board to look at. So page 2 has some of those questions.for me, the issue of what the board can do with respect to ballot measures, for example, proposals that mate go before the ballot, the people, the citizens of San José to amend the San José city charter. The law is relatively well developed, even on what a public agency including this board can do. There's much less law, believe it or not, concerning the fiduciary responsibilities of a board such as this one when, let's say, a charter amendment has been enacted 50 voters. That is a more difficult issue for me to deal with assuming you assign that to me. Hopefully the Orange County discussion was helpful, hopefully the brief quotation from the Cal PERS publication was helpful. But the real issue is for the board to come to its own determinations as to the issues it thinks appropriate to have looked into.

>> David Bacigalupi: Okay, Russ have you heard from Russell after he left on vacation? I know he's on an extended vacation right now. I'm wondering if there are some questions in his possession --

>> Russell Richeda: Nothing came my way.

>> David Bacigalupi: Sean.

>> We did agree that everyone would submit questions if they have questions. I submitted the minutes of the actual meeting and that was the outcome of it. I did submit questions. Russell was not present. Was adviced to submit it to Ron and Donna which I did. Bring questions to this meeting, we'll decide which questions get formally proposed.

>> Russell Richeda: Sean, they were forwarded to me but only after I submitted the item in the agenda packet.

>> Okay.

>> David Bacigalupi: What is the pleasure of the board regarding do you want to identify some specific issues, questions, that we want Russ Richeda to take back and report back to us?

>> Richard Santos: Mr. Chair.

>> David Bacigalupi: Go ahead Dick.

>> Richard Santos: I definitely want them to look at Sean's questions, any information with it, retirees who may have questions I think we have time and I want to make sure we get every bit of information we possibly can before we give any possible direction.

>> David Bacigalupi: Okay, Vince.

>> Vincent Sunzeri: Not knowing what Sean's questions are my specific question would be, if there's a ballot measure that modifies the plan, and it is approved by the voter, does this board have a fiduciary responsibility to implement that change if, in fact, that particular voter approved ballot measure is to go to litigation or are we to pend the outcome of that litigation, making any changes to the plan?

>> David Bacigalupi: Right, that's a good one. Sean, go ahead.

>> Perhaps I should -- hi three brief questions, perhaps I should read this in, that mirrors what Vince was asking and some of the thoughts in here.

>> David Bacigalupi: Sure.

>> My thought was in light of fiduciary, according to their contract what are the plans and plan fiduciaries legal responsibility continue to receive benefits as they were previously specified, and what is our duty unlawful action by the city, if someone makes a change, if that's illegal, potentially unlawful, contract provision or enter into a lawsuit, how should the plan handle the collection of city contributions and the disbursement of benefits while it's being resolved? Those were the three questions, what you were saying and capture some of the spirit of this memo as well.

>> David Bacigalupi: Thank you. Damon.

>> Damon Krytzer: I think with all of these questions I'm most concerned with our duty versus our options. I'm laying out the framework, maybe some of this is not framed by our fiduciary duty but what are the parameters of the answers we can make and how they are framed coming back that way.

>> David Bacigalupi: Dick.

>> Richard Santos: One of the questions asked Vince there I think it's a good question. The voters say one thing, and whatever have you. It comes back to our fiduciary responsibilities and authority, and what's best for the plan? So I'm looking forward to answering those kind of questions because it could be contrary. I've been around a long period of time and I've seen the voters say one thing and the council do a another. As far as the options what are they? That's an excellent thing to look at.

>> David Bacigalupi: Thank you. We have specific questions. Any of the questions that Mr. Richeda laid out in his memo that you would also like researched further? And I think you know if any of those are identified plus the ones that have already been given, I think everybody pretty much agrees on, we can take the next step and charge him to get back to us with that information.

>> I have one question. On page 2, items 4, 5, 6 and 7, in terms of the board educating and spending board resources on education, what are the thoughts behind that? Is that something that the board has done in the past or is that --

>> Russell Richeda: Well, actually, that's there Sean, because the Supreme Court in Stanton V Mott made this distinction between advocacy and education, advocacy no, education yes. That's amplified in subsequent cases.

>> In the position we educate, that gets tricky how you move forward.

>> Russell Richeda: Very little is going to be mandatory, sort of responding to Damon. But I think it's probably useful to the board to let it know what it can do. But you know, what it has discretion to decide to do but in exercising its discretion it obviously has to weigh the pros and cons, what's reasonable to do under the circumstances. Depending on the situation, maybe it's reasonable to do nothing or at the opposite extreme again depending on the circumstances it my be reasonable to do more. But ultimately, a lot of this is going to have to be case-by-case until you're presented with something real. But hopefully, this will be provided helpful context for considering whatever comes down the road.

>> All right, thank you Russ.

>> David Bacigalupi: Vince Then Sean then Drew.

>> Vincent Sunzeri: So on that point item 5 page 2 if I'm reading you correctly and hearing you correctly what you're stating is had a the board does not possess an advocacy position, the ability to take an advocacy position is that correct?

>> Russell Richeda: Well, I wanted to raise the questions. I haven't -- since my summary of Stanton V Mott is based on a recollection from a while ago, I haven't dived into these yet because they haven't been assigned. I think it's unlikely that it's going to be -- well it depends. An advocacy position where it's a resolution of the board,

an advocacy by the board where you decide to initiate litigation, again there's a continuity of activities. And -- but I think it is most likely, you know subject to my actually doing the work, that advocacy positions are going to be rarely, you know on public policy issues that decide how the plan is going to be changed, sort of policy issues that we're not necessarily the body to take those on. We perhaps are the body to say if you go down this policy road here are some technical implications and that should be helpful to people. And that might be wise for us to notify people about and to be part of the public discourse as kind of factual background elements. But that's still different than taking an advocacy position.

>> If you could clarify that in your research that would be very helpful because I think that that defines very much the boundaries for what we can and cannot do.

>> David Bacigalupi: These are all questions and we may want all these questions answered as well, these aren't answers, so in addition to what has been suggested by the board here, these were possible questions. Some of them are interrelated to what the board said. But the board may want him to research all these items and stuff. Vince -- Sean you're next.

>> Just to this point in answering these if you could help us in laymen's terms just to identify each area, that continuum of our action so going from what you must do to what you should do to what you can do, what you shouldn't do and what you can't do. Just give us that scale on advocacy you absolutely could do this but you absolutely can't do this. Okay then we know where we should be in that range. Thank you.

>> David Bacigalupi: Okay, Drew is next then Conrad then Damon.

>> Drew Lanza: I keep harping on this at all the board meetings but I bring it up again. We are moving into a tricky situation. We are advancing the notion that we have various constituencies and they may be already in conflict and we may be asked to sort of not necessarily take a position in that conflict but be asked to still function within the constraints of that conflict so I would like to urge the board that if we really think that's coming up, we do another offsite and go up to 100,000 feet and not specifically talk about the rules of the road which we have to

understand but what we have to do to make sure we have heard from these constituencies and understand their positions and then ask ourselves what are we really here to do what do we think our superordinate goals are how does that interact with that and how does that play with the rules of the road. I know that sounds very touchy feely but I've got gray hairs over the fact of i'll go out and have a beer because these may be very, very difficult decisions that we are asked to weigh in on.

>> David Bacigalupi: We're caught in the middle, we're not the deciders, we're the implementers.

>> Drew Lanza: We're ang awfully big tail of an awfully big dog.

>> David Bacigalupi: Sean then Damon.

>> I would like to include the vested right issue just a summary of that I know you've done that in the past but particularly pertaining to this plan.

>> Russell Richeda: Sure.

>> David Bacigalupi: Okay thank you Conrad . Dpai mon.

>> Damon Krytzer: I have one comment. I think we're overusing the word fiduciary in these comments, because partially what I said earlier. We know the scope of of what we can operate but being a fiduciary means we do take a position and our position is to be the voice of the plan itself. That at least, you guys, that's going to be my position moving forward is not that our job is to react and implement, our job is to take a position. We're going to see a lot of conflicting opinions and to Drew's point, we need a mechanism to get all the accurate information. Some of our positions are made with half-truths and spin. We need to among ourselves figure out how we're going to handle this information, how we're going to vet it ourselves. I guess I'd be curious about any thoughts you have on some of these cases on whether or not they've done a good job and how they've done it,

how they selected information if that's even an answerable question. Like if you know how the boards, their decision making process.

>> Russell Richeda: I'm pretty sure -- they would do it in roughly the way we did it. And you can see Orange County they're presented with a fait accompli -- I was a spectator on this. There was a long process at the board of supervisors level, whether the retirement board knew one way or another whether anything was going to happen. And the date of the Orange County board's action was in 2007. And they had the presentation by their fiduciary council, Harvey leaderman, that I attached and the OCERS board adopted. But the litigation didn't ensue for another year and a half. Very slow process. Obviously it was a difficult decision for the Board of Supervisors but eventually the Board of Supervisors did decide. They didn't coordinate with the retirement board. Their activities were in closed session. The retirement board didn't know really what was going on even though for example the county treasurer is on that board, a member of the association of Orange County deputy sheriffs is on that board , he had to recuse himself. There was a member of the Board of Supervisors on that board. You can imagine how internltly conflicted that board was on this issue. But they're presented then with the final action by the Board of Supervisors, and have to scurry around and decide. But they at least had set this as their parameters. You know, that we don't -- as I mentioned here, they decided they were not going to take a position on the merits. They were, however, remember, unlike our possible situation, where the plan either through action of the council or action of the voters is going to be amended. There the plan was intact and the Board of Supervisors was suing to undo what was in the plan. So that will be you know a dramatically different context than our context. But the board did affirmatively say if the status quo is challenged during litigation you know the board of supervisors presents a motion to the court to get an injunction like a preliminary injunction during the pendency of the litigation to stop these benefits from being administered then the OCERS board came to the conclusion, fiduciary counsel came to the conclusion and the OCERS board came to the conclusion they would adopt that. That's a bright line, that's helpful but that's not going to be our bright line, that's not going to be our situation. But at least shows even under this context of how to deal with this situation. That's the line they drew. Cal PERS hasn't drawn any line yet. You notice they evocatively say, under facts and circumstances we may initiate litigation. That is maybe yes, maybe no. Unfortunately you can see a fair amount of work has been done, particularly both and as I subsequently learned the author of the Cal PERS publication was also Mr.

Leaderman which I had not been aware of and the bottom line is, there's not much helpful litigation on this point. And that is a particularly yes on ballot measures, but not on this litigation issue. So it's going to be a harder an more -- a harder assignment to give you bright-line conclusions that have any basis outside, other than Russ's best reasoning which might be wonderful but it's not a court.

>> David Bacigalupi: Okay, Dick then Mollie.

>> Richard Santos: A couple of the board members here mentioned vested rights, I want to make sure we mention that. I think Drew made an excellent point and others. We have had a chance to digress on certain issues and whoever they represent an what have you. I think it's good in line to have a retreat, especially with a new person coming aboard, if we get an idea when it's going to be appointed, if we could include that person. I think it's good that we sit down and have that discussion, it helps us make decisions, most of us that we've talked to, doing best for the plan. We want to make sure we are doing that at the same time, can you represent whatever you have been appointed to. But at the same time we have to do the best for the plan. So a retreat would help us and I hope we can get it before the holidays are over.

>> David Bacigalupi: Thank you, dec, rose is here substituting for Pete. So probably she'll be sworn in by next meeting? (inaudible).

>> Councilmember Herrera: On that.

>> David Bacigalupi: Okay.

>> Councilmember Herrera: Affirmatively.

>> David Bacigalupi: Okay, Mollie.

>> Mollie Dent: I just wanted to add that getting back to doing the legal analysis, that you can tell, I think, from the discussion today, and from Russ's memo, that there will be a range of options that are available to the board. And so I would -- I would recommend that you ask Russ, not just to look at the options, but to look at that time risks to the board of taking some of the options. Because any time you have options available to you legally, some of the options are riskier than others. And for example, on the spectrum of advocacy versus educational material, there's actually been a fair amount of litigation over whether or not something is advocacy versus educational. So you may want to understand, you know, what the risks are as you're presented with options.

>> David Bacigalupi: Thanks Mollie. I think the board has kind of hashed out what we're interested in. Donna is going to have to summarize it, if somebody will make a motion, that we charge Russ with doing this.

>> I've been making some notes here I can make a motion. That we request Russ and his firm to return to us at the November board meeting with analysis along the continuum concept for each of the questions he has proposed. In addition to the three that I had mentioned. The question Vince had brought up and there might be overlap where you can consolidate some of those questions. And as well a discussion mentioned by Taylor and Santos about vested rights and if you can include a discussion about the our -- this is to Damon's point the rule of us as fiduciaries, what is our role to be advocating for the plan or just you know, what is our role? And that has been discussed before but including that in this memo I think that's the header that sets off saying what we're here to do.

>> David Bacigalupi: Coy ask the maker of the motion to also include the risks involved that Mollie mentioned. I thought that was a very good point.

>> I accept that addition, thank you.

>> David Bacigalupi: Do I have a second?

>> Second.

>> David Bacigalupi: Ong I have a second. Discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries unanimously. Thank you. Okay, 3-- 1 is done, 3.2 is withdrawn as per the letter from the retirees association. 3.3, update on status of trustee replacement. Donna as rose has stated that Bettina rounds was approved by city council last Tuesday, then, and then in addition to that we also provided information that Rose Herrera will be the alternate for Pete Constant as the council nonvoting board member.

>> Welcome back.

>> Councilmember Herrera: Do I get my name tag back?

>> David Bacigalupi: Question, will bettina be sworn in next meeting? The time line?

>> Donna Busse: We'll arrange that.

>> David Bacigalupi: Okay, great.

>> Rose, good to see you back.

>> David Bacigalupi: Okay, item 3.4, discussion and action regarding legal services request for proposals. And there's a packet in your folder from Mollie. Mollie any comments on that?

>> Mollie Dent: So actually if you'll go to the back of the packet, the last two pages are the summary. I tried to summarize it for you so that you wouldn't necessarily have to read through the whole RFP unless you wanted to. But the part of the summary that I specifically wanted you to look at probably of most interest of the board is on page 3, the selection process. Because that's really not in the RFP itself because it doesn't need to be. But you'll see that we have separate screening panels for each of the boards with two attorneys, up to two board members if you want to appoint two board members and the director so that we'll always have an uneven number of people

on the screening panels. We anticipate that the screening will need to occur the week before Thanksgiving. We're not sure what day. We -- our goal is to have someone ready to move forward to your December board meeting. And since your December board meeting is on December 1st, I believe, we're pretty tight for time. If it doesn't work and we can't meet the deadline we'll have to work around that. Our goal is to have someone in place by the end of the year. So it would be up to the board how many board members they would want to have on the screening panel and who they would want to have on the screening panel. And I've outlined the process in terms of sort of honing down the responses that we get, so that we hopefully, you know are only really interviewing the top candidate firms in each of the categories.

>> David Bacigalupi: Okay, thanks Mollie. Has Russell seen the RFP here?

>> Mollie Dent: Yeah, it's been out for a while because it went to the Federated board meeting last month.

>> David Bacigalupi: And the action you would need is to approve it and send it on?

>> Mollie Dent: I don't really -- we're going to send it out. Probably the main action we'll need from the board is if you want someone to be on the screening panel but you can do that in November. Because I've set out the time line and the due date for the responses is not until November 4th. So after we have the responses then we can move forward with having you all appoint to the screening panel.

>> David Bacigalupi: Right.

>> Mollie Dent: If you had any comments on it I would certainly take comments. But --

>> David Bacigalupi: Sean first.

>> I just have a question on the process the last step. So in this particular scope of practice if Federated board likes one attorney, we like a different attorney, it says that if there's a split vote the top two firms for each scope will be submitted to the boards and City Attorney for consideration.

>> Mollie Dent: Yeah, actually you're going to be running separate screening panels. So the way -- so the Federated board can move forward with their person and you can move forward with your person. Actually, the point of that comment is that if the panel, if your panel, the Police and Fire panel, unanimously recommends a firm, then that particular firm will be the firm that will come forward to the board for approval. If there is a split-vote, in other words, two members of the panel --

>> Within our own panel. Thank you.

>> Mollie Dent: Within your own panel then the full boards will be submitted to the attorney and to the panel. it is true there is going to have to be a consensus on this.

>> Okay, thank you.

>> David Bacigalupi: Okay, any further questions of Mollie? Thank you. Item 3.5 is an update on payroll audit, FLSA, and overtime payment issues.

>> Veronica. Over here. File for the missing pay periods from the original AUF that was performed by Macias, Gini & O'Connell. Unfortunately I have not received the file so I have fold up with finance and hope to have an update with a file and some next-steps. As you recall we were scheduled to have the file on September 30th. Do I know however that finance is also finishing through their annual audit and I think a lot of the resources may be there. But I'll definitely follow and come back. My intention is once I have that information to come back with a request to the board for some additional help to actually implement some of the FLSA adjustments and actually start running through some calculations after making sure with legal that we can do that.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: Veronica can we have a hard deadline? We have been working on this a long time.

>> I understand that.

>> Conrad Taylor: Do we have a hard deadline on this?

>> My only response is I thought September 30th was where we were working with.

>> Conrad Taylor: Do we know the magnitude of the amount or what the amount is?

>> That's why I couldn't give any recommendation to the board, let's pass or go through any of the pieces we have. Not until I have an idea how big an impact it has, I can't make recommendation to the board.

>> Mollie Dent: Just to be clear, I think we have an idea of the global amount but what Veronica is saying, we don't know how much of a difference that makes.

>> That's correct.

>> David Bacigalupi: Sean.

>> We have a -- it has been a number of while. We've had a number of employees who have had money taken out of the paycheck to go into the plan which have not have been done, and they are owed that money back. They are waiting month after month after month to figure this out. We're talking about over a year plus in this whole process, as well, we have retirees who have done their numbers and believe in doing that they are owed more money. In balance, there is probably people who owe money back in. And things need to be calculated. I believe they have been pretty patient. At this point I have been telling them, month after month, just

hold on, we're going to get it? We're going to get it, at this point I don't think they are going to hold on much longer, I believe there will be grievances and lawsuits filed, with regard to money withheld from paychecks and that's the ramification from this issue. I understand we are waiting for the information from finance, and everybody has been pretty patient with all this going on.

>> David Bacigalupi: Sean thank you. Go ahead Dick.

>> Richard Santos: I would second that direction that I think Sean is trying to get. I don't know all the workload of all the people that work for us and with us. But I remember when I was a young firefighter and the city overpaid me while they didn't take a year to get that money back they took that within 30 days regardless of my house payment or whatever have you. I remember I was down and out at the time and there was no appeal process or nothing like that, it was done like that. When we have retirees who need it, I'm sensitive to that, I think wait for Mr. Crosby to get back and this board get direction find out what the workload is and get this ASP. Since I've been here, I've heard this thing and now it's been over a year. Conrad and those that work with the active people get a lot of heat. It isn't efficient either. We should get down and get the job that the people elected to us do.

>> David Bacigalupi: Thank you Dick. Anybody else? All right. Next item is item 3.6, and just for information, I'm sure Russell will listen to this tape when he gets back from vacation. So all the sentiments that are compressed here will definitely get back to him. Item 3.6 update on electronic board packets. Is that you Donna?

>> Donna Busse: I'm not exactly sure where, I report to both boards I never remember what I reported to what boards. I did review a draft RFI, I should have a revised one by next week. I did attend the Cal PERS administrators institute, they did have a packet. The plans presented and the ones that were there were not doing it in the way we were envisioning. They were more on the lines of downloading it onto an iPad, we need something more secure. One hasn't done their disability yet because they are doing information on the confidential information. The investigations that our I.T. staff is doings is going to cuts us better, even the questions on the other plans, the other plans it's not going to meet their needs as well. We're moving but it's a slow process.

>> David Bacigalupi: Damon.

>> Damon Krytzer: This is one of those cases, can we not wait six months to decide? Is that possible?

>> Donna Busse: We have to sent out an RFI. It's not just iPads, give them a device which is something you can probably do pretty easily. What we're actually doing an RFI is a service to house our data where we can control, we put it on, put it off where it's not really downloadable, where you access the site to read it but you don't actually possess it. That's what we need to have for our disability packets because we can't have the medical information downloaded onto someone's device to pick up. Even if it's encrypted or password protected, it's still -- we pick up tall confidential information after the meeting. We don't want it laying around. That's what we have sensitive, we dkd can't we hire a technology consultant that's dealt with this before instead of reinventing the wheel?

>> Donna Busse: We are not reinventing the wheel. We're hiring a service and there are different people who provide this service. We need to hire the person who is going to do it for us. That's what the RFI is for. If we had a consultant we would have to have an RFI for the consultant. That's the way the purchasing works at this city.

>> Donna was there anything with the board books in terms of did you guys have any feedback on their product? That was kind of the original one that we had read about.

>> Donna Busse: We did look at board books. We also looked at several different vendors that do different things. That's the RFI as to which provider we are going to do to do this for us.

>> And was the RFI giving you forecast as far as pouring back data or storing off?

>> Donna Busse: Yes, there are a lot of companies that can do what we want to do. They are not I.T. policy with the board with the trustees. We can't foolproof everything so some it's just going to have to be an I.T. policy whereas you can't use your device or other things or things like that.

>> My impression is that if we want to try to move towards a paperless and you know when I look at this I definitely would like to go paperless because lugging this around is crazy. I think board books you know from what I've read this is some of the most sophisticated corporate boards who deal with extremely sensitive information. If we drill down into this and maybe not open it up too broadly, say these are guys that are dealing with fortune 100 companies and they are probably the best at what they do, and go with those guys and focus efforts there.

>> Donna Busse: I think we know who would be good providers for us. We just have to go through the purchasing process.

>> David Bacigalupi: Rose. Okay. You had to lug these around, too.

>> Councilmember Herrera: This is only a question, I don't know about board books but would you be able to use board books for the nonmedical hipaa kind of things where you can have access? I guess I'm asking staff.

>> Donna Busse: Right --

>> Councilmember Herrera: Would you have one that's in the cloud and a password or something.

>> Donna Busse: It would be for the whole packet as well as being able to load stuff onto our Website for the public packet.

>> Councilmember Herrera: Okay.

>> If I can follow up what might be interesting is do it as a two-step phase, take this stuff this that's not hypersensitive and start with that, see how it works, give everybody a chance to work out the kinks. And when you go to the point of wanting the supersensitive stuff, you've been where the weak points are.

>> Donna Busse: I don't think -- it's just a matter of getting a provider and we do have to go through an RFI to get a provider to do that. Unless you're talking about downloading nonsensitive material and giving it to you in electronic format, we could -- you know we could probably do that now. But --

>> Mollie Dent: I was going to -- for the regular board packet, for the nondisability information that's easily available now on the Website. Sometimes not everything gets posted early enough but a lot of it is posted and that's easily available. It's really the sensitive information that they're struggling with.

>> David Bacigalupi: Well one of the things I think they're trying to avoid though, if they just went out and got iPads and gave us the nonsensitive information, that may not work for the bulk like this for sensitive information.

>> Mollie Dent: That's my point.

>> David Bacigalupi: Trying to do it alt conclusive in one new electronic device.

>> Mollie Dent: Right.

>> David Bacigalupi: And I'll trade my VCR in for it.

>> Councilmember Herrera: So you can download everything to an iPad or to a Kindle? Can you download to it a Kindle? No, okay.

>> Probably.

>> It's the ability to interact and add information and make your annotations and have that saved.

>> David Bacigalupi: Okay, it's 9:30. We have a time-certain schedule, item number 4, retirements, time-certain at 9:30. We are going to take item 4.2 M as in Mary, the application in closed session first, we'll take a five minute

break and meet in closed session. Donna we pleating in this back room here? And with that we'll be going to item 4.2M an application for a service connected disability by police officer Vince Williams, effective October 6th, 2011 with 22 much 12 years of service. We'll be going into closed session as requested by the applicant pursuant to government code section 54957. When we're done with that item we'll come back into open session in this room. [Recess, followed by closed session]

>> David Bacigalupi: All right, we're back in open session. We were in closed session on item 4.2 M and for the record the application for a service connected disability retirement for police officer Vince Williams was granted by this board unanimously. Okay back up on the agenda, service retirements, I have an application for service retirement for fire captain Harry Jackson, effective October 1, 2011, with 23.08 years of service. Is fire captain Jackson in the audience? Doesn't appear to be. Do I have a motion, motion and second to approve. Any further discussion on the motion? Hearing no further discussion, all in favor, opposed, okay we have one nay, Krytzer.

>> My bad.

>> David Bacigalupi: You can vote any way you want. Okay, let's --

>> Damon Krytzer: My bad.

>> David Bacigalupi: Let's take a re-vote. Okay, the motion and second is to grant the application for a service retirement for fire captain Harry L. Jackson. All those in favor say aye, all those opposed, it passes unanimously. The next is 4.1B, it's an application for service retirement for police lieutenant John vanek. I don't see John in the audience. Motion and second, hearing no further discussion, all in favor, all opposed, motion carries. 4.2, service connected disability retirement application and Sean Kaldor would like to announce the board. You will see some of the newer ones and older ones. Sean.

>> Sean Kaldor: One of the things we identified and heard back from the forum there would be an opportunity taking advantage of the opportunity to improve the forms could make the decision making process much

easier. Collecting and presenting the details. Other changes we want to make, we're still working through the changes. In terms of the forms we were going to come back to the broader board, make that recommendation and then we realized it's just going to take longer and long tore get anything dong. But because the same thing is reflected just in a different order let's give it a shot. Dr. Das was well to work with us. For the packets that were not yet completed, he reflected it in a different way. Some of them were already reflected in the older way. They are coming at you in different directions. At the end of this process if we could get feedback or input to Dr. Das, just what you would like to keep the same or change, that's why the format is somewhat different in Dr. Das's summary section.

>> David Bacigalupi: Thank you Sean and committee members for working to improve that, Dr. Das as well. 4.2 A application for a service connected disability retirement by police officer Edward talley. For 22.72 years of service. Mr. Talley is presently and represented by Mr. Boyle.

>> Edward talley is applying for service connected disability left knee right knee right shoulder and neck. Mr. Talley has 22 of 72 years of service, currently on modified duty, that he should avoid sustained kneeling, squatting and running and he should avoid altercations with suspects. Permanent modified duty is available as indicated by the department.

>> David Bacigalupi: Okay, thank you Tony. Dr. Das do you have anything to add to the information?

>> Dr. Das: No I don't.

>> David Bacigalupi: Thank you. Mr. Boyle.

>> Can you hear me or do I --

>> David Bacigalupi: You have to push the button.

>> It's lit up.

>> David Bacigalupi: You're good.

>> The question here is, availability of work for per Grimes and his work status changed -- sorry. Mr. Talley. The work status changed. The note in the file addresses September 20th, 2011. On September 22nd, 2011, the primary treating physician Dr. Rollins reduced his hours not to exceed five a day, four days a week, no typing, no lifting, no kneeling or squatting or prolonged walking. That restriction was supposed to last from September 22nd to December 31st. Then on October 4th he extended the restriction to August 15th, 2011. I have copies of those reports here for the board since they're so recent they weren't able to get into the package and then would I like to call lieutenant Nguyen to answer the question of wether or not they could accommodate the part time work so how would I handle that?

>> Mollie Dent: I would like to recommend that since these have come in late Dr. Das would like to look at them also, not just the department in terms of whether or not -- because again Dr. Das is supposed to provide work restrictions too. So I think that should be something --

>> David Bacigalupi: Dr. Das have you seen these reports at all?

>> Dr. Das: The new reports, no I have not.

>> David Bacigalupi: My question is Mr. Boyle, since no one has had a chance to you review those then the department would review whether or not they could accommodate those restrictions.

>> So put this over until next month?

>> David Bacigalupi: That might be helpful to your client. Because the doctor -- nobody has a chance to read the new information and it might be very helpful to your client. Because as it stands there's two restrictions and the

department's saying they can accommodate those restrictions. Well it sounds like you have even more enhanced restrictions, that will change Dr. Das's mind which would also change the department's mind.

>> Okay.

>> David Bacigalupi: So that would be a suggestion.

>> That would be acceptable to me.

>> David Bacigalupi: Okay. We will defer this item till next month. And Mr. Boyle, I'd ask that you make sure that the office gets a copy of that new information and stuff, and maybe even Dr. Das gets a copy of that information.

>> I will, I'll serve it on retirement services and Dr. Das.

>> David Bacigalupi: Thank you.

>> Thank you.

>> David Bacigalupi: Okay next item is item 4.2B it's an application for a service connected disability retirement for police officer Gabriel Dekock. 22.11 years of service. For the record, officer Dekock is here. I don't have information on representation.

>> Nathan Bledsoe.

>> Gabriel Dekock is a police officer applied for a service connected disability based open lower back neck right knee right shoulder and right biceps. Officer Dekock has 22.11 years of service. She is currently on modified duty and the work restrictions from the medical director are, that she should avoid sustained squatting and kneeling. Department has indicated that they do not have modified duty available.

>> David Bacigalupi: Okay. Dr. Das do you have anything to add?

>> Dr. Das: No.

>> David Bacigalupi: Dr. Das, there's a mention on page 1-12 from the department that's responding to different restrictions than what you've listed. Do you have a comment on the other restrictions of only being able to work five hours a day?

>> Dr. Das: I bhoaf these are probably if she's currently working in a modified capacity in a permanent modified exaps capacity those would be relatively new restrictions, I'm not sure where the restrictions came from. They didn't come from me and so they're probably from her treating physician and I would expect that they would probably be subsequent to my evaluation and the restrictions I obtained from her doctor.

>> David Bacigalupi: Okay.

>> Dr. Das: Because if these were permanent restrictions she wouldn't be able to work modified I believe.

>> David Bacigalupi: Okay, Mr. Bledsoe.

>> The only thing I wanted to add was that they -- they aren't giving -- they don't have a permanent modification for her. The city doesn't have a job right now for her. There were some disability that the treating doctors have in the packet that describe shoulder surgery and multiple operations that there weren't restrictions placed by Dr. Das which probably add to the request. But I think it's time she's put in her years of service it would nice to get her retired if possible. If you want to leave her on modified we could go that route as well. But I mean -- we're requesting retirement.

>> David Bacigalupi: Okay, questions by the board? So there's no questions I'll entertain a motion.

>> Conrad Taylor: Move for approval.

>> David Bacigalupi: Do I have a second? Okay a second. Is there further discussion.

>> Richard Santos: Yes, Malaysia Mr. Chair. Not to correct you that bothers me too a great deal. When the officers are hurt in the line of duty we definitely want to help them to rehabilitate and so on. I don't see much of a choice. One person can get modified duty other people can't and they have similar injuries. This gets to be a little confusing. I want to be sensitive to the officers, do they want to work? I'm glad Rose is here. I hope our Councilwoman will take a message to the city. I know when I was a firefighter very tough times but talked to most of the board members and so on, and you know people want to work, those contributions to this plan to make it financially sound is needed. When people leave early that doesn't stabilize that at all. At the same time we want them to go out and do good work for our citizens. So this board is a lot of times caught in a real catch 22 and I don't enjoy retiring people but on the other hand if they need to be gone and can't do the job by all means but if there's a chance they can go out there and work for a short time and may be rehabilitated we will never find out. Those are difficult things that's my comment.

>> David Bacigalupi: Thank you Dick. Damon and Vince and Mollie.

>> Damon Krytzer: From the discussion it seems like the treatment has been chiropractic care.

>> She has had caper care has had multiple surgeries, treated by Dr. Lynn, she's had surgery to her shoulder her biceps and multiple PT.

>> Damon Krytzer: There appears to be extensive treatment options.

>> She has had multiple treatments and still continues to get treatment but the doctor is her chiropractor now.

>> Dr. Das, where are you? There you are. Do you have any other comments ton treatment options?

>> Dr. Das: You know there are injections and as I said earlier these are -- the restrictions are primarily based on pain. They're not based on functional restrictions. And so the issue is, are there options to manage the pain? Obviously the medications have not been effective in managing the pain, otherwise she'd be able to work more than five hours a day. Then the issue is whether there are other trigger point injections or injections which may help reduce the pain and allow her to do more. Because right now the restriction is based primarily on pain not on any type of instability or restrictive movement.

>> David Bacigalupi: Okay, Vince. All right. Mollie.

>> Mollie Dent: I wondered if the board might want the department to indicate where they got the work restriction for the five hours from. I don't see it in the packet. And then whether that is a permanent work restriction and whether or not that was what drove their decision on modified duty. In other words, whether or not they could have had a modified position available for just the sustained squatting and kneeling restriction.

>> David Bacigalupi: Okay, I saw lieutenant Nguyen in the audience.

>> One second. Good morning. The restrictions that came to us is from officer Gabby Dekock's chiropractor and those restrictions were not permanent restrictions.

>> David Bacigalupi: Okay, so the question was that Dr. Das had sent over what he listed as the restrictions. And the answer came back with a different restriction and that came from the treating physician, the treating doctor?

>> Right.

>> David Bacigalupi: Okay. Sean.

>> Dr. Das, could you expand on what you mean by sustained squatting and kneeling? What kind of -- is that sustained like for a long period of time, what does that mean as like no squatting no kneeling or is it like staying squatted down --

>> Dr. Das: Like if you were gardening or something like that, you were going to plant something, half an hour 45 minutes without moving. The idea is in between if you can you know stretch or whatever. But the idea is sustained is an extended period of time.

>> Thank you.

>> David Bacigalupi: If I can just clarify, a police officer doesn't do a lot of gardening during duty, Dr. Das, but a police officer could be wait be or guarding a building where they might have to squat to take a deafive position.

>> Dr. Das: Yeah, yeah --

>> David Bacigalupi: I didn't want the board to get the wrong impression about what could cause an officer to have to do that kind of a movement.

>> Dr. Das: I apologize I didn't mean to imply that. Okay? I couldn't figure out a good thing that I would perceive what a police officer would be doing at the time but thank you for --

>> David Bacigalupi: Having been crouched behind cars and buildings for years I know exactly. Conrad.

>> Conrad Taylor: Can I have an additional statement, we previous one maybe we need to review those restrictions before we make a decision. And if we have additional restrictions can we have access to those restrictions to look at them?

>> Mollie Dent: Well I think that if the department is prepared to answer whether it could accommodate just Dr. Das's restriction, in other words, if we were to ignore the five hour work restriction, would they still not have any modified duty available for her for just the sustained squatting and kneeling, could you move forward today. But you can't really move forward, because the five-hour restriction is not in the packet and the department has said it wasn't a permanent work restriction.

>> David Bacigalupi: Alex, can you answer that question? If the five-hour restriction that you have, we don't have a copy of that. Dr. Das's only restriction was the squatting and kneeling. Would you have modified duty if that was the only restriction?

>> If the five hours is not the restrictions then yes we do. However with the five-hour, if there is a five-hour restriction, the department is not in the position to accommodate the part time position.

>> Mollie Dent: Then it sounds like you are in the same situation with the prior application where there's a piece of evidence that's not in the record.

>> David Bacigalupi: Sean, you're next.

>> Sean Kaldor: My questions involve the same thing and it looks like we've reached -- I'm good.

>> David Bacigalupi: Russ.

>> Russell Richeda: The board might want to ask Dr. Das, to indicate to the board whether the five hour restriction is appropriate. If you know that today that might assist the board and also assist lieutenant Nguyen in resolving this application. You might not be in a position to --

>> Dr. Das: What it suggests to me if she has temporary new work conditions, that her condition is not maximally medically improved, hire doctor needs to determine whether she needs additional treatment to get her back from

the original work restrictions from a couple of months ago or whether these new restrictions are permanent work restrictions, I think what we've done is taken a step back because she's no longer MMI.

>> Mollie Dent: So I might suggest that if the applicant does have additional medical evidence they want to submit that the applicant be asked the same as the prior applicant if they want to defer this matter.

>> We agree to defer the matter and get the new medical evidence to the retirement --

>> David Bacigalupi: To the retirement office and to Dr. Das?

>> Yes.

>> David Bacigalupi: Great, we will defer this matter until next month. Mollie, how do we ham the motion on the floor?

>> Mollie Dent: If the maker of the motion could withdraw the motion and the seconder could agree.

>> Conrad Taylor: I'll withdraw the motion.

>> David Bacigalupi: The maker of the motion has withdrawn the motion and we'll defer this until next month. Item 4.2C, it's an application for a service connected disability retirement effective for police officer Eric Grimes effective October 6th, 2011 with 22.06 years of service. And police officer Grimes is represented by Thomas Boyle. For the record, Eric is present before the board. Tony.

>> Eric Grimes is a police officer who is requesting a service connected disability based on left shoulder and left knee. Officer Grimes has 22.06 years of service, his current work status is that he's on modified duty. He has work restrictions from the board's medical director that say Mr. Grimes should avoid sustained high impact activities with his left leg. The department has indicated that modified duty on a permanent basis is not available.

>> David Bacigalupi: Okay, thank you. Dr. Das did you have anything to add to this?

>> Dr. Das: No.

>> David Bacigalupi: Okay. Dr. Das, are you aware that the department's response to your restrictions is different than what you gave the department on page 1-10? You listed the restrictions should sustain high impact activities with his left leg. The department absenced back, Mr. Grimes was restricted to working 32 hours a week. We're in the same situation as last case, responding to questions that weren't asked.

>> Dr. Das: My answer is if these are permanent work restrictions, then if they are temporary, the treating physician needs to make determination as to whether additional treatment would return this person back to the original restrictions that they provided for Mr. Grimes or whether these are the new permanent work restrictions and then we would need to reassess based on that.

>> David Bacigalupi: Mr. Boyle did you want to add anything? We're kind of in the same quandary as we were on the last case.

>> The disability certificate came in on September 20th and says from that date till December 31st, 2011 so I think we need some clarification.

>> David Bacigalupi: Lieutenant Nguyen we'll ask you the same question as we asked you on the last case. If the 32-hour restriction, because you base your -- you've based the response of not being able to supply permanent and modified duty, but it was based on the 32-hour restriction. If you went to the restriction that Dr. Das gave you, Mr. Grimes should avoid high impact activity with his left leg, would you be able to provide modified duty at the department?

>> Yes.

>> Mollie Dent: So I think we have the same issue as on the prior two applications actually in the sense that the 32-hour work restriction isn't actually in the file. And hasn't been able to be reviewed by Dr. Das. So I --

>> David Bacigalupi: Okay. Question, sane?

>> I have a question for Mollie. So one consideration is that if there is not permanent modified duty, that would be one thing that would according to the rules that have been drawn up by the city that would qualify for disability, right? Now, from my perspective, also, it's important to establish that the cause of the injury is tied to the function of the job. Is that also correct or is that --

>> Mollie Dent: For a service connected disability retirement there is a causal element to it, yes.

>> Okay, thank you.

>> Mollie Dent: I think in this particular case, if the applicant wishes to submit additional documentation on work restrictions, they should be provided with an opportunity to do that.

>> David Bacigalupi: Mr. Boyle would you like to take that opportunity?

>> Yes I would, Mr. Chair.

>> David Bacigalupi: Okay, so we'll defer this item till next month and again I'd ask you to get the department of retirement services and Dr. Das the additional information that will help this board make that determination.

>> I will do that.

>> David Bacigalupi: Thank you.

>> Thank you.

>> To ask if going forward if the lawyers could make sure they have everything in place before we read all these documents because we're spending a lot of time reading the background information and these things are all being pushed off to next meeting. For the lawyers in the audience I would appreciate it if you would make sure that the information is complete before you bring the case in front.

>> David Bacigalupi: Well, the thing we have to ask is like on the last two cases, there may still not be modified duty based on the original restrictions. So we don't know, there may still be enough information to help us make a decision even though there's been additional information added after Dr. Das made his recommendations. So we're kind of --

>> Right but shouldn't they have all that together before they come in front of the board?

>> David Bacigalupi: We would hope. We would hope.

>> That's my point.

>> David Bacigalupi: Yes.

>> Just out of curiosity, why is it that the hours matter more than the injury?

>> Because the department is losing its resources and was shrinking. We need every police officer that's able bodied as we can. And the program has changed from 30 to 10 and the decision has changed and with the demand workload we have we cannot accommodate anyone in the part time positions.

>> David Bacigalupi: The department doesn't have any permanent part time positions and that's always been the case. The problem is, that restriction is coming in after the fact, of what Dr. Das has reviewed but the department doesn't have part-time positions. They don't have job-sharing and where I can work five hours and Conrad can work five hours we do the same job they just don't have the resources for that.

>> I may have just misunderstood that. I guess what I was hearing was modified duty based on the injury but we don't have modified duty based on the restriction of only being able to work five hours a day.

>> David Bacigalupi: That's correct.

>> I guess I misheard that.

>> Mollie Dent: That's correct. The department does have a modified duty program. The program is shrinking as indicated, the program has shrunk from 30 positions to ten positions but the modified duty program is full time only not part time.

>> That's correct.

>> David Bacigalupi: And the -- if the part time basis is a permanent basis then the department could not accommodate that. But we're not getting all the information to our medical director in time. Okay. Next item, 4.2D, it's an application for a service connected disability retirement for police officer Mark Freitas, effective October 6th, 2011 with 21.78 years of service. This was deferred from the June 2011 meeting and Mr. Freitas is present and represented by Mr. Boyle.

>> Mr. Chairman, the agreed medical evaluator sent in a report on the 6th of September. I don't know if Dr. Das had a chance to read it, but that increased the restrictions and then the treating doctor reduced the hours and now Officer Freitas is not working at all. But all of this information came in after the packet was developed after the

case was agendized. So Dr. Das hasn't had a chance to see it and neither have you. Maybe you've seen Dr. caton's report. I got that e-mailed in so it became part of the record.

>> David Bacigalupi: Dr. Das did you get an opportunity to see the additional information that Mr. Boyle is talking about?

>> Dr. Das: I did review it, it cam in the day before the deadline. I did review it. I don't believe Dr. Caton is the treating doctor. It is a consultant.

>> This is a consultant, the agreed evaluator, yes.

>> Dr. Das: Is issue is whether the treating doctor agrees and the medical basis for the restriction in terms of, I'm in total agreement with the presence of cardiovascular disease. The issue is in terms of you know the restricted workday, in terms of why -- in terms of the fatigue factor. Because based on the blood flow to the heart and damage to the heart there's nothing obviously present. And so I was in agreement with activity restrictions, but in terms of duration of time sitting and doing clerical work, I had an issue. I wasn't quite clear from the medical record why there was a restriction in terms of doing sedentary type work.

>> David Bacigalupi: Is that something you're prepared to discuss with Dr. Das today, or is there more information that you can provide him that might help him --

>> Dr. Das relies primarily on the treating physician who hasn't had a chance to see or comment on Dr. Caton's report and Dr. Caton's report said he should not be doing eneven the modified work, not as a police officer in any capacity. So Dr. Das could maybe comment on what he thought about that, kind of has already. But since there's also reduced work restrictions to which lieutenant Nguyen in terms of hours would have to address. Again I think we need to come back next month, after an opportunity to get these supplemental reports.

>> David Bacigalupi: Okay. First Dick then Mollie.

>> Mollie Dent: Sorry.

>> David Bacigalupi: Dick.

>> Richard Santos: Yes, Mr. Chair. In reading this that's what came to my mind, I was thinking yes we all would like to see modified duty but in this case we're thinking of his cardio, heart, thinking no matter what this young man does it's not going to work out. Just the fatigue that Dr. Das thought, stress and so on, no matter where you work you're a police officer, sitting at a desk or what. Who's coming in or what. I don't want this young man to pass away, when I read this thing pretty carefully it sounds pretty severe so I'm inclined to say this is a different situation and make the motion to grant this person a service connected disability.

>> David Bacigalupi: I have a motion, do I have a second?

>> Second.

>> David Bacigalupi: Mollie you're next.

>> Mollie Dent: I wanted to point out the medical information that's talked about is not in the board's packet. It's not part of the record. It hasn't -- it could be passed around for the board to look at today if they want to. Since Dr. Das says he's seen it. And the department could be asked to react to it. But if the board's going to make a motion, based on the information that's discussed, then it needs to be introduced into the record alternatively, the board could that is in my --

>> Mollie Dent: You were talking about two different doctors I think?

>> What I'm talking about the familiarity restrictions from the Kaiser doctor which I have here are not in your packet, yes.

>> Mollie Dent: That would be the treating physician?

>> That's treating physician, Dr. Ho. L.

>> David Bacigalupi: And Dr. Caton was an agreed upon medical examiner is that correct?

>> It was agreed between the department and myself as an agreed upon cardiac consultant.

>> David Bacigalupi: Sean.

>> As it stands what we've been begin the police department says yes we can accommodate his medical condition. It definitely seems like there's new information, that Dr. Das would need to evaluate and the police department can respond by saying yes or no and it would clarify everything. I think she benefit from all that information.

>> Yes, do I too.

>> David Bacigalupi: I tend to agree with you.

>> This is not only an hour restriction, this is also a medical restriction.

>> David Bacigalupi: Thank you. Russ.

>> Russell Richeda: I'm going to make the same comment as Sean.

>> I'll withdraw my motion.

>> David Bacigalupi: We'll delay this until next month.

>> Thank you, Mr. Chair.

>> Russell Richeda: Mr. Chair, I imagine there's no need to mention to lieutenant Nguyen that the restrictions that we're hoping the department would evaluate are the restrictions from Dr. Das. I know that's probably implicit and he's probably --

>> I discerned that.

>> David Bacigalupi: After the meeting. Okay. Next item, item 4.2E it's an application for a service connected disability retirement for police officer Robert chewey. The effective date is October 6th, 2011, 21.65 years of service. And for the record, officer chewey is present. And you representing yourself Bob?

>> Counsel is tied up in a trial.

>> David Bacigalupi: You ready to move forward on this?

>> Let's do it.

>> David Bacigalupi: Okay, Tony.

>> Robert chewey is a police officer applied for a service connected disability based on left wrist, neck, left shoulder. Officer chewey has 21.62 years of service and he is currently working on modified duty. The medical director's work restrictions are that he should avoid forceful gripping with his left hand. Permanent modified duty is not available as indicated by the department.

>> David Bacigalupi: Is not available you said? (inaudible).

>> David Bacigalupi: Oh I missed one, okay.

>> Yes, that's correct, as of October 1st the department has indicated they do not have modified duty.

>> David Bacigalupi: Thank you. Okay Dr. Das did you have anything to add to the information?

>> Dr. Das: No, I don't.

>> David Bacigalupi: Okay, did you want to add anything else?

>> I don't know what to add. I certainly didn't want to go out this way. I didn't get hired on to get injured. I enjoyed the job. It is one of the best jobs in the planet. I've worked as long as I could with as many injuries as I have. I showed up to work every day when I could. In pain. Dr. Das doesn't like the word pain. But I certainly suffered through enough.

>> David Bacigalupi: Okay, questions by the board or I'll entertain a motion. Sean.

>> My question is when I read this, looks like the injury is to your left hand but that you're right hand dominant. Can you explain how that ties into why you're not able to perform?

>> The department doesn't have a job for me anymore, as effective the 1st.

>> Could you also just go into a little bit about the injury on the left hand in terms of how it happened?

>> Yes. I was injured during an altercation while arresting a person that was assaulting his wife in a parking lot. Three other -- who other officers along with myself ended up in the hospital that night during the altercation. I did have a prior injury to my wrist when I was a child however my wrist was fine up until the date of that injury. I

sought some initial treatment, was off light duty for a couple weeks, went back to work, and after a year or so, pain continued. I had it reevaluated by a hand surgeon who indicated that my wrist joint had collapsed further. And the only solution for repairing my wrist joint was total fusion. At the time I declined total fusion. Because I wanted to continue to work. Which I did. For about another six or eight years before my wrist joint did completely fall apart, where I couldn't -- I couldn't work anymore. On that same occasion, that I injured my shoulder, it was also examined on that night. I had no other problems until, I don't know, maybe six, eight years ago. I suffered through that. And ended up having shoulder surgery in 2006. After my shoulder surgery, I continued to have shoulder pain and hand numbness in both hands, both shoulders, and problems in my lower back. My treating physician asked me to, after a nerve test indicated there was problems with nerves in the left side of my neck. I went and had an MRI and at that time, my treating physician said there was a problem, in every one of my vertebrae and disks in my neck. I went and saw Dr. Coe who indicated I needed a multilevel fusion. After battling the Mitchell commission I was finally approved for that. And in 2010 I had a three-level fusion of my vertebrae in my neck.

>> David Bacigalupi: Vince.

>> Vincent Sunzeri: So in the report here open page 4, there is a discussion, and Dr. Das, I guess I'm looking for more information on this -- it states that 20% of the injury is the industrial component. And 80% is related to an old injury. Can you expand on that for us?

>> Dr. Das: The issue is in terms that there was an underlying degenerative problem associated from the prior injury, the fracture, the cartilage was likely damaged. And so in terms of the issue is whether this would have been a progressive problem anyway. And I believe that's what the doctor was referring to, that it would have been a progressive problem anyway. It doesn't help to have the trauma that Mr. Chewey describes in terms of -- you know so it definitely could have been exacerbated from the fight, in terms of the injury he sustained, there was not really anything broken at that time or anything you know trurlly torn. It just looked like more was already damaged and further damaged.

>> David Bacigalupi: Okay, Conrad Then Russ.

>> Conrad Taylor: Russ this is a question for you. Is there a percentage that we need to look at and two, another question is going to go to Dr. Das. Do woe have restrictions on the neck, on the back? I'll let Russ go first on the percentage.

>> Russell Richeda: There is case law with respect to the law in the government code, concerning county retirement system, subject to the county employees retirement law. And that's appellate court not Cal Supreme Court. Appellate court decisions not a whole lot of them have talked in terms of percentages and said that 20% or more, that is attributable to work, is enough to find causation under, you know, industrial causation or job related causation under that statute, which for this purpose at that time, was substantially similar to ours. Subsequently and partly in response to those cases that statute's been amended to require a higher threshold. So when I read this I immediately thought of those cases and it immediately came to my mind that there's sort of a policy issue for this board. Because in this experience we very seldom get percentages in the applications that come before you. But we have one here. And I don't think you as a board have decided whether 20% is enough, with respect to the San José municipal code. But I think at the most, you have to find if it's substantial. And I think it would not be unreasonable for you to conclude that 20% is substantial. Obviously it's not predominant. It is not 50%. But, you know, it's also probable reasonable for you to decide it might not be enough. But there's definitely case law for the proposition that 20% is enough.

>> Mollie Dent: And I do want to point out that that case law is under the 37 act county employees retirement law. There are other disability cases, I mean the case law clearly indicates that you don't have to show 50% or more and then I believe there's one case down to about 8% being not -- being reasonable to reject it at 8%. But I think that in between that, that area of 8 and 50%, you -- you have a lot of discretion. And I think that you know Dr. Das can comment on whether or not he agrees with the percentage. But in general, it -- I would say that this is within the discretionary range for the board.

>> Dr. Das: Can I comment from a physician's perspective on the percentage issue?

>> David Bacigalupi: Please do.

>> Dr. Das: From a physician's perspective at least mine, the percentages that we ascribe to these are for the attorneys. They're not medically based. And so there's no -- there's no grade that we can measure 20, 20, 30, 40, 50. I'm kind of a lumper and not a splitter. I think if we need to split the difference there needs to be some accuracy associated with it. These percentages are not based on anything outside of this is what my person opinion is based on what I see at this moment in time. And it is one doctor's opinion. So my preference would be to look at the mechanism of injury and do the substantial versus minimal contribution rather than looking at 49 versus 51. Because I don't think it's-d I don't think it's fair because there's not a whole lot of measurement that goes onto this. We don't have any reference that there's any consistency.

>> Russell Richeda: And Dr. Das with respect to this application under your informational would you conclude this is substantial? Forget the percentages. I didn't see that in your report.

>> Mollie Dent: I want to say that I agree with Dr. Das. That the whole idea of percentages, courts even try to stay away from that if they can. And the question is, whether or not his disability arises out of the job. And so I think that Dr. Das's way of understanding whether or not the disability is substantially related to the job is really the correct understanding.

>> Dr. Das: You know, the problem that I have is more of an absence of information in terms of looking. If we had like a baseline in terms of prior -- you know, an MRI from dating prior or previous, and then looking and seeing what happened subsequent. So lacking that objective information, it becomes a little bit more difficult to say how substantial was the new injury. Compared to what it was previously. Mr. Chewey, officer chewey says he was completely unsymptomatic prior to that event and he continues to be symptomatic since then. And the only problem -- the only treatment option is a wrist fusion which I based on my review of the medical records I think is a very reasonable approach. He's undergone a lot of injections, to address the symptoms in his wrist which reflects that he's trying to dpawft conservative care and it's you know, multiple injections which tends me to feel

that probably surgery is the only thing that's going to make a difference for him since the injections are not going to be permanent and long-lasting. So, with that in mind, in terms of trying to figure out whether this is a substantial, you know, from a symptomatic standpoint it is definitely a substantial injury because there are no reports of him having any prior treatment for this, you know, in terms of medical that there's no activity or duty restrictions prior to this injury. The problem is, is that immediately subsequent he was also able to return to full duty, and it wasn't until later on that we have more of the clinical presentation that he's having, that he has difficulty with the wrist. So you know, I would -- you know, the surgeon who saw him attributes 20%. I would probably be closer based on, you know, in terms of what I understand about police work, I would probably be a little bit higher contributions, so you know, I would be a little bit more substantial about that, maybe 40 to 50 if you need a percentage but I would say that it is probably a reasonable injury. I would say if he didn't have the prior problem he wouldn't be in this predicament as well and if he didn't have this kind of injury the mechanism that he describes he wouldn't have this type of pathology. You definitely had to have the prior injury in order to have the clinical presentation at the time.

>> David Bacigalupi: Dick.

>> Richard Santos: Yes, Mr. Chair, it seems like we keep on talking about this young man's left hand, when you look at him he looks healthy, so on. When you look at him you don't see the pain. I see some people retire with 50%, some with 20, what have you, it's substantial pain and injury, is the issue. To me it's not simple it's pretty sad. He says he has complete hand collapse and hand surgery and then he had total fusion then he had a shoulder operation in 2006, lower back pain and a fusion on his neck. The key to this thing is, is this person if we don't say today is he going to come back six months to a year from today? The answer is yes. These are substantial surgeries that I know you don't get better, you just exist. He walks around with the pain. My motion is to grant a service connected disability.

>> David Bacigalupi: I have a motion. Do I have a second?

>> I'll second.

>> David Bacigalupi: Okay I have a motion and second. Yes, go ahead Damon.

>> Damon Krytzer: So based on what Dr. Das said we are making a binary decision, in this case? In this case it is yes and no.

>> Mollie Dent: I think Dr. Das, if I can restate what he said, basically said that the injury at work did contribute toward him being disabled. But he also said that -- and substantially contributed to him being disabled, I think, I think that's what Dr. Das said.

>> Dr. Das: Yes.

>> Mollie Dent: But he also said that it might not have done that had he not been previously injured, did I say that correctly Dr. Das?

>> Dr. Das: Did not do that if because there was no specific injury or trauma at that time that showed like significant bruising or anything.

>> Mollie Dent: From a legal standpoint it is not the applicant's burden to prove that the soul cause of the injury was the job. That's clearly not the standard. It is enough if it is a contributing factor.

>> Russell Richeda: And I think it's clearly established under related bodies of disability law but also under our plan that aggravation of a previous condition is enough to establish causation for purposes of disability retirement. And Dr. Das, even though he has underscored how difficult the analysis it is and how problematic it is, did tell you 40 to 50%.

>> David Bacigalupi: Okay I have Conrad then Sean.

>> Conrad Taylor: My question is directed towards lieutenant Nguyen in police personnel. Why are some of the modified position that we have positions and in some we don't have positions? How are we making that determination of, if you have a position or you don't have a position?

>> Well, currently because we went from 30 positions down to 10, in the consent decree it asks if anyone that are currently holding the positions, because we have more officers than want to come in than position available, so we as a department actually volunteer to vacate the positions. In this case because we're down to 10 those are in the top most seniority, that are in the program remain in those programs. So when we ask for vacations of positions if anyone within the top 10 want to vacate that spot then they're allowed the next junior person to enter the program.

>> Conrad Taylor: So if they don't vacate there's a position available?

>> If they don't vacate all we have is ten. If they already have a position they stay in that position.

>> David Bacigalupi: Sean.

>> Sean Kaldor: Those with that position, stay in the position, those forced to go through that. 28 or 29 years who have been working modified duty for several years we're instead seeing the people with 15 or 16 years just based on seniority, is that how that would work?

>> That's correct.

>> Sean Kaldor: Dr. Das, I have a question on the neck then I'm going to ask about the wrist. Question on the neck. On page 179, the physician provides work restrictions and the use of his rubber stamp and one word after it doesn't provide me a lot of detail. I wish they would summarize given how important these documents are in more detail but he says this person has an incapacity to perform these activities. And for documentation of that refer to my May 17th report which is the day before he wrote that, he. May 17th report it says, no restrictions with regard

to this current occupation, employees are released to full duty. So which is it? What or whoever if the applicant could help.

>> That report by Dr. Robinson --

>> Sean Kaldor: Let me see.

>> The one inconsistent position I've found being on workers comp and modified duty and such doctors don't like to say much. They don't like to be the one to say you can or cannot do your job. And Dr. Robinson in all trying to respect him as much as I can, he's one of those doctors who doesn't like to make those decisions. And what he is referring to in that report is there's no restriction, excuse me, that's part of my -- one of the side effects of the steel in my neck is, I get -- I lose my voice when I'm talking. Dr. Robinson was meaning that there was no restrictions in my current duty assignment which was a modified duty assignment. It wasn't meaning full duty as in back in patrol.

>> Sean Kaldor: Thank you very much that was important clarification. That was injury attributed 70% to work so it does cross that line. My comment on the wrist I think a lot of these things any time someone's injured there's always a chance to say well they had weaker bones or bad ligaments or those type of things so I think fundamentally if you are injured on the job just hike a car accident if somebody breaks your neck on the car accident you don't make the case oh they're a brittle patient and it wouldn't have happened if they were stronger. They have people that are deemed fit for duty, they get injured and they are not fit for duty. It crosses the line. It's 20% kind of low, but Dr. Das says it's pain 40 or 50%. That changes the whole perspective on the wrist injury for me. Thank you.

>> David Bacigalupi: Thank you Sean. Vince.

>> Vincent Sunzeri: So what I'm seeing here there is no restriction here given the neck injury. This is all specifically related to the left wrist?

>> Dr. Das: That is correct. I relied on his treating physician, felt to be he was not a qualified injured worker because he had a permanent modified job and looked like the treating physician felt he could return back to the modified duty. He provided prophylactic restrictions, that he should avoid extension and reflection. I would not expect officer chewey to return back to full duty, mainly for sedentary not for full duty work.

>> Vincent Sunzeri: And the second question is on the fusion on the wrist you had suggested that if he had that procedure, he may see additional improvement in the wrist.

>> Dr. Das: He should have -- if it's a successful procedure, he should have a lot less pain, but he would also have significantly reduced mobility in the wrist. So it would be a lot less functional. So I mean I don't think you would be able to return back to being a police officer after the wrist fusion because yeah it would significantly compromise his safety in my opinion.

>> David Bacigalupi: Sean.

>> Sean Kaldor: Briefly on your last point, you gave restrictions for a clerical job but said it would be more for a field patrol job. Wouldn't the restrictions be the same? I mean if he can't -- if you can't run, okay that's a restriction but they can accommodate it in a nonfield position. Why would you have given different restrictions or said you're cleared to return to duty other than this one line for modified versus full duty?

>> Dr. Das: For the neck?

>> Sean Kaldor: Correct.

>> Dr. Das: Because the doctor didn't provide any restrictions number 1 and then he provided prophylactic restrictions. So he didn't say there wasn't a specific reason why he could not return. In my opinion, I would -- for his wrist do I not want him to go back to full duty but based on -- if it was a successful fusion and he had been

able to continue working in a full duty capacity after the fusion I would have a more difficult time saying that there are restrictions from that. The fusion is either successful or isn't. We have to see if there is additional treatment that would make it better or it stays the same.

>> Sean Kaldor: Thank you doctor.

>> David Bacigalupi: Okay any other discussion on the motion? Dick.

>> Richard Santos: Dr. Das his prior left wrist injury it didn't contribute to his shoulder operation, his neck operation and fusion, and lower back, is that correct?

>> Dr. Das: I no, I don't believe that it contributed to the neck problems. Or the shoulder problems. But he -- he injured the shoulder during the same altercation, I believe.

>> Richard Santos: That's correct, officer?

>> Yes.

>> Richard Santos: That's my point. Sean was saying, these things are job related. And I don't see them getting better so thank you.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: Lieutenant Nguyen based on these restrictions we do not have a modified position for him is that correct? (inaudible) until October 1st effective October 1st we went down to 10 from 30. Officer chewey out of kindness vacated the spot for a junior officer.

>> Conrad Taylor: Thank you, that's what I needed to know, have you vacated the position.

>> David Bacigalupi: Is there any further discussion? Hearing no further discussion, all in favor, opposed, the motion carries unanimously. Good luck in retirement. I know you worked modified duty coming in every morning and working the stuff so good luck for you. In retirement.

>> Richard Santos: Officer chewey, for all the citizen of San José thanks for a job well done.

>> David Bacigalupi: Okay, item 4.2F was deferred at the officer's request. Next item is 4.2G, an application for a service connected disability by police officer Jon bonetti. For the record, Jon's present in the audience. And you're representing yourself Jon?

>> Yes.

>> David Bacigalupi: Okay, thank you. Tony.

>> John Bonetti is a police officer who is applying for a service connected disability based on left showered and both knees. Officer Bonetti has 17.12 years of service and is currently on modified duty. His work restrictions are that he should avoid sustained over-shoulder activities with his left arm and he should avoid sustain crouching, high impact activities or running. The department has indicated that permanent modified duty is not available.

>> David Bacigalupi: Okay, Dr. Das do you have anything to add?

>> Dr. Das: No I don't.

>> David Bacigalupi: Okay just for comment on page 1-12, the response from the department includes restrictions that Dr. Das, again, does not have. And I just want to clarify, from lieutenant Nguyen, you discuss a 20 hour or restricted work week of 20 hours a week, if you took that equation out of your response, would you then have modified duty available, or is officer Bonetti outside the ten and would not have modified duty?

>> He would be outside of the 10. He is outside the 10 right now.

>> As of October 1 I don't have a job.

>> David Bacigalupi: Okay so even with the 20 hour restriction there is no job available?

>> That's correct.

>> Conrad Taylor: Lieutenant Nguyen would he be inside the ten if those previous individuals come back and get approval?

>> Yes.

>> David Bacigalupi: Okay. Questions by the board? No questions I'll entertain a motion. Damon.

>> Damon Krytzer: I guess I was a little confused with some of this and I'm curious, I don't know, I guess both of you can comment on this. But the substantial injuries seemed to have happened at the academy. Is that right? I mean there were --

>> Excuse me, I've got a dictionary there. I've had multiple injuries. The first one was at the academy. They had us do the physical agility test on the third week. Even though we passed. My body went one way and the leg went the other. At one point they were going to release me from the academy. The city sent me to their appointed doctor he said yes it looks like you've damaged your knee but you can continue on which kept me in the academy.

>> Conrad Taylor: And what knee was it that you injured at the academy?

>> It looked like it was the right knee but if you look through the record both niece have had multiple surgeries ACL repair.

>> Conrad Taylor: But on page 1-8 did you have a prior injury to your right knee?

>> My right knee, in 1979, I had a meniscus tear which was just cartilage. And they repaired it and that was it. And if you look at my higher end documentation when the city hired me, I openly told that to the doctor. And it's in the records that shows that. Somewhere, somebody misconstrued a meniscus tear operation for an ACL operation. And that's all false. And I have documentation where I have sent paperwork forward to show where people made mistakes.

>> David Bacigalupi: Damon.

>> Damon Krytzer: It's Sean.

>> David Bacigalupi: Sean.

>> Sean Kaldor: I guess I'm a little hooked up on we have a position or may have a position depending on what board does with other applicants.

>> Sean Kaldor: How close is it now that we have three or four people deferred?

>> I think it would take two people.

>> Sean Kaldor: Thank you.

>> However just so you know that currently he does not have a position right now.

>> David Bacigalupi: See, what I think what may or may not happen, Jon you're off payroll.

>> I'm sitting at home twiddling my thumbs.

>> Sean Kaldor: It is a weird position, if he doesn't retire, someone else which take one of those spots that will be retiring in the future? We have a the whole list here.

>> I'm sorry could you repeat your question again?

>> Sean Kaldor: I'm just wondering if we end up retiring one of these peoples, there is a vacant spot that one of them are filled.

>> We have more than ten officers, we have 14 officers who do not have positions.

>> Sean Kaldor: If we approve all of these, the ones that remain behind will fill the ten positions?

>> Yes.

>> Sean Kaldor: All right, thank you.

>> David Bacigalupi: Any other questions?

>> So I guess Dr. Das, I'm curious about the shoulder injury. So you returned to full duty after you injured your shoulder and then you became symptomatic once you were on desk duty?

>> Yes --

>> That was --

>> I don't know who you are asking.

>> Dr. Das: I think Mr. Bonetti would probably be able to comment more what was going on how it relates to the shoulder instability.

>> All right.

>> I've hurt both shoulders multiple times if you look at my injury reports. I put off surgery on my left arm until I had to have it put back together with screws. I was off duty modified by the pfd for eight months and I was cleared to go back to the street. After a couple of years fighting with individuals I blew out one of my knees. I had a special brace made for that knee because I wasn't prepared to have surgery at that time. I think we were in the process of having a baby. Six months later, while I was having a brace on one knee I blew out the other knee so both knees were significantly damaged then I went through a process of operations to get my knees fixed, ACL, I have cadaver parts in my knees with screws and pins. Then when I was in a modified position my arms kept going numb. The Mitchell group paying for injuries was difficult to fight. It took me two years that they recognized back in the early '90s while fighting PCP suspects going to the ground on the street dmarnlgd my ulnar nerch and caused my arm to go numb and I was losing control and power in my arm. After two years they finally agreed and authorized surgery. At that time they rebuilt my elbow, you can see the nice scary have and because it took so long to correct the nerve damage it caused nerve damage in my wrist. I have carpal tunnel in my wrist. At the same time, the screws backed out and they had to go refix the left shoulder which today isn't fine for me but that's kind of a history of what I've been through, since I've been here protecting the public.

>> I have a -- I guess I don't know whom I'm asking this to but I'll ask it to David. Is there a way for us to address, out of context, the way we've addressed delay? As I've talked about, I've done two knee surgeries and I've done ironman on it. More problems happen, and then somebody that wants to go back to work --

>> David Bacigalupi: If I could answer from experience, Jon misspoam when he said the work comp or the retirement board, the retirement board doesn't do anything for repairs and part of the work comp process. I can tell from you personal experience and personal observations that it's a very frustrating experience. When you have X rays of bone chips in your shoulder, and I mean, visible evidence of injury and therapy is recommended by the treating doctor, just recently is within the last three months I know of one case specifically myself, that six therapy sessions got cut down to one. And a second request appealing that got denied. We have no control over the work comp process. And the city contracts with a private vendor to review the treatments. So it's a battle that end up in our lap. But to answer your question, I don't think we have any control on it at all.

>> Do we not have control, I'm going to ask Mollie, do we not have control or have we not taken the control that we have and exercised it?

>> Mollie Dent: No, you don't have any control over the workers comp process. You -- the disability retirements basically come forward at the point in time when that process is over because they have to be permanent and stationary in order to get a disability retirement.

>> (inaudible).

>> Mollie Dent: I can't really comment on whether there should or shouldn't be. All I can say is it's not within this board's purview.

>> David Bacigalupi: Dick.

>> Richard Santos: Well, it's not that I disagree, it's not in our purview. What I believe is that we can do a better job in terms of addressing these issues. Because it does have an impact on the system and that's what we're here for, to make sure this system is independent of politician, politician, what have you. When Drew talked about doing this retreat, we got to sit down and address this in a more positive manner, whether it's by letter writing or councilman, Councilwoman, we haven't asset down and constructively dreached in, I think you're right Damon

and we should do it soon. Officer, let me ask you this position, I feel for your pain and things you are going through because I appreciate the work that do you. If you had an opportunity to work modified duty would you want to stay a police officer and work that modified duty?

>> Yes, as long as I could. But currently, I think you addressed the part that have doctor put me on partial days. Is due to the knees I have to get up and walk around quite a bit to stretch them out. I think it's in the doctor's reports and a lot of time I'm denied that privilege. Sitting behind a desk for three hours my knees start to ache. That requires pain medication to try to address the pain but I try not to take that. I don't want to become you know what I mean addicted to pills.

>> Richard Santos: We don't want you either. Many of you weren't here a few years ago, and a few of us, this happened to us back in the '70s where all kind of firefighters and police officers are leaving due to police chiefs and fire chiefs playing politics. I remember hearing Dr. Das talk about this situation a while back. I think he's doing a great job and I think we need to take a look at what we can do from the medical standpoint of helping his office out for this board, at the same time writing letters but at the same time press it on our politicians this can cost us in a costly manner kneels can address some of these issues. Things that y'all know, we got to sit down and have this retreat soon and stand up, not keep having these meetings, because this is going to increase, people unsatisfied with their jobs or modified duty, this is compromises to make, we can do that if we sit down to do it.

>> David Bacigalupi: Thank you, Dick. Rose and then Conrad.

>> Councilmember Herrera: I'm taking notes. This is definitely the part of the job I don't miss. Sitting down and evaluating these cases because it's a lot to ask of folks who have a certain knowledge -- certainly not more than a laymen's knowledge of medical technology et cetera. I'm glad it is not me having to make the decision. But I think you're bringing out some really important points about workers comp. The city did do an audit of the workers comp program because we're very concerned about them, concerned about the numbers of those cases and how they get resolved. I will definitely take your questions back to the city. I think it's very important that we -- I want to be careful about saying I have a solution. I think it's very important that we figure out how we can get people

treated more quickly. Because I've heard this is a theme I've heard over and over and over again. And I don't know, you I don't recall now? Didn't know I was going to -- you were going to have this discussion today. I don't recall if that was specifically addressed in the audit, this time lag. But it's certainly, it makes just comofn sense that if an injury isn't treated soon enough, there could be other additional complications. So the city certainly has -- it's in the City's best interest to get people rehabilitated and back to work as quickly as possible so that certainly could reduce costs and I'm very concerned about what I just heard in the last few cases where we're looking at the reduced positions are down to 10 now. And so it's -- and it's based on seniority. And so we're seeing folks that are able to stay and actually seeing folks that are younger coming forward, who would not be able to qualify for those positions and that would simply increase costs. And so yeah, the whole thing is something we need to really look at. And I'd be happy to take all this back, and will.

>> David Bacigalupi: Thank you. Conrad then Dick.

>> Conrad Taylor: Officer Bonetti when did you go on partial days when did it start?

>> I think it was the beginning of September.

>> Conrad Taylor: You were on partial days beginning of September?

>> You mean partial days five days a week work week?

>> Conrad Taylor: Yes.

>> I think it was beginning of September.

>> Conrad Taylor: Do we have any documentation on that?

>> Workers comp to see when his work restriction comes in.

>> Conrad Taylor: Do we have additional restrictions that came in after the fact?

>> The police department said even without the hours he would still not have a position available. Sorry to jump in.

>> David Bacigalupi: Dick then Sean.

>> Richard Santos: Yeah I think Conrad has a good point. I think this board is what I sense a little dilemma here and I hate to see anybody be put in that dilemma. And I think that bringing back additional information or anything that helps this board would be I think a good recommendation. The other thing is, I'm glad that Councilmember Herrera is here to listen to this. And Dave made a great point, people don't know the Mitchell group and what's going on in this workers comp area. They don't have an idea. When we have this retreat of course we will have Dr. Das here, those are resources we got to sit down with the board, I know we will, I had a chance to sit down with him, he made great suggestions whether it be unions or negotiations or whatever, we play a role into this. We need to sit down as I'm repeating and use Dr. Das as a source. Because I've seen some improvements when I had a chance to sit down and have some dialogue. That would be part of that retreat, thanks.

>> David Bacigalupi: Sean,.

>> Sean Kaldor: Couple of quick questions, they're not relating to you but you serve as an example. Audit pointed out that workers compensation cost are being driven up by people manipulating the system to prepare themselves for a false disability claim. They want to limit disability claims to drive down workers compensation cost. That is not the dynamic that's happening. You are asking what kind of solution we can do and this relates to the previous point of reviewing the ballot measure and discussing what action or nonaction we should take. The ballot measure says if people disability retirement ore wise he doesn't get a disability retirement so to say to him whatever minimum wage menial jobs out there you can do that, therefore you don't get a disability retirement. It is a solution that's currently going to go in front of the voters and drives some of the decisions, we need to look at

that and see if he would have a role in that. Theern I support the application based on the information that's been presented here based on the disability and the level presented.

>> If I may, maybe there's some confusion, the pain in my knees the doctor ended up reducing my work week. Earlier it was discussed the consent decree, any time you have more injured officers that were in the program you ask to vacate. I signed such a letter that specifically tells me if you leave the program because you're outside the 10 you have no choice. I mean can you not come back. You vacate your position feck October 2nd, it should be noted that you volunteer to vacate and you will not have the option to return to the program. Other than that I'm outside the ten, I'm 14 or 15. Aside from my doctor saying I can't work more than five or six hours a day, lieutenant Nguyen says I'm not on work hours, I am sitting at home, making my own Tim. So I don't have a job now right?

>> What happened is when the number is officers is greater than position available, we would seek volunteers of those that are in the ten positions to vacate. So what happened was, we got responses from people within the top ten. If we have more than -- if we have more than two or three officers, then we go by seniority base. And so unless they were seeking for one positions and you have two people volunteer within the program then we go to the person with the most seniority and allow that person to vacate. In this case when we seek for volunteers to vacate the programs, there were several people that signed letter to vacate. But it wasn't enough to move all ten in. So we went by seniority based. Even within those of the 10 vacated, it didn't create enough positions for officer Bonetti to move in. Per Bonetti is one of the persons who signed the letter to vacate, and the letter states if you are within the top ten and you vacate the positions you will not be allowed to reenter the program. Officer Bonetti was not in the top 10, he signed the letter and so there was no position for him.

>> David Bacigalupi: Okay, thank you. Sean did you make a motion? I heard a second but I didn't hear the motion.

>> Sean Kaldor: I said I was supporting. I thought the motion was made, I thought it had better than made. Then I will make a motion for disability retirement.

>> Richard Santos: Second.

>> David Bacigalupi: Motion and second on the floor. Is there any discussion on the motion? The only thing the chair would like to say is, we've got a bunch of people that may or may not be retired which may or may not open the position. But unfortunately, I think we're hampered by the consent decree that the reducing the 30 modified duty positions down to 10. There's other departments that do not have any permanent modified duty positions, so this wouldn't even come into question of where are you on the list? I don't like to see somebody so young that would continue, would be able to continue to work modified duty to be retired. But I think he's given no choice and for that I would support the motion. Rose.

>> Councilmember Herrera: It's not on the motion but it's related to the discussion, I just wanted to say this since we're on the topic. I think the retreat is a great idea and I'm wondering if there is a point at the retreat where you'd have someone from the city be able to answer questions or dialogue with you guys. I just suggest that because really the city is trying to resolve the problem too. I just wanted to say one other thing. On the audit which I did pull up, I was trying to recollect it. To see why the costs are so high, because our cost rts higher than comparable cities. Because we've tried to reduce them. Even further is how long it takes someone to get treated. This isn't something we drilled down into. We are caught within the state rules, we don't have total control either. It's something to look into. The last I'd like to correct, the ballot measure is not for a minimum wage job. It would be for another job within the city or within I think there was some that thought talk of other government jurisdictions but certainly not private sector. They're talking about some kind of a job within the city.

>> Correct, any job in the city regardless of the pay of the job.

>> Councilmember Herrera: We don't have minimum wage jobs in the city.

>> David Bacigalupi: Dick.

>> Richard Santos: Years ago you would not only rate retirement, but that portion was added to that job, let's say for instance recreation personal and that's how you got the same wages. Do you rep that day? Okay there's something about that formula, on Dave's things too, for retirees, which you don't all understand, but you'll get some of this I hope in the retreat, when they this Mitchell group basically stalls United States and weigh go, wait a minute, we're not missing work, we're missing life, we're trying to get better, why would you keep on deferring, it's costing the city tremendous amount of moisten oonce the doctors who send us there figure out, wow, you're spending more, there needs to be a whole new ballgame that you y'all simply don't ups, especially when it comes to retire East, they want to be helped. You think the young people, such as Rose who is learning here right now, how do you have an ACL and have two years of waiting? That doesn't make sense. That is city-paid money. That could be resolved two years ago, that person could be working again making full wages, not sitting here costing the city way more money. Then you would have changed the position and trying to do a better job. We'll be addressing those, thank you.

>> David Bacigalupi: Discussion on the motion, Mollie.

>> Mollie Dent: I juts wanted to add something about when a position is available and when it's not available, I think the other thing I want to point out is there is a reinstatement to duty provision so if there is at some point an extra modified duty position available the department will have the option to try to reinstate someone to duty if they want to. It may not be -- I don't know what the process for that would be under the terms of the consent decree but there's certainly a process in our code for someone to be called back to duty if they're retired on a disability before they're 55.

>> David Bacigalupi: Or they can volunteer to come back.

>> Mollie Dent: Or they can volunteer to come back. So if you do wind up, somehow, having extra positions in the modified duty program available, there may be options for that.

>> Russell Richeda: The board may also wish to get some feedback to the department. This seems to be an unexpected catch 22 that maybe the board's discovered that I've only heard for the first time today but somebody in the sense out of the goodness in their heart or the pain they're under has gotten untolerable, they leave a permanent modified duty within the ten it sounds like if they volunteer the notice from the department says they cannot return, right? That's what we've all heard. They've given up their option to that duty and what if we don't grant the retirement? That seems to all be under the assumption that of course we're going to grant it. As we've just heard today these are complicated and it's not a slam-dunk that we're going to allow those applications. If we deny it then the person is totally out in the coul. That doesn't necessarily seem to be the way they want to structure this.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: , Mollie, with regard to how you just stated this, officer Bonetti is number 14 on the list and the first four that we went to that we deferred until next month, if we grant -- if we grant those disabilities next month and if officer Bonetti gets his disability or is granted a disability today, next month if these four get or the top four get granted a disability, this board or the city can recontact officer Bonetti and say -- and put him back into a position?

>> Mollie Dent: I think it would be unit to the city -- up to the department to make the decision about reinstatement to duty because I don't know what their negotiated agreement is in terms of who and how would get -- who and how -- if positions would become reavailable whether they would be offered to the position of people who have been -- whether they would wrap or be offered a newly disabled. I'm pointing out there is a return to duty station and a position for the individual, to try to come bang, he can only come back in a modified duty position he can't come back in a full duty position so.

>> Russell Richeda: Just update that particular section in the Municipal Code related to disability, retirees who are no longer incapacitied for the performance of duty and it seems highly unlikely this applicant would actually be capacitated, if that's a verb.

>> Mollie Dent: He would be capacitated to perform the modified duty position. He would not be capacitated to perform a full duty position but if a modified duty position were available and consistent with his work restrictions he might be able to perform that.

>> Let's call the question.

>> David Bacigalupi: If there is no further discussion on the motion, all in favor, signify by saying aye. Opposed? The motion carries unanimously.

>> Would I like to abstain as well.

>> David Bacigalupi: Okay I have two abstentions. John good luck to you. I know it's a confusing situation. Sorry, I know you're talking about fighting work comp it's not going to get any better as you continue getting your medical treatment just wish you the best of luck. Take care.

>> Richard Santos: Officer Bonetti from the fire and all the residents here in San José thank you for a job well done.

>> David Bacigalupi: Board need a break? Lets take a ten-minute break and then come back up here before the next case. [Recess]

>> David Bacigalupi: If I could have the board come back. I'm going to call this meeting back in session. Next item 4.2H, it is an application for a service connected disability retirement of police officer Donald Sprankle. He is if the audience. Tony.

>> He has 16.74 years of service. His current work status is he is on modified duty. The medical director has said he should avoid sustained bending and lifting. The department says there is no modified duty available.

>> David Bacigalupi: Do you have anything to add?

>> Dr. Das: No.

>> Robert Morgan Morgan for the applicant. He is on rather than modified duty.

>> David Bacigalupi: Thank you. Good call to the board's attention the actual wording from the examining physician I'm not going to attempt to say his last name, but Dr. Emicament withube, wrearn he no lifting pushing pulling prolonged sitting over an hour or standing. And that's on page 55 of the records.

>> David Bacigalupi: Thank you. Okay.

>> Councilmember Pyle: Questions by the board? If there's no questions I'll entertain a motion.

>> Conrad Taylor: Make a motion for approval.

>> Second.

>> David Bacigalupi: Discussion?

>> Yes, Dr. Das, one of the crbed, how should I read into that?

>> Dr. Das: There is a natural aging process that we have and then there's specific injuries that can -- that can contribute to pain and problems. So the issue is in terms of the information and they have in the record suggest that all of his symptoms are due to degenerative disk disease and there may be other components that are contributing such as you ligaments and muscles that haven't been necessarily addressed.

>> And I have a second question which is, is there no duty as far as being a motorcycle officer or I don't understand -- we had a case about that in the past and it was a little unclear for me as well. Should I distinguish that whether or not you could continue to serve as a motorcycle officer versus the car?

>> Actually the motorcycle was more easy for me, because getting in and out of a car with the vest and gun belt on, whereas the motorcycle actually alleviated a lot of that because I was able to lift my leg over and get on the motorcycle.

>> David Bacigalupi: If I understand correctly Dr. Das listed the work restriction and lieutenant Nguyen if I understand this correctly, that normally you might have a modified duty position. But again we're running into the fact that there's no modified duty positions for officer Sprankle.

>> That's correct. Because he asked his attorney to treefer he's on disability right now and until he returns we don't know what the restrictions will be if any. Even then, we only have ten positions left from the exempt program as of October 1st. And he's outside of the ten positions.

>> David Bacigalupi: Okay but he's on disability now but Dr. Das, the board's director, listed his restriction as must avoid sustained repetitive bending and lifting. And my question to you is: The 10 positions are taken up. That restriction would preclude him from having a modified duty position.

>> That's correct.

>> David Bacigalupi: Okay. Go ahead.

>> Dr. Das, on page 5, item 4, the doctor indicates that Mr. Sprankle's lower back condition has reached maximum medical improvement but additional treatment should reduce his level of impairment. Seems like a contradiction to me and I'm not sure how I read that.

>> Dr. Das: It is a contradiction. But I'm not sure what the physician intended by that, as well.

>> David Bacigalupi: Okay. Any other questions? If not, all in favor? Aye. All opposed.

>> Nay.

>> David Bacigalupi: Okay. Let's have the ayes raise their hands because there are so many echoes in here. Okay. One two three four five, the nays raise their hand? One two three. The motion passes. Don, I know you didn't like giving up the motorcycle or quitting police work so soon but I wish you the best of luck in retirement.

>> Thank you sir.

>> Richard Santos: Officer best of luck to you.

>> Thank you sir.

>> David Bacigalupi: Okay next item, 4.2I it's an application for a Service connected disability retirement by police officer Kyle Johnson effective October 6th, 2011 which 15.12 years of service and this was deferred from the September meeting. And for the record, Kyle is present and is represented by Mr. Sam swift. Tony.

>> Kyle Johnson is a police officer who was applying for a service connected disability based on his back. He has 15.12 years of service. His work restriction is that he should avoid sustained repetitive heavy lifting. At current he is on modify dude. And the compartment has indicated that they would have a modified duty position available for him.

>> I'm sorry, would?

>> Sorry would not, sorry about that.

>> David Bacigalupi: I was going to say what happened to the last few cases? Dr. Das do you have anything to add to your reports in the packet?

>> Dr. Das: No I don't.

>> David Bacigalupi: Mr. swift do you want to address the board?

>> I do. This is an old case. Officer Johnson has been on modified duty since 2001. He was injured in 2001 taking an uncooperative suspect into custody. He had to struggle to get him to the ground and handcuff him. He was taken off work by Kaiser at that time. He was then seen by Dr. Bellard and placed on modified duty. His MRI back in 2001 showed a four millimeter central disk pro turgs at L with central canal narrowing. he then continued to treat with Mr. Dr. Mellard. he was sent to a surgeon in 2001 but also in 2002, Dr. Far in 2002 saw him in 2002, said had he three bad disks with spinal stenosis and there are too many levels to operate. Surgical outcome low. He was in the process of a workers comp case and you'll see in pages 45 to 47 of your packet that in that workers comp case the city agreed to formal disiptions that were saying yes this man does have definite industrial injury to his low back and he was 40% disability rating that he received. Based on that, he continued to do his modified duty job. And would be continuing to do it for the next 20 years if it were available to him. He had an industrial injury in 2001. He's never recovered from that injury. He's been provided with modified duty and now that modified duty has been taken away from him. And he has no -- he has no place to go. It's the -- Dr. Das gives him permanent work restrictions. His treating doctors have given him permanent work restrictions. I think he's 15 or 16 on the list. I would ask that his application be granted because even though he would like to work, there is no work.

>> David Bacigalupi: Okay, questions by the board? Otherwise I'll entertain a motion. Chair will make the motion to grant the application or the a disability retirement, since nobody else wants to speak up. Do I have a second?

>> Richard Santos: Second the motion.

>> David Bacigalupi: Discussion on the motion? Anybody have any questions, discussion? Sean.

>> Sean Kaldor: Again if you could walk through on the back. You itemized.

>> Yes.

>> David Bacigalupi: Sees stoimple me he has worked a long time on modified duty and the consent decree has dropped that modified duty position. There's not enough spaces available for somebody this low on seniority. I don't see an alternative for him. Go ahead Dick.

>> Richard Santos: I think again not being a physician but just looking at the previous information and so on, if you get on one treated doctors, I've been there you keep getting injections, why don't you try something else? Not trying to tell you what to do but there are other doctors and other ways of looking at bulging disk and so on. One procedure of epidural injections not the case. Sometimes they work for some people sometimes they don't. I'm just curious if other methods were not looked at.

>> Answer that, first doctor that I saw was a specialist was Dr. Millard has a procedure called IDET. I had a frame go through that he said I was not a candidate for that. He put me on the epidurals those did not do any good at all. That's why I went to other doctors. Basically they suggested surgery. Most of them said it was a roll of the dice, 50-50. You might come out better you might come out worse. I wasn't willing to do that. Basically my options were surgery or modify the way lived.

>> Richard Santos: During this time was there a long periods of time where you didn't get treatment or can you kind of --

>> It was on and off. As you can see from the different doctors every once in a while would I have a -- my back go out on me and then I would go seek help. For the most part it didn't do any good. One of the last doctors I went to was K resge for that. All he said was I'll give you some pills and I'm not even going to go at a direction because I'd rather spend two or three days in bed. And deal with it that way. Because I've already had three shoulder surgeries. I Mo what pills are like and I don't want to get vouched.

>> Richard Santos: Are those shoulder surgeries part of work related?

>> Well they're work related but not part of my claim at all.

>> Richard Santos: Do the epidurals work for you for limited time?

>> Not at all.

>> Richard Santos: Not at all, thank you.

>> David Bacigalupi: Any further discussion? In one question. What does intense lower back --

>> It's just certain exercises to do.

>> David Bacigalupi: Okay, any other questions? If not I'll call for the question. All those in favor, say aye? All those opposed? Nay.

>> David Bacigalupi: Is that three nays? The motion passes.

>> Thank you.

>> David Bacigalupi: I don't know who's going to take care of the inside, you've been doing that for several years, did a good job of it. Want to leave further issues.

>> Right now I'll teach someone, I'm the only one.

>> Richard Santos: Officer good luck to you.

>> Thank you.

>> David Bacigalupi: Okay, item number 4.2J it is an application for a service connected disability retirement by police officer John Mitchell, effective October 6th, 2011 which 13.33 years of service. For the record John's in the audience and is represented by Mr. Boyle. Your packet looks like our packet.

>> Before we start Mr. Mitchell wants to defer his case, indefinitely. So he wants to not go forward today with his case.

>> David Bacigalupi: Okay. Thank you. We'll grant that. Okay, 4.2K is Francis Keffer, Tony.

>> He has 12.88 years of service and is currently on modified duty. The work restrictions prescribed by the medical director of that he should avoid sustained repetitive use of his left arm. He is -- oh excuse me the department has indicated that they do not have modified duty.

>> David Bacigalupi: Okay, thank you Tony. Dr. Das do you have any further information to add to your reports?

>> Dr. Das: No I don't.

>> David Bacigalupi: Thank you, Mr. Boyle.

>> Just briefly Dr. Das describes on page 1-6 that he has a cervical disk fusion and diskectomy and with those restrictions he is begin on 1-7 and month position available we would request that you grant his application for service connected disability retirement.

>> David Bacigalupi: Okay, thank you. Questions by the board? Russ did you have a question?

>> Russell Richeda: If there's no questions by the board you notice there's this theme running through, whether it's a shoulder injury, versus something to do with the Bracheo plexis. I don't know what that is. The important point to me is it also caused by the job. The doctors seem to disagree on the that issue factually. Something claiming it was a shoulder, others claiming it was the Bracheoplexis whatever that is.

>> David Bacigalupi: Dr. Das.

>> Dr. Das: The Brache oarvetionplex is is in between the neck and the shoulder. And there is a diagnostic quandary, why he has the symptoms that he has. The shoulder on the surface looks like the most obvious source for the problem, based on the mechanism of injury. But the evaluation of his shoulder doesn't show anything significant that would account for some of the symptoms described. Then the physicians have looked at the neck, to try to see if there's any explanation there, and based on the mechanism of injury it is possible that you know, the shoulder, you know, depending on how -- if the top of your shoulder and your neck are kind of stretched apart, you can have a -- you can put some tension on the Brachialplexus and perhaps cause some symptoms. It is low on the diagnostic differential but since traiment of the neck and the shoulder haven't resulted in any improvements of symptoms I believe the physicians are considering that as a possible source of injury. But the problem is, this many years after, it would be kind of hard, usually with the brachial plexus you kind of recover from the symptoms. So it's hard to -- it's a thought but it's hard to figure out where the underlying problem is for the nerve symptoms that he describes. That was my take from the medical records.

>> David Bacigalupi: Okay, thank you. Questions? Further discussion? Otherwise I'll entertain a motion. The chair will move to grant the application for a service connected disability. Do I have a second? Okay, I have a

second. Discussion? Hearing no further discussion, all in favor? Aye. All those in favor, signify by raising your hand. Let's do it this way, seems to be easier. One two three. All those opposed? Raise your hand. One two three four okay the motion does not pass. All those abstained? Okay one abstention.

>> Richard Santos: Abstention is I would like to hear more information.

>> David Bacigalupi: I'm not hearing more questions so I'm wondering what more information do we need, away questions could we be asking?

>> Richard Santos: I just request more information on this, I don't have enough for me to make a decision I'd like to make.

>> David Bacigalupi: Okay, Mollie.

>> Mollie Dent: So the motion to approve didn't pass. But the -- and I don't think there was a motion to deny. So --

>> David Bacigalupi: No.

>> Mollie Dent: It will remain pending because it hasn't been denied. And it would only come back with the information that's in the packet, I think, unless someone had some thought about what additional information they want. So --

>> David Bacigalupi: Well I would ask the people that volted no and abstained what kind of additional information would you need to help you make a decision on this case? Obviously, there's something lacking. The officer's been injured on the job. The department -- he has restrictions, the department cannot accommodate him, I'm looking for a suggestion by the people that did not support the application. What this applicant needs to do to receive his application?

>> Mollie Dent: I'd like to say what -- I think that it isn't the people that voted no, necessarily, but if someone abstained because there isn't enough information, then we do need to know what additional information at a person might need to be able to vote. Because the -- otherwise, it just drags on until you get another board member possibly, that's another possibility.

>> David Bacigalupi: Okay, Sean and Conrad,.

>> Sean Kaldor: To echo i'm very open to seeing what that point is or hearing discussion about it. It could equally go yes or no.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: (inaudible).

>> David Bacigalupi: Okay.

>> I'll comment. I think it's really incumbent upon the board member who abstained to request more information. It's not incumbent upon those who voted nay to justify why they voted nay nor sit important for those who voted yea to justify.

>> David Bacigalupi: Okay.

>> Mr. Chairman, if I might just make a comment. When there's no contrary medical evidence, when the injury is clearly service-connected, when the injury happened, it involved the neck and the shoulder. And when the department can't accommodate the disability, how can there be anything but a positive vote to grant the disability? Under away grounds could there possibly be not to grant the disability? The City's doctor has given the

restrictions. Hasn't said it's not work-related. I don't understand. I don't understand what I can do or away officer Keffer can do to change the board's mind.

>> Mollie Dent: I do have to say, for the record, that in order to deny the disability retirement, there do have to be findings prepared. So there does have to be some basis. There has to be a statement of the basis for the denial. Because I have to bring back a resolution. But I mean you didn't vote to deny it. There wasn't a positive vote to deny it. It's basically a tie vote at this point and it will come back to the board. At this point it will come back. And -- but if there is a denial, the reason for the denial does need to be stated in the resolution, whether it's because it was not service connected or because it was not disabling or because there were accommodations available.

>> Russell Richeda: And fads not only does there have to be a statement like that, there has to be evidence in the record to back that statement. Now you're able to weigh the evidence, and you could decide when there's conflicting evidence that Dr. A's report is more persuasive than Dr. B and therefore we're denying it on the base drf A's report but I at least in this packet didn't see that kind of conflict. And so, there are situations, there are cases not many that say, even though there's no medical evidence in favor of denial, you know you don't have a medical report that says he's not disabled and you don't have a medical report that says yes he's disabled but it was caused by something else, in the absence, there still are a handful of cases that do say you could just conclude that none of this is persuasive and that's enough. I personally have had to defend that kind of case in superior court, not here in Santa Clara County and got soundly trashed. In the record, at least in this packet I'm not sure I can.

>> I'll do it. I don't feel that I need to necessarily justify a no. I don't have a dog in this fight. Not a taxpayer, not a participant in this plan. When I read this record let me read some statements. Symptoms are not proportional to the shoulder problem he's having. Findings did not reveal there's a discrepancies from possible tendonitis, there's no evidence of a tear. I read discrepancy again. Improve work tolerance. That's what I pull out of this statement. So again, the fact that I don't need to justify voting nay, aside to respond to Russ, that's why I vote nay.

>> Russell Richeda: Those are clear and I only caught one of those in my review.

>> Richard Santos: Mr. Chair -- just for clarification. I think the key to this thing that there was a couple of things that said possible this and that. There was a couple of ones, the main one that got me in the dilemma candidate for fusion. That tells me what, what if the person had the fusion, would it be better to go back and serve or do modified duty or whatever have you. So that was a question in my mind and that's what made me pause. But to be critical of whether I abstain or not, you as you know, very, very helpful and sensitive and open. That's like Mr. Damon they vote they vote and the majority carries and what have you. This case I don't question the honesty of the officer I said well if it's a candidate you went to school for a degree but you didn't get one so I don't know the results. Maybe he's going to be repaired. Maybe something good is going to happen. I would hope so.

>> David Bacigalupi: Thank you dick. Sean.

>> Sean Kaldor: Just looking where we're standing on these we need to provide information to sway each other from one side to the other and completely open information, you monetized out a custom of points I caught, those are good points to put on there as far as being a candidate for surgery, symptoms are not proportional. I got to say are they overinflated, are they still enough? Those are good discussions, I'm open to considering my opinion, evaluating our way through that but to say I'm just going to vote and that's my vote I think I need to definite a yes and that's why I did a quick run through. Written summary some Dr. Das has prepared a written summary, maybe something that would itemize from all the report, documentation of it happening on the job, documentation of a murtd injury, documentation of the limitations and the summary of the city not having available position for them, and we could kind of walk through those point by point by point. Can you provide all the evidence you any is relevant for those, and maybe we can resolving that point by point by point. Otherwise we are split as a board and that's if not doing anybody any good.

>> Richard Santos: Through the chair, I don't want anybody to vote and feel uneasy. Anybody feel put on the spot. It is tough decisions here today. The more information we got we're here to help people when they need us and not let them down, at the same time make good decision. I appreciate that comment.

>> David Bacigalupi: Vince.

>> Vincent Sunzeri: I think one of the reasons we have Dr. Das here is to help us laymen go through this information, and come to a conclusion. And some of the importantly comments in there by Dr. Das were that more aggressive treatment may reduce the level of pain and improve work tolerance. Given the fact that that has not happened yet, I'm of the opinion he has not reached maximum medical improvement.

>> Conrad Taylor: Russ and Mollie, do you have to take more aggressive treatment? Are you required to take more aggressive treatment?

>> Mollie Dent: The applicant has to show that the disability is permanent. And so I believe there are cases that would say that you may have to take some forms of more aggressive treatment but not others. I don't think there's a one size fits all answer to that. I also think that if you're talking about more aggressive treatment, if the more aggressive treatment wouldn't necessarily -- if this individual with more aggressive treatment would still have to be on modified duty then there's -- there's no position available. I mean I think this is all -- this can all come back to you, maybe, in a better format. But -- and Dr. Das can perhaps address that. But as he indicated -- anyway there maybe that the surgery or whatever would not -- would not put them in a position where they could fully perform as a police officer anyway. (inaudible).

>> Russell Richeda: And nonsurgical forms of treatment versus surgery, there's no legal requirement to undergo surgery. But aggressive treatments if it was pills, medication, physical therapy, massage, then it would be a much closer call whether not undergoing there or refusing to undergo those would negatively impact your application. We don't know what Dr. Das's referring to so far in this context.

>> David Bacigalupi: So Mr. Boyle would you prefer to come back with that information, you know as you have heard the board speak?

>> I would, I think Mr. Kaldor's suggestion is a good one and I will do a brief and lay it all out.

>> David Bacigalupi: Okay.

>> This doesn't relate directly to officer Keffer. But I think one of the issues you have to be aware of is that we have 17 people coming up for retirement, we have two service, 15 disability and I think that obviously the City's cutting back and people are losing jobs but doesn't mean you are connected to a service connected disability. I understand the service connected disability, that's not specific to Mr. Keffer. I do think as a board we need to be aware that we don't neat to jeopardy our tax free status as a pension plan. IRS has very specific guidelines that if you are over 65% of granular disabilities that you're automatically audited in the private sector. I know we signed an IRS letter we haven't signed before I want to make sure that when we look at these things that we're not going to jeopardize our tax status because we are at 99% approval ratings on disabilities.

>> David Bacigalupi: Sean.

>> Councilmember Herrera: I don't have anything to say.

>> Mollie Dent: Let me explain it gets very difficult this is an evidentiary hearing, it would not be clear if you were actually testifying as a witness.

>> David Bacigalupi: Okay, Sean and Dick.

>> Sean Kaldor: I think this clarification will help. The doctor bifn a more significant restriction those are the things to work out. I think we're looking at different pieces, you can look at them differently and completely open to seeing a more complete discussion and we can go through that point and it lands where it lands.

>> David Bacigalupi: Dick.

>> Richard Santos: I thank Sean for bringing this up. Someone mentioned brachial plexus, whether the symptoms are do to the shoulder injury or neck injuries, there are some questions I have. Other than that I understand the big picture because I think when you come back here and go through what he has to do I see positive things come out of it.

>> Sure. And I didn't mean any disrespect to the board members who voted no and I didn't mean any disrespect to you who abstained. I just wanted to understand --

>> Richard Santos: The wait came across I did take exception.

>> Sorry I apologize.

>> Richard Santos: But I'm back to you and I say thank you.

>> Okay.

>> David Bacigalupi: So we'll put this off until we hear back from you with more information. Item 4.2L is an application for a service connected disability from police officer Jeff Thornley, for the record Jeff is in the audience and is represented by Mr. Boyle. Tony.

>> Jeff Thornley is a police officer who is applying for a service connected disability based on his heart. He currently has 10.68 years of service and the medical director has indicated that he should would I extreme and or sudden physical activity. Department has indicated that he does not -- do not have modified duty.

>> David Bacigalupi: Okay, thank you. Dr. Das do you have anything to add to the medical records?

>> Dr. Das: No I don't.

>> David Bacigalupi: Thank you. Mr. Boyle.

>> Thank you. It doesn't seem like there's a problem with the disability. And he can't do patrol. But Dr. Das mentioned that it wasn't clear about the coronary artery disease being related to the work at the San José police department. So I wanted to address that. The short answer is, to refer to Dr. Nakuzi's report who was originally the City's doctor and then the agreed medical examiner in the case, on page 12 of your material. It says it is leer that during his employment with the San José police department, officer Thornley developed and mfd no one is denying he had existing coronary artery disease. Then Dr. Nakuzi says on page lane and 14 of his materials, I apportioned to a reasonable degree of medical probability the coronary artery disease permanent impairment 50% to the cumulative trauma March 8, 2010 that is the San José work and 50% to the cumulative trauma up to November 27th, 2000 which is when he had his heart attack and had his prior work for another department. So that's the short answer. But a more thorough explanation includes my letter to retirement services, pages 3 to 6.your material, going through the medical reports and pointing out the work relatedness. No one denies there is preexisting coronary art disease. The question is what part did the 10.68 years of service contribute to officer Thornley's inability to do patrol? I want to give you a little bit of history of officer Thornley's 10.68 years. His first day of work he had a heart attack. That was on San José's time. He returned to work approximately three weeks later to full duty status as a San José patrol officer. He was responsible for patrol type activities such as physical arrests, many of which were with combative subjects, report-taking and accident investigation. In 2003 he was assigned as a CIT officer, a critical incident team. Which their purpose is to handle suicidal subjects and mentally ill subjects. So he did that along with his regular patrol duties. In 2006 he was promoted to detective for the financial crimes unit. While in that position he wrote no less than 15 search warrants, executed no less than 50 search warrants and though usually involved exative subjects. In 2007, he was approached by the bureau of investigations and the narcotic and covert investigations, and they asked him if he would play a role in a deep cover, undercover operation to combat the metal theft epidemic that was going on in San José. This operation was called operation melt down. It was a 24-7 type of operation and was very stressful. A small hand picked

group of detectives officers and sergeants from the San José PD and the Santa Clara PD opened an undercover scrap yard. This operation lasted over one year. The operation yielded over 270 felony arrests, recovered tons of stolen copper, 40 stolen vehicles, 70 stolen firearms and seven cell phone activated bombs. This operation was the most stressful task in officer Thornley's career as a law enforcement officer. In 2007 towards the end of the operation melt down he had a heart related issue which kept him out of work for three to four weeks then he trowrnd full duty in the undercover operation. Page 23 of your materials, Dr. Nakuzi says that this is a work related event. In 2008 his cardiologist advised him that he should no longer exert himself in extreme stressful situations and his duties as a detective were modified to avoid extreme stress. He maintained his modified duty status as a detective in the financial crimes unit and in 2010 had another heart related issue and a second stent placed in his heart. modified position was too risky for his heart health and took him off work entirely. He's been on disability since that time. Therefore I would urge that the medical evidence of Dr. Nakuzi the agreed medical examiner with no contrary medical evidence based on the facts and the work history would make it clear that officer Thornley's 10.68 years of work for the San José police department establishes the relationship between officer Thornley's current heart disease and the work at the San José police department. Therefore I would urge you to grant his application for a service connected disability retirement.

>> David Bacigalupi: Thank you. Questions by the board? Dick?

>> Richard Santos: Well, like all of them, I read it thoroughly you know and I'm sure part of me says well you know you came from a different department, you had this coronary disease and then I go to premedicals and for years, Dave and I both thought why couldn't we have had better medicals, why couldn't we have seen this at a different time other side of me says once you come to work here and I know the josh he's doing detective all the things you're talking about, the tremendous amount of stress, then he has a heart attack. The point is his dad had one at 37, fortunately survived. so I take that responsibility it worked for the family now we've got to protect him. I feel bad may not satisfy this situation. Very tough on a young man so with that I'm going to go ahead and make the motion to grant ow a service connected disability.

>> David Bacigalupi: Do I have a second?

>> Conrad Taylor: I'll second for discussion.

>> David Bacigalupi: Okay, have a second. Go ahead Sean.

>> Sean Bill: Sounds like a very stressful job. My dad had three heart attacks I totally know that's crazy stuff. My question to Dr. Das, no question that there's coronary heart disease and there's a heart condition. For me the big connection is, is it service connected in terms of the service connected disability, is it driven from work? And if you could expand on that to me, that would be helpful to me. For me, laymen's perspective are hereditary, are.

>> Dr. Das: As far as the work relatedness of cardiovascular deit is presumptive from the state of California. And it is difficult from an epidemiologic concrete evidence that there is relationship, more so with firefighting than police work but there's also more evidence that supports the relationship between you know people in Public Safety and having heart disease in terms of the mechanism it's unclear. But on a grander point, genetics and lifestyle are considered the major, major contributors. That's the major issue. From my standpoint I personally feel this is a preexisting coronary heart condition that came -- that he was symptomatic at the time he started the work here at the city. And then was already experiencing chest pain and angina and then started to do a little bit more running to a meeting and then experienced a heart attack where there is -- heart was not getting enough blood. And that was the first day. So it's very hard for me to say that you know, go forward 20 years later and say this is related to work at the time City of San José. Like I said, apportionment is a difficult, difficult thing to do. It's opinion-based, there's not wait science associated with it in terms of what the percentages. So that's just where I -- that's just where I come from. I'm not saying that I'm right or wrong. It's one of those things that's an opinion.

>> Sean Bill: Thank you.

>> David Bacigalupi: Dick.

>> Richard Santos: Dr. Das, wouldn't you say that doesn't a job induce more stress and more -- and so why wasn't this detect whed the young man came on the job you know years ago we talked about and you told me a while back we can't do that. Why? Why wasn't it detected then?

>> Dr. Das: You know postguidelines we would detect something like this, we go through a screening EKG. If an EKG doesn't show any evidence of an ischemia we wouldn't go forward with anything. Currently we're very aggressive about cardiac issues because it is the major issue for police officers and if they have even a little bit of left ventricular hypertrophy we're concerned about it. Back then I'm not sure what we were doing. It's coronary artery disease translates to blood flow to the heart muscles. When you have a heart attack or myocardial infarction, typically the heart muscles die and that's a component of the heart that is not working. In his particular situation what they are attributing to his problem is not necessarily the large vessel disease, like the big ones you get from the cardiac catheterization, they're saying small vessel disease. You don't traditionally think of small vessels or capillaries or the blood vessels downstream of the big arteries getting occluded in the heart and causing problems. But that is part of the problem with the exercise treadmill test and all of those looking for evidence of significant heart damage or ischemia. It is not present in his case. That's what makes it a little more difficult for me to say slam dunk here is someone with cardiac large vessel disease here it's related to work at the City of San José. But yeah, so I -- I think that the work here can definitely contribute. Is that the punch line?

>> Richard Santos: Not what I'm looking for, just that's what I would believe. A family member everything is fine and all of a sudden what do you do, when something happens, does the occupation contract to it and you're telling me that's correct.

>> Dr. Das: Yes, I --

>> David Bacigalupi: Okay Sean then Damon Conrad then Vince.

>> Sean Kaldor: So I'm kind of zoning in on the same issue of just -- I get cardiac is presumptive work related. I get with the experience in the police service that was definitely a contributed area or causational. The challenge to

me is it's got to be the City of San José's employment and day 1 we have the record that says there's nothing unusual from a physical or emotional standpoint that was viewed at contributary, the chest pain was a late manifestation of a hard edition or trouble. And put it says such heart trouble condition mfd or scots valley police department. I would turn to the attorneys and ask, how -- what would be your view on that specific legal point?

>> Russell Richeda: Well I think like any experienced lawyer I would cop out. I think there's the clear fact of the heart attack on the first day. There's equally the clear fact of what Mr. Boyle presented of possible work related causes during his period of time of work with San José. We all know the doctrine of ago gages but it has to be substantial aggravation, I think that's the standard. So I think that it's fair to throw this very difficult ball back to Dr. Das. Was all of the following manifestations of heart conditions and heart issues that occurred when he was employed by the City of San José, employed for a long time in apparently high stress situations as were just explained, can all that together constitute substantial aggravation of the obvious conditions that he brought into employment? And I think the board needs again a yes or no in a situation that I know is difficult to come to a yes or no answer but I think that's what the board needs.

>> Dr. Das: Personally, I was looking at one of the medical reports just by I believe it was by Dr. Nakuzi in which he described or was it Dr. Ng? How he enjoys the work here at that time City of San José and he's happy as a patrol officer. So for me in terms of looking at substantial stress here at the City of San José compared to substantial stress at scots valley I don't think there is a comparison at least from are what Dr. Ng reports on page 91. I -- you know, I -- you know, the issue of how much of an aggravation I guess in terms of the significance of the contribution to his current problem, I personally have a more difficult time compared to others that we've seen here in terms of saying comfortably that the City of San José has contributed to the coronary artery disease. The stewed is there's not real substantial heart damage. The exercise treadmill tests have shown pretty good heart function. It's not like there's an obvious cardiac program where if he came to me today, police officer, the reason why I support my restrictions for him is that he has this history of hard disease, a hard attack, and it's very reasonable to continue experiencing symptoms after that. But at the same time, if I wanted to refuse him being a police officer I don't think I would have -- I would have that ability. Even with this history.

>> David Bacigalupi: Damon you're next.

>> Damon Krytzer: I just wanted to ask Dr. Das are you saying the stressful activity at the San José PD for the 10.something years was or was not a substantial cause?

>> Dr. Das: I don't believe it was establish compared to Scott's valley. Dkdz how can you say that when you refer to Dr. Ng's report which was done in 2002. What about Dr. Nakuzi's report that was done in 2010, when, in 2007 he had a stent put in his heart?

>> Dr. Das: I don't know that there's a one to one relationship between the stress at San José and treatment that was required in terms of the blood vessel disease. And so as we said you know age 37, heart attack, significant coronary artery disease at that time. It's very hard for me to say that you can -- you know we're focusing on the stress, whereas genetics obviously plays the larger component and then when we're talking about stress, what the contribution is, it seems to me that we've got a duration of time here. Some of it, you know, last three years have been in a modified capacity and so we have a shorter period of time, it seems like. Where from 2002 to 2008, compared to the 12 years at Scott's valley, I don't know how you compared the two. And there's definitely a contribution. But in my opinion, and I say it's not scientifically based, neither is Dr. Nakuzzi's, it's only opinion that I don't see the substantial nature of it. And especially when we have someone coming in on the first day having significant symptoms. It's very hard for me to say oh yeah, these are significantly aggravated. This was a significantly -- we're not talking about just X ray findings. We're talking about a significant event.

>> So you're saying it's just all naturally occurring, whether he worked as a police officer or a lawyer? It wouldn't make any difference?

>> Dr. Das: I'm saying that the genetics play the major role. In terms of what the specific work at Scott's valley compared to the specific work at the City of San José, it sounds like the 12 years at Scott's valley were significantly very stressful compared up until 2002 as you point out and then the six years we also have to realize that there's not any evidence of significant heart damage. And there's the -- the testing to show significant heart

disease in terms of reduced blood flow, it's not there in the medical records that I have. So it really isn't, you know, that's where they're opining or thinking that this is small-vessel disease. So it's hard for me to say -- and as I said based on what the medical records show here, I don't know that I would be able to say you cannot be a police officer here. He doesn't have left ventricular hypertrophy, the exercise treadmill test, he performed well, he was playing racquet ball for a short period of time, that is highly exertional activity. That's why I say this related to work here in San José.

>> One is the relationship between the heart disease and the work of San José isn't supported was a statement I read. The second one we haven't addressed is that there is no objective prunltd to do so. We haven't talked about that at all so maybe Dr. Das could you elaborate on that?

>> Dr. Das: Well, the exercise treadmill test that shows good profusion of the heart muscle, there's no dead heart muscle after the heart attack. And so that's the objective information I'm looking for to say you've got restriction. You have to look at his history, a heart attack at age 37, coronary artery disease, if he were my patient would I not want him to exert himself based on that just because I don't think it's wise or prudent for him because he has that history. Even though I can't say point at something and say you can't do it, I would still strongly feel that he shouldn't do those kinds of things based on the history alone.

>> David Bacigalupi: Okay, Conrad then vines.

>> Conrad Taylor: This is going to be directed at Dr. Das and I think he answered some of these. But medical exams when they come before to be hired, EKG when did we start doing that or looking at the heart, do we know?

>> Dr. Das: I know we've been doing it since I've been here in 2003. And the EKG, if he was depending on how long he was symptomatic I believe we could have probably caught ischemic changes on EKG at the time of hire. I don't know that for a fact. I could try to pull his -- try get the original chart and see if we have the EKG from the original chart when he was hired.

>> Officer Thornley said he did have an EKG when he was hired.

>> Dr. Das: There was nothing obvious because he was hired.

>> Conrad Taylor: You're talking about the blood vessel disease and stress, the blood vessel disease is clogged vessels?

>> Dr. Das: Correct, yes.

>> Conrad Taylor: High blood pressure would lead to LVH, he has left ventricle hypertrophy if he had it.

>> Dr. Das: He's got a strong history after having a heart attack. The problem is he's responded well to treatment it looks like. But there still are issues, when he becomes symptomatic, and it's not clear what kind of physical activity triggers it. So that's kind of -- that was kind I my issue.

>> Conrad Taylor: And the last, should he be in some type of environment which would be uncontrolled immediate stress environment with his condition?

>> Dr. Das: I don't -- I think it's wise for him to avoid uncontrolled physical activity. So what would I recommend, and this is what I've said in the past, I want you to get out there on the treadmill. I want you to exercise as maximally as possible but that does not equate to chasing down a bad guy in the streets. Because it's a control situation, you stop when you're tired, you don't -- in an uncontrolled situation you're chasing down someone, you don't have that opportunity to just say I'm going to stop right now, you have to keep going and push yourself. So in those scenarios you could get less blood floe to the heart, causes keep ya and does that make sense to you?

>> Conrad Taylor: It does. Is it related to San José or to Scott's valley?

>> Dr. Das: That to me is the operative issue. It is an issue that is not scientifically based.

>> Officer Thornley, I mean, it's unfortunate that you had this condition that you're challenged with right now. I'm looking at the evidence from the fact that you were already challenged with this hereditary condition, that you experienced through your career at Scotts valley police department. And then I look at the fact that this happened on the first day of work in San José, but yet you continue to serve for the city for ten years. And in my mind to some extent San José deserves some of the burden. But here's the thing that's most concerning to me. Is that the condition can be exacerbated and playing racquet ball that is one of those events that can exacerbate that condition. When I'm reading the evidence I'm questioning why should you be doing that activity, when the first day running to your car to get papers, you experienced a heart attack. I'm concerned that that could also happen playing racquet ball.

>> Can I respond to that? I'm new at this. My dad had a heart attack at 37 or 38 years old. He was a three pack a day smoker. He drank heavily. And he was extremely fat. He's alive today because he stopped doing those things. And as far as I'm concerned, I don't smoke and never have. I drink wine occasionally and I try to watch my weight. Racquet ball it was a one time event with a friend and that's what caused it that one time. I try to stay fit walking with the wife, and things like that. So I don't have heart disease. I don't know, I'm not a doctor, but I can tell you that as far as showing a history, my dad and I are complete opposites. So I don't know if that answers your question, sir. Beeps Dick.

>> Richard Santos: I think right there that shows what kind of a person this officer is. He kept on working to improve himself. Worked out and doing what he could do. He could have gone home that day and said this is enough. But he kept on working.I applaud him, many of us have injuries but we love the job, you keep on working. I applaud you, that's why I'm saying, could you have quit the first day but you didn't. Unfortunately regardless of what you have you gave 100% and now you're injured and we don't leave anybody behind and we're going to take care of you I hope.

>> David Bacigalupi: Any other questions by the board? Okay fm if there's no first discussion we have a motion to on the floor to grant the application. Conrad.

>> Conrad Taylor: Dr. Das, I don't remember it, there was no left ventricle hypertrophy? He doesn't have it? I don't remember reading --

>> Dr. Das: I don't think so because I would have incorporated it. I'll double check and see but that's usually one of the things I look for because that is actually a postrequirement issue and it's pretty -- yeah so if there's left ventricular hypertrophy, I will check. I'm pretty sure there wasn't because that would have been a pretty significant issue for me.

>> David Bacigalupi: Sean.

>> Sean Kaldor: run for sometime, burning sensation, you tend to ignore it because it usually goes away in two to three minutes and incident in 2000. There's something preexisting there. There's the documentation there, at some point a doctor attributes 50% of the current disability to the 2000 incident and 50% to the 2010 incident and there was a couple of snebts in between. So with that additional information, again I turn to the attorneys there is a preexisting condition I believe and I understand occupational causation, absolutely. But then you have something that triggers it or aggravates it or makes it worse, while we're there that one doctor says it's 50% due to the time between when he was hired and the subsequent event. Dr. Das wasn't as convinced or as confident in that conclusion. But if it was -- let's say it's that high end, let's say it was 50% caused at work then it would be San José causation. I'd ask Dr. Das again, this is what is boiled down to me. Between today getting hired and the subsequent events that happened, can you -- I think you've already answered it but I ask you to clarify again, your view on whether San José work was a significantly causation factor or whatever percentage you want to put on it.

>> Dr. Das: Yeah, I just don't see the one-to-1 correspondence between the time at San José and the progression of the disease when they come in day 1 with this significant left of vascular compromise. I have a hard -- it's hard for me to do. But as I said it's not scientific, this is opinion, you know, I try to -- I want to distance

myself from saying that this is a hard and fast. It's just an opinion based on what my review of the medical records. It's not that this has to be.

>> Conrad Taylor: Then I would ask do you believe there's any other information that you would provide as an applicant that would document the San José work causation that we're not taking into account at this point?

>> I'll let officer please -- once again I apologize for interjecting. Are Dr. Das I respect him but he attributes this to Scots valley. Are any of you familiar with the town of Scots valley? Scots valley is a town of 10,000 people. It's basically Mayberry RFD. As far as stress goes, it's getting the cat out of the tree. That's why I chose San José. That's it.

>> David Bacigalupi: Mollie, could you just refresh my memory? I know the board has another option here in a nonservice connected disability twirmt. Can you refresh my memory? Because there seems to be an issue here as far as service-connected relationship.

>> Mollie Dent: Well, yes, the board can on its own motion grant a nonservice connected disability retirement, but you might also want to wait to see if the applicant would want to apply for a nonservice connected disability retirement. That would only be if you found that the injury was disabling. I mean so you've got the three criteria, you've got -- is the injury disabling? And there was some back-and-forth on that but assuming you found it was disabling and that the department couldn't accommodate it but you also found that it wasn't related, it wasn't sufficiently connected to a San José service, then it would be a nonservice connected disability retirement.

>> David Bacigalupi: Yeah, thank you.

>> Vincent Sunzeri: For the sake of transparency, that's my sentiment.

>> That's mine as well, actually.

>> David Bacigalupi: Andrews.

>> Drew Lanza: Can I just get some clarification from you? I guess it's not in the notes. Do you want to retire? I mean is your wife telling you hey don't keep running around or is your doctor saying don't do it? You know what I mean do you want to retire or would you like to keep doing it or why are you stopping?

>> I got hired in 1988 and fell in love with law enforcement. I fell in love with the City of San José, and would love to continue for another year and two months. Because then I'll be 50 and I'll have my 25 years in. Every -- all my doctors say, just don't do anymore. I look at my wife and kids and I want to see them grow up.

>> Drew Lanza: So I would echo what you're saying, yeah. Thank you Mollie. This has a very certain feel for me the same way.

>> Mollie Dent: So let me just make it clear. That you would not be able to grant the nonservice connected disability retirement today because it has not been agendized but if the board wanted to agendize that as a future agenda item they could. But you do need to vote on his application today. He's applied for a service connected disability and you have a motion on the floor. So that needs to be taken care of first.

>> David Bacigalupi: Thanks Mollie. Any further discussion? Hearing no further discussion -- oh --

>> Are we better off voting no or abstaining? If you understand our sentiment.

>> Mollie Dent: I need to explain that in order to abstain you have to have a reason for abstaining. It isn't a way of just not voting.

>> I guess my question --

>> Mollie Dent: If you wanted more information or if there was something that wasn't clear in the record and you wanted to abstain you certainly could do that.

>> Voting no doesn't prevent him from refiling as a nonservice connected --

>> Mollie Dent: And that doesn't prevent you from agendizing it that way if you want to.

>> David Bacigalupi: Any further discussion? We have a motion on the floor to grant the application. If there's no further discussion I'll call for the question. I'm going to ask for everybody to raise their hands for the ease of my being able to count this late in the day. All those in favor of granting the application for a service connected disability raise your hand. All those opposed? The motion fails. Drew.

>> Drew Lanza: So I would like to make a motion that we deny the service connected disability, and I would state to you, I think I can do this but were you to return for a nonservice connected disability I would certainly vote in favor of that and I think you've heard sentiment from other people. I would like to make a motion to deny the service connected disability.

>> David Bacigalupi: Do I have a second? I have a motion and second. Is there discussion on that motion? Hearing no further discussion, all in favor, raise your hand, all opposed, the motion carries.

>> Drew Lanza: I hope we didn't just drive you nuts with that?

>> I'm disappointed sir but I'm -- you have a difficult job.

>> David Bacigalupi: Okay your options now are --

>> Mollie Dent: Yeah, I think that if the -- I think that if the applicant wanted to convert it today, to a nonservice connected that would be okay. But if the board wants to agendize it for itself, for next month, then you should do that under future agenda items.

>> I don't think there's any pressure to make a decision now, other than your own terms and.

>> I understand, my house is up for sale, we're going to have to move as a result of this. Timing is an issue for us. I need it done as soon as possible I guess.

>> You're requesting us to change your application to a service connected disability? Nonservice connected disability today?

>> I guess so, sir, yes.

>> Mollie Dent: You want to take some time to talk to your attorney? We want to make sure that your --

>> I don't have the time, ma'am.

>> It's an economic issue not a legal issue.

>> Even for ten minutes that we can go on and confer?

>> David Bacigalupi: We have some agenda items, it's not going to be long but if you would like to with your attorney.

>> Thank you.

>> So if I can before we move on because we're still in this area dealing with disabilities, I just want to take a moment to make a comment. We have this disability committee. We've had several meetings. I think with the help of our chair and Dr. Das we've really reformatted the way that we're looking at this information and it's been extremely helpful. But we've been discussing this for three and a half hours. And one of the things that I pushed for on the disability committee is, I don't believe it should be happening here in this venue, that I believe we should have a separate committee. And I think we should have a further discussion of that, that an independent committee should start this process, not at the board level. There are a lot of important topics that we're not able to cover because we're spending so much time on this. We're not medical professionals, we're not trained, we have a new board member coming on, they're not prepared for what they're going to be experiencing. I think we need to make a priority in how we deal with disability hearings.

>> David Bacigalupi: Okay, thank you.

>> Can we wrap up on the form side of things or was there another point going on there?

>> Richard Santos: No, the thing I was going to do is have the chair make a statement so I understand what's going on.

>> You mean the ad hoc committee, I've been acting as chair. Change the form process to make it much easier to go through and read. I think going through this process we're going to have to make a few consumption to Dr. Das one of mine would be after each injury I would like to have a case augmentation and I would like to have the restrictions for each injury. I'm going to -- we've debate bed the difference of should we have a subcommittee just looking at these. We looked at different things. Our board is really no different than all the other boards that we had retirement services look at. And do the research on. We tooled with different things and how can we expied this process, not expieding it but remove some of the ones that we could -- that I want to use easily grant or just that grant, one of the suggestions that we use is that Dr. Das's medical advice would be on the -- he would write that up and it would go over to an outside council and they would look to see if all the legal parameters were met. And then the applications would go on a consent calendar and we could all hear it in one motion. And the

ones that were in the gray area, those that would be the ones that we would be hearing. So it's still a work in process. We still have to go through the items and how we're going to look at it. But the first process that we wanted to do was to try to revamp the forms.

>> Richard Santos: Away I'd like to see is make sure that committee finishes what they started then we can go on from there. I do agree that we've got to get this process going because it's taking so much time, and time is really important so we can cut it down. And what you call the easier ones to get through and bring a cover level to people and the so-called harder ones or ones that need Dr. Das's advice to our committee, we can go through and give it the right time it needs so when you make a presentation it's smoother. I'd ask that committee to get it going and see if we can wrap things up.

>> I'd like to say that the reason for the large volume is the modified program has basically been deleted at the department. So if we did not have the deletion of the modified duty program we would not be looking at these. We wouldn't have one application that would be coming before this board. Because there was 30 positions, these are individuals that wanted to work but now there's no more jobs for them to work. So the large volume is because of the elimination of those jobs. And you're going to continually have individuals that still want to work but they can't work the patrol position, so because we took those jobs or those jobs were taken away now is the end result of it.

>> David Bacigalupi: Rose you're next then Sean, Vince and Damon.

>> Councilmember Herrera: I wonder if the ad hoc committee has considered the situation of having a different outside group review these applications. Because the concern is, and I sat on your shoes, I don't think board members can be expert with everything, we have a great board of investment, but we can't have doctors and people with deep medical knowledge here. I think it's a tough position where board members are asked to do, whether we do it in a committee or do it for hours, however you do, I think it's difficult for this board with the expertise you have, to make -- to be asked to make these decisions without, I'm thinking of some other, I suggested this when I was on the board, too, there was other point that could boil it down and make recommendations, some other service that can help this board so you are not required to do it. My concern is that

are all these cases being handled fairly? Because even though Dr. Das pointed out in one of these cases, I don't know if it was the last one or one before that, it's an opinion. It's your opinion after weighing this and if you're not expert in it, I'm afraid that sometimes the decision is not going to be -- may not be consistent because it's not for any lack of trying. It's just that we don't have that knowledge up here. So it's my concern. I just wanted to register that.

>> David Bacigalupi: Sean.

>> Sean Kaldor: When this discussion is done I'd like to go back to the form and get your feedback on them. From this committee we have talked to other things, completely outsourcing to other firms to creating a subcommittee not with us on there but with a legal view, medical view and some other independent third parties in there going through all this and maybe experts on compensation and disabilities and such. As we looked at each of the scenarios we started to run into little roadblocks. One example and you saw in the RFP going out let's have an attorney go through this. It is written in the RFP we're getting a quote what to do that, we'll see what they would charge but we were advised in our last meeting, if you have an attorney that tells you this should be approved and you decide not to approve it now what do you do? So okay then we shouldn't have attorneys on there or should -- so there's so many little ramifications to all this and there's the members that can ultimately appeal to the board and every time they get turned down they're going to come to the board anyway. It's not do X and move forward. I want to be cognizant of our responsibility. We don't just take investments and tie group and come up with investments and they'll do everything, it will be consented on the board to provide a new asset allocation plan. We take active involvement on that. We take as much involvement on the disability side and the asset involvement side of things, these are responsibilities that we are held accountable for. I am open to subcommittees and recommendations and all of that but that's what's been taking so much time in all the meetings from my opinion being on the meetings.

>> David Bacigalupi: Vince and Damon.

>> My point -- did I jump over anybody?

>> Mollie Dent: Are we on 6.2, just so we can have the record kind of be clear. I believe we may want to call the applicant back up, we did have them go out and.

>> David Bacigalupi: We may have transitioned over, I've got the list of who is able to speak. Mr. Boyle are you ready to --

>> Yes, we would like to apply for nonservice connected disability retirement agendized for you. Do we have to apply again?

>> Mollie Dent: If you want to make the motion for the nonservice connected disability you can do it today. You can convert it today. I just didn't -- if the board wanted to do it on their own motion they would need to agendize it for next month but if you want to convert your application today you can.

>> Can you can tell him Jeff. We do want to do that.

>> Please.

>> Mollie Dent: Then the board can vote on the nonservice connected disability retirement request.

>> I'll make the motion to approve the nonservice connected disability request from the applicant.

>> Second.

>> David Bacigalupi: Okay I have a motion and second to fulfill the request of police officer Jeff Thornley, to change his application to a nonservice connected disability retirement effective October 6th, 2011 with 10.68 years. I have a motion and second. Is there a further discussion on the motion? Hearing no further discussion all in favor, say aye, all opposed? The motion carries unanimously. Jeff, good luck to you in the future.

>> Thank you everyone.

>> Richard Santos: Officer, the best to you and your family. Good thank you sir.

>> David Bacigalupi: Okay, we've had some discussion about the disability retirement process, is there more? I think I still have Damon and rose wanted to speak. Did you have a chance to speak? I scratched you already but go ahead.

>> Just to finish we did look at some of the City's best practices and in most cases they were done by an independent panel and came to the board. So the board is not excluded from the process. They ultimately have to grant or deny that request. But certainly we have a large volume here. We had about 13 cases and we've only heard six today and it's taken up an awful lot of time. So that is one of my concerns. Second matter is, are we really in a position to be effectively doing this, or would our skill set be better utilized to work on other board related issues? Finally, this goes back to the City Auditor's comments, is that they were suggesting in their report, and looking at disabilities, that it should be done by an independent panel. And so this also tends to make sense in moving in that direction. Actually, my final comment is that I don't ever want to be in a board meeting where we're making -- having a vote and that vote is whether to grant a disability, and a decision is a nay, and I feel like, and this is a strong term, but I'm being bullied by board members to justify my nay position. Because I feel like that's what happened today. I don't think when we have votes taken in the other position people are questioning the yeas. That's very important that we get this right on the disability side.

>> David Bacigalupi: Let me just comment that if it was felt that I was trying to bully the board I apologize for that. That was not my intent at no time. I was just at a loss trying to give recommendations to the candidate on what they could do next, what was missing. And if there was a thought, and I sometimes maybe come across too strong. I truly apologize. That was not my intent. I was confused and I saw the confusion of the candidates, of where do they go from here? And looking for direction. So I do apologize if that is -- if I did that. Damon you're next and then rose.

>> Damon Krytzer: One quick point on that too. I've always seen my role in disability and in anything I really vote on I do this for present and govern as well, my own interpretation in my need to explain or way. So that's how I've seen my responsibility from disability standpoint as well. So you know, if my role is to be a participant in active debate, that's another story and I welcome someone saying yes, that's your responsibility but until then I see my primary role to interpret what I'm reading and make my own decision. To Rose's point, you would have the thought then in the last five hours that we would have talked even once on investments. This does clearly dominate. Ever since we've come in we used to get to the investment part and it was like okay you can ask two questions now and we'd have people waiting outside. Apparently we had some vendors waiting outside that never got to present a few meetings as well, they came in and sat through our eight hour meeting and left. And I didn't even know they were there. So it is a little -- a little -- I know it's a difficult job to figure out how to handle these disabilities. It's not something that's really been done in the past. But it seems to me -- I won't say it seems to me -- the independent option is one that I think I would strongly support. And I'm not part of that committee but we got to find a way truly to streamline this process. I personally didn't find any of the cases today to be simple, though. I didn't find one single case that came today to be one where I would say, okay, that one's just such an easy pass that it could just not come before the board. So I mean that's I think the difficulty with having a subcommittee. I mean I read through these and every single one of them I had questions, right? None of them were that simple to me. And I think that a question that came up, it might have been even my second meeting you know February or March or so, where I forgot who it was from the city came up and they said look either San José is one of the most dangerous places to work as a police officer or fireman or there's something off about our disability process. That means there's so many disability claims versus retirements and I think ultimately that's something that I would personally like to address.

>> David Bacigalupi: Okay, Rose, then Drew then Conrad.

>> Councilmember Herrera: There's a lot of training in the back here that talks about all kinds of investment training. I don't see any training that teaches you how to do that. And unless the board is going to go out and get specific training and I don't think that's what you should do, to really understand this, so that you can make that

kind of informed decision, just like people go to Wharton and whatever to learn about investments, I think it's clear that the capacity to do this is limited for the board members here. I like the idea of the panel making recommendations. I think the board still has to make the decision that's absolutely right. You can't pass off that decision, you don't do that in investments either but you get trained to do that, you learn, and we have expertise on that. We don't have that expertise on the medical side. It's just a lot to ask. It's not in terms of -- in being fair to these applicants that come up here. If you were to turn down somebody and you do it on grounds that, without sufficient knowledge, how do we know we're being fair to that applicant? Most of the time we're granting them. You look at the numbers, 99%? I don't know the numbers. It's very high. I think anybody would have a heart time justifying turning one down even because of the, you know, the difficulty in really understanding the content. So I just -- I really, strongly suggest that we get at least some help from the outside, or we find some people to join this board that have that expertise or train people, which I think's very impractical.

>> David Bacigalupi: Thank you, Rose. Drew.

>> Drew Lanza: So I don't think this is really as confusing or unsettling as we seem to be leading to. I think certainly, the committee can take a hit for not having implemented yet, despite the fact that we've been working over a long period of time, four or five points, you're absolutely right, we are seeing something unusual, let's take that out of the equation. Let me reiterate what Sean said, he's spot on. Some of these we have to hear. Mollie has told us we are the board and some of these we have to hear. We've gone back and forth here hour to hour and a half I think that's a reasonable amount of time. And I think we can delegate to the a committee, and I think the committee or panel or whatever it is can make the decision for us in the case of saying yes, that's a legitimate claim we're going to grant it and then bounce to us the ones that are gray or where they might be leaning towards no and that leads us to those two to three per month. And I think the reason you know why that subcommittee or panel or whatever it is is going to grant a lot of those when you look back at these, you'll notice that we grat unanimously, when we grant them we half the time we see them or more we go right, got it, that's pretty straightforward. So I think we know statistically we can changes our charter or something. So I think we can get to that point. We haven't implemented shame on us but I think we know how to implement that and we need to do that. So I think we could have a plan shame on us for not doing it better but we know what the numbers are, we

that is not look at what we have here, this is very unusual. But the committee at every meeting recognizes that it's our job to get more at these meetings to talk about the numbers because the biggest impact we can have is in the fund itself. And none of these other things will be successful unless the fund itself is are successful. By way of we need to go through to fix this.

>> David Bacigalupi: Conrad then Mollie. Then Sean.

>> Conrad Taylor: With the subcommittee the composition of the panel, trying to put it on the pilot program, we have a medical expert. We have Dr. Das, so we have the medical opinion there. We looked at the panel, should the panel be medical doctors? That's going to cost the fund. How much is the fund going to pay for just having medical doctors on it? We already have an expert, a medical doctor. The legal analysis would be done. Those are the two chings, there's your panel you have the medical and the legal side reviewed and that would just go on a consent calendar. Going with Damon, regarding San José, I could tell you on the police side, we're short-staffed. We go out, we're three officers in a district where it should be six, sometimes seven and you're only going out with three. And there are still cars so you're out there by yourself. And the population is getting older. So there's an older population of officers, going out there with less individuals to go, if you go out there and you contact somebody with one person, the lightly hood that you're going to be in a confrontation is much higher than if you go out there and you have two individuals there with you. So that's part of the equation also. Yeah.

>> It is more dangerous, that's an issue someone needs to address too then. Clearly not us then.

>> David Bacigalupi: Molly.

>> Mollie Dent: I just briefly wanted to apologize not going over the RFP that has to do with the disability review process. The disability committee had asked us to include in the RFP a scope of work for an attorney to review the disability applications. And basically, kind of put them in two piles. This pile, there's prima facie evidence in support of the application and if the attorney made that recommendation in writing those would be consent calendared, the board could take them off but they would be consent calendared. Then there would be another

pile where the attorney would do a report that won analyzed to determine whether the evidence was inconsistent, unclear or insufficient. So it would be more clear to the board what was missing from the application, was it inconsistencies, insufficiencies or just unclear evidence. We'll see what kind of price quote we get. It's included in the RFP scope to get a price quote from attorneys to do that. And it will be up to the board whether it wants to move forward in having the attorney do that level of review for it. And it is correct that under the Municipal Code, as it's currently written, the board can't simply dell gate the function to someone else osh to some other committee. That is not to say the code couldn't be amended but the current plan document calls for the board to make the decisions.

>> David Bacigalupi: Okay, thank you, Sean.

>> Sean Kaldor: Just two points, that was the strategy, Dr. Das, and an attorney to look at it while we're getting the RFP we also have Russ going through before these meetings looking at all the information and saying based on the parameters we expect to give some contractor if we go that route here's where he thinks it would come down. And then we could mesh back did he say two months, two months of doing that we'll see was it value-added or are we disagreeing all the time? There is stuff going on all the time. The other point I wanted to make, as far as no votes and putting people on the spot, it is not my intention to do that. When I dmom and see a case, I'm pretty vocal askings the questions if I'm missing something I don't want to vote yes and someone knows that no this should fail because it's clearly not work related. If there's something I'm missing I want to hear that. That's why when I get surprise answers I want to know what did I miss. It's not an effort to put people on a spot, and I apologize that it came across that way and it did come across that way. Ppg Dick.

>> Richard Santos: We're being together tremendous amount of responsibility and changes, and to me I think more people are getting more excited than it is. This is not pressure. That we can't handle. And we are handling it. It's not how you start, it's how you finish. Let's take today for example. When Sean just got through saying, Dave made someone feel uneasy. I that young man will come back here and it will be unanimous because we asked pertinent questions like Dave like me, in cases you feel so much energy that you can see the light. We saw some words that didn't fit what we needed and we went back as a group and we worked through it. And when we

get all said and done that young man will benefit and so will this system. But the biggest problem is as you know modified duty and city responsibilities. Let's not keep on putting on this board. On the other hand, why don't we give this committee the opportunity to complete what their recommendation is going to be, then let's pipe in. What are we doing from here? You give a committee to get together, give them a time to come up with a formula and if you like it speak your peace. As the day comes that none of us should be here we'll get financial experts we'll get doctors and we'll all go home and you'll see this system completely fall to pieces. I don't care what you change after a year being here long enough, it will all go back russ smiles because he knows what I'm talking about. So we've got people here that we always don't all agree. I like working with all of you and I know we're going to do a good job and you've just got to have the patience, nobody retiring, nobody disabilities, it's going to come and you're going to be sitting there saying welcome on talk about your investments war we doing here? So you're going to have plenty of time doing these things, just have the patience, as we get to know one another we know what we're doing, I appreciate you all, nobody's perfect we all care about this plan, thank you.

>> David Bacigalupi: Thank you Dick, already, won't be next month. We've already put away six of these retirements so Sean and vines.

>> Sean Bill: I think it's very important that we get the disability issues taken care of. It's a big part of our responsibilities. But do I think we're short changing our investments. We're just now getting a report for the first half of the year or the last fiscal year that was June 30th data. And it's now October 6th. The market, you know, small cap equities which is one of our big positions is down 20%, okay? Commodities are down 25%. Okay? TIFs break evens are mayor owing, relative to or and you know hiring doctors or whatever, it's all peanuts compared to what's going on in our investment portfolio. I haven't seen any data that gives us an update of what happened in August, or September. Or July or what have you, you know. But that, we really do need to get on top of our investment portfolio. So I just -- I think you know, I kind of see it as we have two primary duties, disability stuff is a big one and investments are a big one. And the beneficiaries of this plan are counting on us to city being able to make bigger and bigger contributions you know it would help if we could at least maximize our investment portfolio.

>> David Bacigalupi: Thank you. Vince.

>> Vincent Sunzeri: I just want to comment that I initiated the dialogue on disabilities and this process and I'm on the disability ad hoc committee. So I people it was prudent for me to do that. Secondly, I think we need to be a little careful in our dialogue, as a board, of what I perceive as almost coaching people to get approved for a disability. There was a lot of dialogue that went on in my mind that was moving in that direction and that's not our role.

>> David Bacigalupi: Well unless you want to continue on this discussion I think we have a committee that's working. The only thing I'd like to conclude this discussion is you know maybe it's time there's a lot of expertise that was brought to this board for a reason and I think it's been really highlighted today that we haven't had an opportunity to use that. We haven't talked about the investments. We haven't talked about where we stand after last month you know I keep seeing red numbers every time I draw up the stock market and we're not taking advantage of that because the others duties. And it may be time and you know we can talk about this at a future meeting but it may be time break the sacred cow and we meet more than once a month, we meet to handle those investments once a month because they need that kind of administration, and we meet to handle the contract retirements and damon.

>> Drew Lanza: Just on this, this was our second modify having investment committee meetings and one thing I'm going to bring up and I don't know if I'll put it on the agenda right now is to try to give some more tactual discretion to the investment committee to make some decisions, for instance to approve some relatively minorrish, although impactful decisions to the investment schedule we meet as well and we even had a third meeting this month with the investment committee as well, so the discussions are happening. They're still not as impactful as I'd like them to be or actionable as I'd like them to be. But I think maybe we should talk to the board about delegating to the investment committee to take action on.

>> David Bacigalupi: That would probably be a very good thing for the investment committee to come with a proposal for board for discussion. Let's go on to item number 3, deferred vested retirement payments, 4.3 A, from

former police officer Mark Colla, effective November 19th, 2011, with 11.32 years of service with reciprocity. I'll entertain a motion. Motion and second. Any further discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries. 4.3B is an application for a deferred vested retirement payment for former police officer Ken Williams. Effective October 28th, 2011, 23.01 years of service. I'll entertain a motion.

>> So moved.

>> David Bacigalupi: Do we have a second?

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Hearing no further discussion. All in favor, say aye, aye, all opposed, the motion carries. All right item number 5, death notification. 5.1 is the notification of death of Wilber M. Givin police officer, retired January 16th, 1982, died August 4th, 2011, survivorship benefits to his spouse Lillian Givin. 5.2, the notification of the death of Paul A. Shuman, police officer, retired January 9, 2010, died September 7, 2011, 53 years old, no survivorship benefits to be paid. I didn't know will but Paul worked for me many, many years and truly a sad sad event. For both of these fine officers I would like to have a moment of silence, please. [Moment of silence.]

>> David Bacigalupi: Thank you. Okay item number 6, committee minutes reports and recommendations. Item six.1 the investment committee you have before you the minutes of the August 24th, 2011, unless there's any questions, that would be note and file. Okay. Thank you. Item 6.2, is the ad hoc committee for disability determination process. And one of the copies of the agendas I said, said there were minutes attached but I didn't get any minutes. Did anybody else get that? I think it was version 4 or 5 or something, unless I mixed that up with something else. Okay, well it's on the agenda. Okay so that will be note and file. Item 6.3, the ad hoc governance committee, the next meeting is scheduled for October 20, 2011. Now we're on item 7 the consent calendar, usually taken in one motion unless anybody would like something pulled from the consent calendar.

>> I want to clarify something.

>> David Bacigalupi: Please.

>> We already voted last month for me. If it looks like I'm coming up twice, it's the minutes from the prior month.

>> David Bacigalupi: Okay, thank you. Why don't we remove that one. We'll remove 7.2 B since it's already been voted on 50 board.

>> Sorry about that. Dr. Das indicated to me that he will not be able to attend his conference and he also wanted that to be removed.

>> David Bacigalupi: Okay. So he's cancelled it. How could he miss Duluth? Sorry. Anybody else, Sean did you have something --

>> Just to pull 7.5.

>> David Bacigalupi: The entirety?

>> Yes, just briefly.

>> David Bacigalupi: Pull 7.5 from the consent calendar, with that I'll entertain a motion on the balance. Second? Any discussion? Hearing no discussion all in favor, opposed, motion carries. Sean.

>> This was something that unanimously at the board current liaison policy works for us as a board and we requested no changes to be made but to highlight they have gone ahead and changed the rules and responsibilities of the liaison. So we just need to make sure we all update ourselves about what that person can do now going forward. That's it. With that I make a motion to approve it.

>> Mollie Dent: So just to be clear it's actually scheduled to be heard by council on -- not next Tuesday, but the following Tuesday. Ordinances get taken in two steps to council. So the first step has been taken but the second step hasn't been taken yet.

>> David Bacigalupi: Okay. We have a motion today, give it a second on 7.5.

>> Second.

>> David Bacigalupi: Okay I have got a second. Any discussion? All in favor, opposed, the motion carries. All right item number 8, education and training, 8.1 is the Cal APRS, trustees round table. 3 and 4 are items we are seeing from Cortex, recommendations for training. Any trainings that you can make yourself available for, the board is asked to take advantage of to enhance their responsibilities.

>> Amsterdam? We'll see about that.

>> David Bacigalupi: You're kidding me.

>> Donna Busse: This is the report that Cortex gives to all of their clientsto so they may not be applicable to us.

>> Tongue in cheek.

>> David Bacigalupi: International doesn't apply. All right, proposed agenda items, we've had some discussion best a retreat. I think Donna's taken numerous notes on that to try and get one scheduled as soon as possible. My suggestion on that if I didn't already say, I think it would be helpful to this board to have representatives from the work comp system appear on that. Because disability until this changes the structure that we have to live with it might be helpful you know that the board members can hear, maybe there's another side to this, you know, delays in treatment and things like that. So if you just make a note of that as well. (inaudible).

>> David Bacigalupi: We usually find if it's a special one or two-topic item it's usually too lengthy to try to cover. Today would you want to stay for another -- exactly. It's just sometimes it's easier to get offsite and discuss and then you have other people come in and it just seems to work better.

>> Okay. I would just like to if we could add right after we talk about disabilities next month, a chance to feedback on the disability forums, because now that time, Dr. Das will use all the forms using that new format. We're out of time now. If you look at the form if you think would be more useful, less useful in form or content.

>> David Bacigalupi: Anything we can provide to the committee I I'm sure would help them. Sean.

>> Sean Bill: I would request we have our one page investment form, it was helpful, I don't know why it stopped coming on the board packets, if we could get the one-page at least often the marketable securities, obviously you can't have private equity and all that stuff every month.

>> Men said they could have a P and L report, they don't get the quarterly reports from the managers but they do get a this.

>> David Bacigalupi: All right, this part is for the public comment, the public has all deserted us. With that I'll adjourn the meeting. Thank you.