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.

>> Conrad Taylor: Everyone I'd like to call to order the Police and Fire retirement board on Thursday, November 3rd, 2011. First I'd like to do roll call. Chairman Bacigalupi is present via telephone. Myself Conrad Taylor is present. Sean Bill is present. Sean Kaldor is present. Damon Krytzer is present. Drew Lanza is present. Vince Sunzeri is present. Richard Santos is present. The list -- the agenda shows the vacant spot but we have filled the vacant spot and that person will be here next month. Under orders of the day, we're going to be a little changing here. 2.1, we will be hearing that first. Before the investments. On 1.2, we will waive sunshine, on 2.1 we will waive the sunshine rules and on 4.1 we will waive the sunshine rules. Under 5.2C, service connected disability for Eric Grimes, that will be deferred until December.

>> Richard Santos: Mr. Chair, I have a prior commitment, I just came back from vacation last night and I have to leave here at 7:30. So I'm hoping today if we have pressing business, I'd like to participate in that as soon as possible before I leave if that's okay with the board and yourself. I want to make sure everybody knows.

>> Conrad Taylor: Okay, coming before us will be 2.1 which we moved ahead.

>> Donna Busse: Conrad, you actually have to vote to waive sunshine. So you have to take a vote.

>> Conrad Taylor: Just do it all in one vote?

>> Donna Busse: Yes all in one vote.

>> Conrad Taylor: I'll make a motion to waive sunshine rules on 1.2, 2.1, and 4.1.

>> Second.

>> Conrad Taylor: I have a motion and second. All in favor? Motion passes. Move forward, 2.1. Discussion and action on Cheiron's experience study for the period July 1, 2005 to July 30th, 2010. Present before us is -- state your names. In good morning, Gene Kalwarsky and with me is:

>> Bill Hallmark.

>> And we're here to present our first effort ever for the -- for this fund and it's called an experience study. What we'll be going over is a brief overview about experience studies, what they entail, and then some general comments and then specific to this plan. And then I will get into the economic assumption and Bill will cover the demographic assumption. The demographic assumptions are if people assumptions, for investment return and inflation. And at the end the may or may not be board discussions. But before we get to the next slide, I just want to comment that an experience study is performed to compare your actual plan experience to the assumptions that we use to value the plan. And rarely are these studies done annually. They're done periodically as it's done here. Also it's important to note that the assumptions are intended to be long term in nature and should be reasonable both individually and in the aggregate. Finally, frequent and significant changes in the assumptions are not normally recommended nor desirable. So those are some basic principles we're going in with. So now I'll go to your handout. And this is sort of a report card of how you've been doing, actually covers a seven year period because for 2005, 7 and 9 that was a biennial period and these are gains and losses relative to the actual assumption. If you are below the zero line you've done worse than the assumption, if you are above the zero line you've done better than the assumption. So you see the cumulative investment loss as of June 30th, 2005 for the two year period, nearly -- eyeball, 130, 40 million dollars and there was a gain that year in the liability side of $100 million for those two years and the net is that black line. Let me just focus on the net, that looks at all the experience. If I were to average that out for all seven years that black line is saying that you're incurring each and every year a $34.5 million loss over the seven year period and that gives us a signal that something needs to be changed or tweaked. The next slide which has a lot in it but I'm only going to focus on the left-hand side and the center column and then the middle column. It's looking at the June 30th, 2010, valuation that was done last year. And if we were to re-do it and you went with -- you see that first give me your laser pen. Well I guess you can't turn around. But the middle column under city recommended where it has 1.1, minus .6 and so forth, if you were to ask us where we would land that's where we would land. And you can see on some of the assumptions we have a minimum and a maximum. Those typically are with respect to the economic assumptions. The demographic we're just measuring whatever the experience was. We're going to go into each one of these. I'm

not going to spend the time on this chart. I think the only thing I'm going to say on this chart is you can see a significant 8.0% increase for the city, and most of it's attributable to the investment return, the SRBR and the administrative expense. Only .2 is everything else. I do also want to say, put this in the context that we're in the process of doing the 2011 valuation. We have preliminary results that haven't been reviewed but from all indications, it appears to us that the experience for this past year is going to be such that the entire cost of that increase plus more will be absorbed by the decrease in dollars required because there's been significant payroll reductions and headcount reductions. So even with these assumptions if you were to go with them, we would expect a decline in the costs. But we'll come back to this. I didn't want you sitting there with the 8%. I'm going to now move on to the economic experience. And I may flip back to the former report because there's some key tables in there before I cover this chart. But what we did in arriving at our recommendation is, we reviewed the historical assumptions of the plan. We looked at the market in general. Industry factors that are affecting the plan. Future, most importantly future expectations of this plan with its asset allocation. And then we developed a range for each assumption because we don't believe there's a single assumption that any actuary should come in and recommend. That's why the next to the last or the most important factor here that we are going to be focusing on is getting a sense of the board's risk preference. And you'll hear more about that later but if you saw a report that term risk preference was prevalent. In your report on page 7 of the formal report, there's a table 2-3. That shows your return year by year. And that red line is sort of the average over that period. And that's showing a return over the nine-year period of 4.9%. So that was one factor we considered. Also in your report we looked at the asset allocation of your plan, and that's table 2-4 on page 8 and 2-5. Down below are capital market assumptions provided to us by staff for expected return and standard deviation. I can tell you that we've reviewed these compared to capital market assumptions produced by other investment consultants and they're very much where others lie. We also understand that these assumptions are fluid, they change from time to time and we understand even more recently we may not have the latest but these numbers will move from quarter to quarter, as expectations change. But going back to the PowerPoint, and I won't flip on you anymore. Looking at those capital market assumptions and I mentioned standard deviation and means in that prior slide. What that means is, if you imagine a bell curve and you expect in this casesen.52 to be, it's the 50th percentile your expected return, there's a likelihood that the returns could be distributed in a wide range. And this chart is saying on the left-hand side, with the 95th percentile, there's a 5% chance your returns could be have returns over the period of greater than 11.73 or there's a 5% chance in the lowest percentile that the returns could be below 3.547. What we like to do is come up with an assumption that is around that 50th percentile but then set a range for you above and below that and we'll be doing that shortly, it's at the bottom hand right there where the recommended range is 7.75, and we'll walk you through risk preference, as far as where you want to be in that range. Also what's important to note is that these returns are gross returns of administrative pens. So administrative expenses, one of our recommendations is to add it to the normal cost instead of subtracting it from the return. Risk preference. We talked about a range of 7 to 7.75. And if you picked what the 50th percentile was or 7.5, if you look at this chart what it means is 50% of the time you're going to miss the mark and 50% you're going to beat the mark. The risk preference is do you want to be 50/50, do you want to be 60/40 or 40/60. It's really a preference for this board but we don't think you should go outside the range of 7 to 7.75 at this time. The other thing about lowering the discount rate is, we've done some projected analysis of what happens, and this is not your fund but any fund would show the same characteristics, this is showing a distribution of contribution rates for a generic system. If the discount rate were anywhere between 4.25 and 7.75. Not that we say it's reasonable but we just want to see what's going to happen down the road if we set these discount rates at different levels. What its shows in the middle for those of you who can see on the board, I've got the red LED on it, it shows that at the 50th percentile as you lower the discount rate the expected costs increase. But what it also shows is when you lower the discount rate your bands flatten. So you don't have a wild increase here with the highest discount rate and you're down to zero 25% of the time. So yes, it increases -- decreasing the discount rate raises your cost but also also flattens your volatility. And the same is true for the funding ratios. That while you're under any discount rate you're going to amortize to get to the 100% funding which is the 50th percentile, the higher the discount rate, the wider the distribution of your funding ratios. This is to give you the sense of why there's this move to take risk off the table. So before I get to this one, there's one other thing I wanted to bring here because there's -- on the investment return because there's so much discussion in the industry. First, there's a raging actuarial debate if our profession called market value of liabilities. Where there's a group of actuaries that say everything must be valued risk free, and another group that says you need to be valued based on expected earnings. And Cheiron has taken formal positions, and Bill and I will be featured in an article in a few weeks on this topic and we've taken neither position. We feel boards risk preferences and going through analyses like these should establish the return. But just want to let you know that that's out there and the group of actuaries pushing for market value are pushing

GASB, federal policy makers, to try to impose on public sector plans lower discount rates. GASB has recently come out with a new I guess they're proposed still rules. Exposure drafts. And they move slightly towards lowering the discount rate to the extent you're not funding your plan. It's a movement towards it. The federal government has already for private sector plans, corporate mandated the use of low interest rates. Other PERS nationwide, and you read here in the papers even in collar are starting to lower the discount rate and then there's the national press stories you read out there that you read studies by Roush, and others, that are saying that public sector is miscalculating its liabilities by trillions of dollars. I think you put all that together and you consider the fact that the two market declines of last decade had such devastating impact on these plans, it is our opinion that trustees need to de-risk these plans. And that's why we're going down the ladder here. But as I said earlier on, it would be opportune to be doing it at a time where you could offset it with something else and it appears that the significant cuts in payroll and active counts would more than pay for this recommendation. Wage inflation, you're currently at 4.25. And national averages have been 2.9 over the last ten years. Your actual members have been 3.4 for five years. I'm not going to spend too much time on Social Security projections because they're always wrong. But that's what they're saying. And I know Bill got hit on that with another fund. And some are saying that private sector ways may rebound from the recession over the next several years but we doubt that's going to happen in the public sector so our recommendation is to drop the 4.25 down to a range of 3.25 to 4 and you ask our preference and it would be 4.75 and that's a 75 basis points drop in the wage inflation. The next chart is not -- is not to give you a menu of options to pick from but to show the sensitivity of decreasing your wage inflation, and you can say for let's take it for a given discount rate. Let's take the 7.75. If we decreased the wage inflation from 4.25 to 4 it's a savings of 3 million. If we decrease it another 25 basis points it's 6. So it's a little three per 25 basis points. And going the other way around if we were at, let's say, 4%, and we increase or decrease the discount rate by 25 basis points, that's more of a hit. That goes from minus 3 to a positive 10 cost for the city. Another 25 basis points goes to 23. But we're not suggesting these are viable alternatives but just giving you a sensitivity chart in case you want to refer to it. The last -- yes.

>> Do the wage inflation numbers take into account all the most recent cuts in -- no?

>> No. But the valuation, as I indicated, will reflect that.

>> Okay.

>> All of these estimates are before the 2011 valuation, so they do not take into account this last year.

>> The last economic assumption I'm going to talk about is the Supplemental Retirement Benefit Reserve. As you know, earnings in excess of the assumed rate go into this reserve, although some of that reserve goes back to the city. If -- well 10% of the excess earnings goes into the reserve. But what goes back to the city would be any investment loss they experience, 10% of that loss would be taken out of that fund but never more than 5% in the reserve. But the bottom line is that you've got this reserve that captures excess earnings. And so if earnings go up and down and the average your assumed rate, whatever it is, 7.5, 7.75, if you're skimming off the mountain tops you're lowering your long term rate of return. But then if you lower your discount rate to reflect that you're going to have more excess earnings because the target is lower. So you'd be chasing your own tail. So what we've come up with is a way to anticipate how much money needs to be set aside without changing the discount rate to pay for this reserve. And we've done it two different ways, and we've ended up with a range between 16 and -- no --

>> 16 and 26.

>> 16 and 26% of pay. No, this is of assets. And that would increase the -- 2.3% of pay. This is a $5 million ticket item if you went to that level. And the other thing that we wanted to mention is that there is an asset there for the reserve that's already accumulated and it's removed from the assets of the system, in preparing the report. We would suggest that you leave those assets in there, but add on to the liabilities, a like amount for the amount that's already there, that's in our Val report. That would have zero impact on cost that by itself but it would tend to just have the whole picture there and not have a part of the system not shown in the Val report. So I -- that concludes the economic assumptions. We could stop here and we could answer questions on economic or Bill can go into the demographic.

>> Conrad Taylor: Okay.

>> So I have a couple of questions, one related to the investment return and then one related to the wage inflation. On the investment return, so I understand your probability, the first question is, on the investment committee reviewed the assumptions, is this data current, based upon the most most recent investment committee meeting?

>> Carmen Racy-Choy: No, staff did provide the most recent capital market assumption to Cheiron the day after the investment committee. I think Cheiron can let you know why they chose not to update. What I can convey is the results, if Cheiron had updated the capital market assumptions, the 50th percentile would be at approximately 7.25.

>> Okay.

>> What did you say, 7.25?

>> Carmen Racy-Choy: 7.25.

>> 7.25?

>> I'd have thought 7.37?

>> Carmen Racy-Choy: That did not reflect the change in fixed income, fixed income was lowered from 4.5 to 4. So ultimately when the full assumptions were reflected, it's 7.25.

>> First, to answer, the reason we didn't reflect in our analysis is we didn't have time to rerun all the numbers and give you handouts in time for the meeting. Second, even though it did drop we think that the a number that fluctuates and you can't keep changing that number wherever it goes every time it changes and thirdly our range of 7 to 7.75 still encompasses that number. And fourth, and we've done this with a number of systems. Even if the

ultimate rate should be lowered, we like moving down in stair steppings instead of big drops. Especially in this system. Because the ratio of your assets to payroll is almost off the charts compared to other systems. And we will show you that next month when we do the valuation presentation. But what that -- Bill has used the term the system is leveraged. To the extent you have more assets relative to payroll, you have a smaller tax base to cover investment losses. Same with changing assumptions. We are still comfortable with the recommendations we have here today. We don't think the new news would modify our recommendation.

>> So the range is acceptable, however, the pinpoint is debatable, given the fact that it looks like this 50th percentile that you're targeting is 7.75 but the investment committee is utilizes assumptions tar more conservative.

>> The other way you could say it if you're an ocean liner going through a stormy sea and the winds have changed directions by 3 degrees and you know they're going to change again down the road, I mean it's -- there's never a point in time where you know exactly where you're at.

>> I completely agree. But there needs to be I think consistency between where the investment committee is going, and their expectations for returns. And the assumptions that we're using for the plan, as well.

>> And we can modify these reports, and reflect the latest investment committee's thinking. Good okay. And then when you're looking at these returns, you talked about probability. Can you address the standard deviation of that? And from the perspective of targeting the return, I see what the assumptions are on a standard deviation basis. So what's the likelihood that you're going to come in the percentage of coming into that range of a 7.52?

>> Well, go to the --

>> I'm assuming you're using one standard deviation?

>> No, we're looking at the entire distribution here. It's slide 5. Well actually it's that slide as well. First let me go back to slide five then I'll go back to slide four. Slide five is the entire distribution and the middle or the 7.52, 50% below, 50% above, but we've got numbers on slide 4 which specifically tell you the probability. And these are not the updated numbers. The 7.25 that Carmen said would be at the 50th percentile, I imagine all these numbers would proportionally change?

>> Would I be correct Carmen in saying that there's a two-thirds probability that you're going to fall in the 50th percentile?

>> Carmen Racy-Choy: No, actually, this is the probability, the distribution. So if you actually wanted the two-thirds probability it would be somewhere between 7.52 and the 5.84. It probably would be somewhere around 6.75. So this was actually drawn out basically this way so that if you actually wanted, for example, a 75% probability of having sufficient funds, which would keep the City's contribution stable long term, then the rate is 5.84 based on this chart. So that's how you can interpret these numbers. If you wanted a 95% probability of having enough money in the trust fund you'd be using a rate of 3.47 which is almost a risk free rate.

>> And that's what the market value of liability proponents want.

>> Carmen Racy-Choy: Yes.

>> Okay. On the wages, on page 5 of your report. Your table is shock which looks to me fairly clearly, if you look over time, the direction of wage growth is declining. So overall from the period of 1969 to 2009, it was 5% but then when you shorten the time frame it drops from 1979 to 2009 to 4.3% and it continues declining. So that even the last decade --

>> What page are you on on the report?

>> I'm on page 5, table 2.1.

>> Okay.

>> So that the last decade, wage growth is 2.9%. We have an environment where we have very high unemployment, we have excess capacity in this economy, we have I would say moderate inflation, certainly you're adding a premium to that inflation. The range that you're talking about seems a little generous of 3.5 to I believe 4, 4.25, whatever.

>> 3.25.

>> 3.25 to 4.

>> When you say generous you mean too high?

>> Yes.

>> There's a -- the lower you lower your amortization -- the lower you lower this wage base you also increase your amortization payments because you're funding off your UAL as a level of payroll. Actually that will make -- there is an increasing factor by lowering it down there.

>> I do understand that.

>> And I hear you but I look at this chart and inthis first column and it's just the last ten years that you're below our range. And you've had several years of -- not several years but recently you've had pay concessions. And --

>> This is running through 2009, so that is not necessarily taken into consideration.

>> Does not take 2011 into effect either.

>> Correct.

>> These are national-these are national not local. We are dropping you 75 basis points. The other comment I mentioned several times, we never want to jump too far with any of these assumptions in any one year. You'll probably have another experience study in another year and you'll have another chance to go at it. Most carries don't like to jump around with their assumptions and shoot to a number that's dramatically different.

>> Carmen Racy-Choy: If you also look at longer historical time periods, pay was very, very high. Well in excess of the 4.25 assumption. So I mean, obviously, the reason the actuary is suggesting a drop is because of the current market environment and the fact that the reality is, there might not be any raises within the near future. But ultimately, always want to -- it's a cycle. And it goes through periods where you know, concessions will be given but then that hopefully at some point in time the economy will recover and at that point in time, the normal thing to do is for the various employee groups to be asking for increases. And so on the average, you end up having basically the history of this plan suggests that even the 4.25 is actually -- might not be high enough. So now given the current context, the reduction is proposed, but maybe changing it too quickly, too low, might not be a great idea.

>> You can also look at table 2-2 on page 6 which instead of being national experience it's experience for these plan members. And for a 17-year period, the annual growth was 4.87, and for the last three years 3.45, and we might have dropped it a little further notwithstanding this, but we might then want to drop the discount rate further as well.

>> If you look at wage growth for public and private sector would you say they were consistent with one another over the last 20 years?

>> Well, certainly not the last five.

>> Over the last 20 or last decade?

>> Yeah.

>> Really? Okay. I'm not sure if other board members have looked at that time data but I believe the data shows that it's actually not consistent between public and private sector. And you know I don't think we have to be so aggressive, but I do think we need to be realistic. So I'm a little uncomfortable with you know, I know that this is not sort of an a la carte menu, but when we are talking about moving to realistic targets, I think there number one needs to be consistency between what the actual investment committee is assuming the returns will be, as they're allocating capital, and what we're using for the plan overall, and the experience of truly what's happening, and the historical data is pretty strong and compelling when we look at what's taken place going back to table 2.1 of the direction of wage growth.

>> Where's the floor though?

>> I don't know where the floor is but is --

>> I assume you got some (inaudible) how far can it be right?

>> So this is a period of time that encompasses 40 years.

>> I would be curious did you guys have an estimate of where the number would be if you had included 2011 from your July 05 to 2010 numbers? How that would impact it?

>> That's what I mentioned, the 2011 experience is is up that it's going to -- our best guess, it's going to more than pay for the entire increase that's shown here. And Bill you might want to add to that.

>> But in terms of where the 3.45 would be, we have not run those numbers yet so I don't know exactly even when that number would be for the last year.

>> So my concern here when I look at this data is that California has a 12% unemployment rate. We have 17% in the U-6 numbers, it's very hard for me to picture any upward pressure on these wages for many years and we've had a consistent trend where the city has been cutting wages. And so I -- you know, I think that your low end is even probably above our -- what is realistic high end going forward. If we're looking forward rather than looking in the rearview mirror. I think we should have a higher wage run.

>> Well, it's -- we're looking in the rearview mirror to say that it is low when if you look historically the rate's been higher than that. All our analysis of having it be lower than 3.5 is based on a rear view analysis. And there are people talking about inflation coming back and we don't --

>> I guess that's my question to you is you know so you have the rear view analysis. What are you guys putting in there for the forward looking analysis?

>> I think as Carmen has alluded to, in the short run we would certainly see very low wage growth. But the question is, when does that recover, and when do tax revenues come back, and what's the effect long term? We have to just this assumption to project very long period so we don't want to overweight too much by the short term economic outlook.

>> And Bill's going to get into demographic assumptions and one of the things you'll see is we will have observed experience rearview mirror type for each of the assumptions but the proposal never goes all of the way there, it goes part of the way here. Because we're constantly changing a moving target here and as opposed to darting this way up and down all the time you want to more gradually move along with the fro. That's why we're more comfortable with the range that we are providing you here on the wage inflation in conjunction with where we are on the investment assumption.

>> So can we go back and revisit, this is on page 10, table 2-7?

>> In the book or the --

>> Of the booklet. This is where you have both the wage and the investment return assumptions.

>> Oh, that's on the handout.

>> If we could throw the chart up here too, I think that would be valuable. If we look at the change in city contribution by going from 7.5%, with a 3.5% wage inflation which is highlighted here in your chart, that's about a $4 million contribution for the city. However, if we push this to what might be more realistic of a 7.25 investment return with a 3.25 wage inflation it's $15 million. It's pretty significant change. And I'm not saying we need to go there immediately. But I think if we're not going on records talking about direction, and where we maybe ultimately want to land we're probably not having the right discussion.

>> So I want to ask a couple questions.

>> This is by the way what risk reference is all about.

>> On the wage inflation factor, I share a similar concern. You recommend a range of 3.75 to 4. We were at 4.25. Your recommendation is 3.5. Last year there was 10% pay concessions and with at least one of the groups we represent there's a contract for the next two years with zero percent in there. It's hard to envision within a five year time frame or seven year time frame a big catch up happening to get us back to three year average over each of those years. The challenge is thinking in the next 16 years will there be a big bump at some point? There have been some big bumps in the past but I know there have also been situations where there was no contracts in place and then there was a big catchup because there was multiple years without any changes. But I feel that same concern with the wage inflation factor. Couple questions on the SRBR. What costing method did you use for it? Was that the entry age normal method?

>> No. Under a traditional entry age normal method we are not even sure how you would develop a cost. We understand another actuary has suggested that we should use that. We'd love to have a discussion with him. But the method that we're doing is a stochastic analysis, knowing that if the SRBR always earned your assumed rate of return, the entry age normal would produce a zero cost because you never have any excess. The only way you could capture an excess is to do a stochastic analysis by looking at the volume tilt of returns and capturing those excess earnings.

>> Carmen Racy-Choy: Stochastic analysis is the right way to value an option which the SRBR is. So there's, I think anybody suggesting entry age normal to value an option is definitely outside of the realm of the mainstream.

>> So maybe some ofs to discussions would be good to have, I understand the city has an actuary working on some other things as well. If are's on the same page or having those cushions that would be helpful. When you valued this did you value it the same was as the Federated plan or did you include that claw-back?

>> Two things. I want to say one thing. We did do the claw-back. Bill you wanted to add something on that.

>> Yes. I was going to say yes. We modeled exactly the way your SRBR works which is different in a number of ways than the way the Federated plan works. And if you look at our presentation for the Federated, their costs for the SRBR were a higher percentage of assets because they don't have that claw-back.

>> Different, okay.

>> And they don't base it off of a smoothed rate of return like you do here.

>> Okay.

>> Carmen Racy-Choy: And the big difference, I mean there's a very significant difference in the cost of the SRBR with yours being significantly I mean lower and the main reason for that is not the claw-back, it's the smoothing. The Federated SRBR, there's no smoothing on the rate of return. So you have a 22% rate of return in one year, 10% of excess goes to the SRBR. On Police and Fire, because of -- it is based on a five year smoothed rate of return. It's actually a lower cost.

>> Okay. And then, in that costing you show it 100% to the city and nothing for the employee. Wouldn't that follow the 8-3 normal cost split?

>> It -- well we would defer that question to legal counsel. But our understanding was that the employees were not to pay for SRBR so we allocated it to the city.

>> Is that correct?

>> Carmen Racy-Choy: This is based on information received from the past chair of the Police and Fire board who was in on the negotiations within the city. And this is the past practices that the city pays for it. So from our perspective, if the -- if there is agreement that it should be shared, 8 to 3, obviously, we have no issue. But so far, what was communicated to staff from the past chair is that this was to be the -- born by the city.

>> What do you mean by the past practice? We've never added this cost in previously.

>> Carmen Racy-Choy: That's correct. But this doesn't mean the cost isn't there. Meaning every year where you do have a payout of money being transferred to the SRBR fund there is a loss. And that loss goes into the under funded liability which is paid by the city.

>> Conrad Taylor: Mollie.

>> Mollie Dent: I'll address it on what the board needs to do today is to make a decision on whether or not to cost the SRBR. It's not necessary at this point to make a decision on how -- and they've reflected the overall rate and so it's easy to do the calculation of what it would be for the employees, if it were to be at the 3/11 ratio for the employees. The code says that normal cost ought to be split. But Carmen is also correct that the past practice has been that the employees did not pay this cost. So if the board moves forward with the valuation, we will be looking at both whether or not the city could shift the cost to the employees, and if the city could, under the current code, shift it, what the mechanism would be for trying to make that shift, in other words, whether or not there would be a need to meet and confer on it.

>> Conrad Taylor: Russ.

>> Russell Richeda: Just a footnote to what Mollie said, the charter in 1505C talks about the 8 to 3 split, in terms of splitting current service for current service benefits. So you know, that term's not self-defining whether that term includes SRBR.

>> Mollie Dent: The charter sets a cap on the City's contribution rates though whereas the code actually sets the ratio itself. So I think we would be looking more at the code language but again we do also have to look at past practice.

>> Russell Crosby: And from a staff standpoint, we should have referred that over to the lawyers rather than --

>> Mollie Dent: Right and it's not something that really has to be decided today. The issue that needs to be decided today is whether or not to consider it in the overall contribution rate.

>> It does have an impact because if it is a normal cost shouldn't we be prefunding it?

>> Carmen Racy-Choy: I mean ultimately it's just a matter of who prefunds it. I'm assuming that basically, you will have an opinion from basically legal counsel on whether it should be split 8 to 3 as a normal cost or whether it

should be borne by the city soon. And as a result of that, that would be well in advance of when you actually need to pay the contribution. I mean there's a one-year lag. This valuation really -- there is a one-year lag between the valuation and the time the contribution goes into effect.

>> Okay. Last question on the SRBR. You gave a recommended range of, this is going to your presentation slide 10. .16 to .26. Is that based on an assumption return of 7.0%? Good well, that is a basis for setting the range. The recommendation was looking more at the range you see for 7.5. We wanted the range to cover the high end of the .26 that you see under 7. The -- the distribution of these, because you have so many years with small or no transfers, you end up with a lot of very small amounts and then a few years where you have much larger amounts. And so that's why you see the difference between the 50-50 break point and averaging. And so we tended to push the recommendation more towards the average than the 50-50 break point.

>> So can you talk about that a little bit more? There's -- whether the range is .26 to .16 or .24 to .14, there's a median transfer and then there's an average transfer.

>> Right. The median transfer means that the -- let's use the 7.5 column for this. The median transfer of .14. That means half of the transfers we modeled were less than .14 and half were greater. But it's not like the investment return bell curve that we saw, it's a much different-shaped curve. And so when you actually average the amounts for that one period, there were some very large transfers that shifted the average to be significantly more than the median. And that was .24.

>> Another way to think about it is if you could allow negative transfers going back, then they would be closer together. But since you stop it at zero --

>> The claw-back doesn't --

>> The claw-back has an effect but the SRBR balance also cannot be credited with an interest rate less than zero. And so that -- that has an effect on it as well.

>> So it's a big spread between the two. And that's the median being kind of a geometric average and the average being an arithmetic?

>> In this context it is really not a gee metic arithmetic sort of thing like in investment returns. It's just the strange shape of the distribution of having some very large transfers at one end, that pull the weight.

>> So your recommendation is towards the top end of that range?

>> Yes.

>> So then my last questions are on that discount rate. You gave a range of 7 to 7.75 with a recommendation of 7.5. We're currently at 7.75. If we wanted to set a rate so that in 16 years, our expected assets will equal our expected liabilities, what would that rate be?

>> You mean the contribution rate?

>> Discount rate.

>> Oh. Well, whatever discount rate you have, it will establish a contribution rate that you amortize over 16 years whether we set 7,7.75, 5. It will change the contribution amount, all with the target of getting there in 16 years if you don't change the amortization period.

>> So the expected rate, we'd need to set the expected rate at 7.5 to have zero at the end of 16 years?

>> All right if you are saying that 7.52 was the correct expected earns but you use the lower discount rate then you should get there sooner. Is that what you were asking?

>> I don't think I'm --

>> Carmen Racy-Choy: Are you actually --

>> (inaudible) the contribution rate it's not solving for the return. It's moving the contribution rate to be --

>> I'm just dealing with the discount rate. I'm sorry if I am confusing those two. The discount rates are assumed return, right? What would our assumed return if those two were equal, and that's what we were trying to achieve, right? What would our assumed return need to be so our expected result at the end of 16 years would be zero, we wouldn't owe anything?

>> If your assumed return is going to be equal to the discount rate, it's always going to be 16 years, because the thing that's going to change is the contribution rate to fund.

>> Russell Crosby: I think what he's trying to get so is, what's the likelihood, I mean what is the likelihood that you're going to have full funding at the end of 16 years with one of these contribution rates. And I think that from Carmen what I understood was that number is 7.25. That gives you a 50-50 of achieving full funding by the end of the 16 year period, is that where you're trying to --

>> Is that the expected return or is that the 50-50 probability?

>> Carmen Racy-Choy: Over the long term, legality me address that possibility, and the long term is typically 50 years. So the median, the 50th number you see here, whether it's 7.5 or 7.25 should converge to the expected. And over 30 years that happens. After 16, there might be a slight difference. Maybe five basis points difference between the two. So fundamentally for all intents and purposes, you can assume the median over a 16-plus-year period to be your expected.

>> So we're dealing with a 16-year period right?

>> Carmen Racy-Choy: Yes.

>> So there's the two different approaches. Arithmetic you're expected, your median, your geometric, right. If we just went with the arithmetic what would the discount rate need to be?

>> Carmen Racy-Choy: Um, I mean we don't do this analysis on an arithmetic basis because basically what the arithmetic basis says 2008 doesn't happen. The reality when a significant downturn like 2008 happens, you spend multiple years trying to catch up. And so you use geometric to reflect the fact that you don't earn exactly the discount rate every year. And because of that, you need to use geometric.

>> And is geometric the standard that everyone uses? No one uses arithmetic? That's the actuary standpoint? I mean that's the --

>> Yes.

>> Okay. So those are all my questions on that part before we go into the demographics.

>> Conrad Taylor: Any other questions? Gentlemen.

>> Okay. We will now switch over to demographic, and Bill will lead the show.

>> So I'm on slide 11 here, and this just summarizes the recommendations. We'll go through them in more detail. But as Gene already alluded to, we're proposing to add estimated administrative expenses to the normal constant, instead of reducing the expected return for that. We're proposing some increases to the merit salary component. We had a discussion about wage inflation. Those two get combined and we'll talk about that. Some increases in retirement rates, really, for those with 30 or more years of service. And some decreases in disability rates for people over age 50. Some kind of offsetting adjustments to mortality and a slight increase in termination

rates. These assumptions are based on an analysis of the four-year period ending June 30th, 2010. So it does not include what happened in this last year. On the administrative expenses, there is a chart on page 30 of the full report that shows the expenses for the last four years. But they've shown a gradual increase to 2.96 million in the fiscal year ending June 30th, 2010. So we're recommending that you add $3 million to the normal cost for the next fiscal year to account for administrative expenses. And we would continue to review this assumption with each experience study and adjust that dollar amount accordingly. Merit salary increases. So we looked at the increase beyond the wage inflation increase for individuals. And so this is usually the increase for changes in step, longevity, other sorts of pay increases that are not across the board. And so as in the past, we analyzed it based on years of service. Typically people get more step increases in other types of merit increases in their first few years of employment and then it levels off. You can see the pattern is a litigate -- the red -- let me go through this. The red line represents the current assumption. The blue line represents the actual increases during the four year period. And the green line represents the proposed assumption. And you can see in the early years, we've essentially smoothed out, of the bumps from the actual experience and taken into account the prior assumption. After about nine or ten years you fall into a fairly level increase that doesn't vary based on service. During that period it's been over 3%, and the current assumption was 1.75. We're recommending that that get increased part-way to 2.25. That's a 50 basis point increase with the recommended reduction in the wage inflation. There's a net decrease of 25 basis points on their overall pay increase that's projected.

>> Can I just ask, what is a merit salary increase?

>> So that's the -- the increase for step and other changes in pay that are not across the board.

>> So I'm not as familiar with the police plan, but how do you get a 9% step increase in year zero?

>> It's in your -- I don't know the details of the wage agreements or the steps. But based on the data, people in their first year of employment got a, on average, a 9% increase.

>> Would that be moving from the academy to the line?

>> Conrad Taylor: We have various steps. We have seven steps. Each year they move up a different step and then they have post requirements. They could have a beginning post an intermediate post and an advance post. The number of years they get an increase.

>> And how much are each of those steps in police, percentage?

>> It's five for each year. And then the post is different. I don't know what the post number is. I don't have that number.

>> I just know on the fire side it's 5% --

>> Post caps at 9% or 7.5%.

>> I believe it's five, five and 2.5.

>> Yeah I don't --

>> And that's on top of the regular step increase?

>> Conrad Taylor: Yes.

>> Okay.

>> Conrad Taylor: But you have to meet certain milestones for so many years that you get the post. It's not for every year.

>> I was trying to figure out why it was above 5%, I couldn't think of a reason, but clearly in police in the initial part of employment have different factors going on, thank you.

>> I did want to mention we've done experience studies all over and we find in times of -- difficult times of inflation where the recessionary increases is very, very low, the plan members find ways to step up in their increase, whether it be step increases or extra overtime or other sources of getting extra pay, they're all in this thing.

>> Retirement wouldn't -- sorry overtime wouldn't kick into this, it might be factors of people retiring and times where people are leaving the plan it creates promotional opportunities for people left behind, thank you.

>> Conrad Taylor: Are you saying overtime is factored into this?

>> No, it isn't, it's just pensionable pay.

>> I'm just talking about nationally what people are doing.

>> Yes.

>> So this next slide looks at retirement rates. And we use this format for our analysis for a lot of the demographic suggestions. So I'm going to spend a minute describing what's on the slide and the whole picture here. The red line, again, represents the current assumption. At the bottom you'll see age groupings so here we have age 50 to 54, 55 to 59 and so forth. The green line represents our proposed assumption. And the black dots there that you can see in the middle of the gray bars, those represent the actual experience during the experience study period. Then the gray bar, what that represents is a statistical measure of the 90% confidence interval around that black dot. And so what we can say is the true underlying rate of retirement during that period, not necessarily going forward but during that period, was when that gray bar where 90% confidence. Where we have a lot of data, those bars will be short and narrow. Where we have little data, they become very large. So 60 and above, we really don't have any data to support things. And so those bars run the full length. One of the reasons we grouped

people into these five-year age increments was to get enough data so that we could have bars. Now, the key -- let's see, and then the actual rates are shown in the table on the right of the current and proposed, in case you want to see the actual numbers. At the bottom, we show what's labeled the A/E ratio, that's the actual to expected ratio. And so what that means, under the current, we've got 2.437. That means there were 2.4 actual retirements for every expected retirement under the current assumption for this group. And so then, the proposed ratio is 1.137. So we're moving that closer to 1. 1 would be kind of the ideal map. What's -- in terms of retirement rates, what's different here is we're proposing separate retirement rates for those with 30 or more years of service. That's where you hit the maximum benefit as a percent of pay. And that contact was not in existence before, so that was just everybody's retirement rate. This is showing the police rates. The appendix of this presentation has the less than 30, there's a minor change in the age 50 to 54 for police, and no change in fire. So since the significant change was for greater than or equal to 30 years, they wanted to focus on those for the presentation. And essentially we're recommending to moving to 100% assumed retirement at age 60, if you have 30 or more years of service. Because the data shows that not only did we have enough experience, there just wasn't anybody in the data with 30 or more years of service who was over the age 60. So they have all historically retired by then.

>> And this is in the whole history of the plan?

>> No, that is for that four years.

>> Four years.

>> So the change in the retirement rates for fire, for those with 30 or more years of service, is much smaller. You can see, though, that it's greater than the current assumption. The actual to expected ratio over the whole group we're recommending a reduction of 1.35 to about 1.04. So here, on the disability rates, you can see we have -- here we have ten-year age increments to try and get enough data to draw some confidence intervals. From ages 30 to 39, we're pretty much on target. Above age 50 we're asking for a reduction in the assumption. And the actual to expect ratio moves from.91 to.97, moving us closer to the target. Similar dynamic here on fire for the

disability rates. And the recommendation moves us from an actual to expected ratio of about .84 to .98. And the reduction again is jut for ages 50 and above. For mortality there are actual charts in the appendix, but the experience for mortality is such that we focus much more on the actual to expected ratio rather than looking for individual groupings. We're suggesting that we redues the age setback for males, male had healthy retireees, from four years to three years, and that moves the actual to expected ratio from 140% back to 125%. For females, we're recommending no change. And then for disabled annuitants, we're retching increasing the age setback from one years to move it from 99 to 111. Previously I said 100% was the target, with mortality, there's an expectation of improved mortality in the future. And so kind of standard practice in the actuarial community is to anticipate some future mortality improvements. And there are generational tables that bake that in. But a more common method is to look at about a 10 to 15% margin on the actual to expected ratio to anticipate future improvements in mortality. So here, instead of really targeting 100%, we're targeting more in the range of 1 ten. Given the size of this plan, there is considerable variability from study to study on these numbers. So that's why we're not pulling the female table back. Just letting it right at 133 at this point. But we'll keeping look at it in future studies.

>> Russell Richeda: Bill, what does exposures mean on the chart?

>> I'm sorry, yes, means for males, for example, there were 1993 male retirees who had the opportunity to die during the period. And if you were alive for the full four years, each individual counted four times. And so that's what we look at as the overall exposures. And you'll see in the report, we use this kind of table for all of the demographic assumptions so that you can see how many people had the opportunity to retire in that group, the opportunity to terminate, and so forth. So here's the termination rates. Here's termination from employment, these rates again are based on service. We've grouped them here in five-year bands so that we could get some confidence intervals, we sigh that the actual experience has been higher termination rates than previous expected. We are looking at increasing those rates. Primarily you'll see the increases in the five to nine years age band and earlier.

>> How come you're not increasing the 15 to 19 years?

>> The experience-d the current assumption is within the confidence interval. The actual number was higher and saw a greater amount but because we're well within that confidence interval, we don't believe a change is warranted. And the actual -- we'll continue to monitor it, obviously, and see where the actual experience goes in the future. So there are a few other minor assumptions in the report. We aren't recommending any changes to this, so I didn't include them in the PowerPoint. There are things like marriage assumptions and those sort of things.

>> Conrad Taylor: Carmen, do you want to add anything on this, pretty much concur? Sean.

>> Sean Kaldor: So in looking at it, I haven't been on the board that long, but it seems every year we sit down and realize we got the numbers wrong and things have changed. Either our realization but all of this should be looking over 30 years. So there shouldn't be that much we realize every year, that should cause us to change our 30 year view but we continue to keep doing it. And I'm sensitive to us sitting here saying, for a city, as a business, your costs of payroll are going to go up 8% next year. And I understand there's investment returns that can help out with that. But for us to keep making assumptions that keep throwing city costs up or down in unpredictable level, it creates an unstable environment. I believe for our members we give them a -- there's a guaranteed benefit, it is a defined benefit plan. For the city I think we should try and provide some stability or expectation. It doesn't mean that the cost isn't there, but it shouldn't jump, it's going up 8% or down 8%. Regardless of how well the investments, we're trying to figure out what's going Do to happen there. Is there a good way to mitigate that or smooth it just for planning and stability?

>> Yes, there is. And I think we're trying to do that. If you look at slide 3 first, we'll slip back to that slide, go to slide 3, Bill, focus on the city increase of 8% on the left-hand side there. Three of the items, the investment return, the SRBR, the administrative expenses add up to 7.8%. All that other stuff mainly that builds demographic assumptions is .2. So that by itself should not, going forward, be a concern. But we spent a lot of time on the investment returning telling you we want to derisk the plan and for reasons of this slide that shows that the higher the discount rate the wilder your returns -- your contribution rates could be. We're trying to lower it so we can smooth that thing out. The SRBR was something that was a built-in loss that you know, once we do that there

should be nothing to change there and the same with the administrative expenses. Those are -- we wouldn't even be studying those next go-round. But I think all the demographics together are fairly small.

>> Russell Crosby: So I think there's been an ongoing recognition that the discount rate needed to come down. And what's been going on each year for certainly the last three or four years is an incremental reduction each year. We've always been recommending that the ultimate target is somewhere, you know, 7, 7.25, down in that range. If you had done that change in one big swoop that would have been a huge hit for the city. And so what they're trying to do is integrate all of these changes continuing to reduce the discount rate. And that's why that changes every year. I mean there's been kind of an ultimate target there, but that's been going down each year to try to match that target.

>> Sean Kaldor: But if we keep -- if we see where this is going and we say this needs to be 7.25 or 7.5 or wherever it is, and we keep going back to the city and say hey, your bill is going up next year eight or 10%, how much was it last time, a huge jump.

>> Carmen Racy-Choy: I need to convey, 7.25, you're going to go back to the city and say your costs are increasing in one of two economic scenarios. You will only have sufficient funds for your benefits in one out of two economic scenarios. If you actually want to have greater certainty, a few things. One, follow Cheiron's recommendations. Things like SRBR and the admin expenses which every year they have been, are a drain on the system, result in losses and force the actuary to reconsider the assumption, should be explicitly funded on an actuarial basis. So that's removing the strain on the system and making things transparent. And two, in setting assumptions such as the discount rates, but really, all of the assumptions, rather than set the assumption at the expected, set it to give yourself a 60% chance of having enough money in the fund. And you can clearly do that at a cost. I mean, ultimately that's your call. If you really would like to maintain the city cost stable over the long term, then you need to move from setting the discount rate, and other assumptions, from the median to a median plus a little bit of a margin, a little bit of a cushion. This way if you go threw rough five-year period because you have that cushion, you can say I'm not changing the assumption. And ultimately if it is just volatility and things go back in line then you didn't have to change the assumption. But if you're setting the assumption at the median, you go

through a tough five year period, obviously the actuary is going to come to you and suggest a change in the assumption. So really it is your call, and you guys decide how you want to set the assumptions. But really, there is no way to achieve a stable contribution rate but to put in more conservism. And putting in more conservism means more pain in the immediate.

>> Sean Kaldor: I hear what you're saying. I think my question goes to both sides though. If we are very conservative and we have a five-year period of great returns, what we end up is a situation that we had no so long ago, with a significantly overfunding of the plan and that turned into favorable return assumptions and increased benefits which then created costs that were unsustainable in a down period. So any time there's the incentive to, on a short term basis recognize these benefits and then suddenly turn them into long term costs or looking at it saying hey we need to make our assumptions more conservative and create huge costs on the city, both of those swings to me are not good ways to go about business. I look at those being driven by not the individual assumptions weed in to make. I think the assumptions are the assumptions and if mortality is mortality, I want to have the right assumptions as best we can guess. It's an approximation, all of this is. But it seems to me all of this creates opportunities for use that creates long term liabilities or creates a huge fiscal swing in the operations of the city. So in looking at this I would wonder what would be the impact, if we were to absorb these changes over a long period of time, still paying them in full but absorbing them over a long period such as using the amortization period that our Federated plan uses?

>> Well, we actually are on record, and Bill may elaborate on some things in the state of California, actuarial group has decided that one should use a longer amortization period for method of changes as to not inhibit a plan sponsor for becoming more conservative. And maybe for benefit changes they ought to be shorter reflective of the period that they're going to be paid. And your current experience gains and losses of 16 years is well within where most actuaries claim they should be. On the -- I'll let Bill mention, there's a group of actuaries in California that have come up with some standards.

>> They're still developing them but there's a California actuarial advisory panel, I don't know if you're aware of it but they've put out a discussion draft of model funding policies. And in terms of the amortization periods, they are

recommending -- well, they've got sort of like a gold star, silver star, bronze star type setup. But the range for benefit changes, the preference, is expected future working life of those receiving the benefit increase. And if it's for retirees over a short period, maybe not one year, but over a short period, for gains and losses, they're recommending 15 to 20 years, as kind of a targeted range, and for assumption changes, 15 to 25 years. So again, though, that's -- it's a public document on their Website but it's still just a discussion draft.

>> Sean Kaldor: So just to play off that real quick we use 16 years, you're saying would be in the range we said gains and losses if we did the same thing as our Federated plan did and said 20 years and assumption changes 25 years we'd all be within that range? In you'd be at the end of the range.

>> Sean Kaldor: So we just did 20 years for everything?

>> Yes, we might want to consider if you're going to do that route and stretch it out then let's take the next bite of the apple and go to 7.25.

>> Sean Kaldor: Could we see numbers on those different scenarios?

>> Yes. One thought we had is, you're getting it for the first time today and we've got some significant results in the 2011 valuation we'll be presenting next month. We'll provide those alternatives, show the impact of the 2011 valuation. But Bill and I are both thinking all those demographics changes are really minor in the scheme of things that you might accept those, the retirement disability and the like or handle it all next month.

>> Sure.

>> Drew Lanza: You know, Sean, it seems like there are two things going on here and we have to be careful not to get them all mixed up. There's a reality underlying this data that is beyond us, right? And the job of these guys is to lock on to that reality as best they can and I think we have to rely on experts how best to lock onto that reality. But that reality is based on underlying data that we do have some impact on. And it's in two ways. And

they've broken it into those two segments. We should focus on generating better than average returns. We should measure everybody here, by saying we want to be in the top tercile, let's say, and we can impact that. And then the second piece of the demographics which we don't have a lot of impact on, but we can impact the demographics a little bit. For instance, if we can keep our people healthier, right, the system will be more sound, right? And we will do better than these expectations.

>> Actually, the healthier you keep them the longer they live, right?

>> Drew Lanza: Right, right. I always figure you have to invert that thing. So returns and roll the dice. But I think you have to focus on what we can impacts. And to play with the adaptive affiliater that these guys have built that's trying to lock onto the date is a very dangerous thing to do. That's why God created actuaries in the first place.

>> Sean Kaldor: I don't think I'm proposing to -- my inclination is if we're going to send costs significantly upward or downward in a 12-month time frame, then I would want to make absolutely certain that I'd want to do each one of these changes and I'd go through each one and say I need to know with 90% confidence it's the right change. Otherwise I don't want to mess with things, let's take another year on two and say. If we can accept the changes and say yeah, it's within a margin of error, but we know this gets absorbed over time, so there isn't a sudden change next year, next two years, next three years, everybody can predict and plan and build it into their expectations, then it's easier to say okay, yes, you know, retirement might be a little bit higher, I think it might be a little lower, because once a bunch of people go, then we have new people, we don't have that many people over 25 years right now in the fire department, so there are not a big spate of retirements ready to come. So if it can get absorbed over time, I would say let's see how things go. So that's my thinking over a longer amortization period as opposed to each individual recommendation going through. Like you say, their job is to go through and think it through look at all the math and come up with the best possible recommendation.

>> Drew Lanza: So there is an underlying frequency to the data and I think what the gentleman are saying we should be changing at that underlying frequency. There is so much we can see into the future and we should be changing at that rate. Not as a function of what the politics are but as a function of what the physics that drive the

underlying data are, you can ask the question, what the frequency of the change of the data has been increasing over time or what the volatility and the noise, but about what you're saying is don't turn the knob any quicker than the data is changing.

>> Right, but listening to this discussion, we're also saying that we want to understand the board's risk preference. This is our first time hearing the board talk. So I think we have a better sense now of where board members are coming from. We also have this potentially very significant change in the valuation results coming up and we may want to look at some tweaking of the amortization period to see what impact that has. And we're perfectly happy to come back next month when the valuation results are there and refine this analysis.

>> Drew Lanza: Well, I think I would absolutely agree with sort of Sean's comments on risk. Because I do agree with what you're saying in terms of how we view it.

>> And we will also have at that time our projection model so you'll be able to see a projection of the systems cost and the different economic scenarios which we don't have prepared today. So --

>> Conrad Taylor: Pete do you have a question?

>> What's our action today, versus next month? It says discussion, action. Are we supposed to decide whether or not to accept these changes?

>> Russell Crosby: That would be the ideal.

>> Conrad Taylor: But they're going to come back with further information. So it looks like next month we're going to be adopting the changes that they recommend. I would rather hold off until we have more information and make the right choice.

>> Sean Kaldor: The valuation study and we'll have permutations and combinations of amortization periods and we can look at all these and --

>> Conrad Taylor: Pete, you had a question and then Vince and then Russ.

>> Pete Constant: Just a comment. I wanted to make sure the board was aware that the City Manager did approve the City Manager's fiscal reforms which included a series of things. And in there were guiding principles. So one of the guiding principles was to support the boards in choosing an assumption rate that has at least a 50% probability of occurring. And that's really important to the city council, and the city administration, because we know that when that doesn't happen, when that target isn't reached, it really does increase the burden by increasing that unfunded liability. Which is -- which has significant impacts on the city. I think it's also important to know that the council has had quite a bit of discussion and is very sensitive about intergenerational transfers of debt or covering the liabilities. And I just want to you know that the council did approve those recommendations and guiding principles and they are the City's position is they really would like to see at least a 50% probability of reaching those goals.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: So following up on your comments here, and going back to the table that was put together, 2.6, the 50% probability gets us to a 7.52 assumed rate of return. But that's not utilizing our current assumptions and frankly, I would want to operate with a bit more confidence than that. That doesn't give me a lot of confidence, that the 50-50 chance that we'll hit that number. So that's the first thing. The second thing is, I do appreciate your desire to not move too drastically from the current assumptions. But if the assumptions are wrong, I would challenge that thinking. And in looking at the assumptions, they seem to be off the mark from what we've actually been achieving. Take into consideration that we have to be careful and mindful of the capital markets and how they've moved over different periods of time. We've had a very difficult ten year run. The assumptions back in 1999 were significantly higher, and we don't want to err on the side today of being too drastic in our assumptions, either, for investment returns. However, there's a big difference here between your current table of a 50%

probability using a 7.5% to return, and having a 75% confidence rate with a 5.82% return. That's not even part of the band that you're using. So that's not in the mix. I would say that from the investment rate of return, utilizing our chief investment officer, the investment committee's assumptions of 7.25 should be factored in at our next meeting. I understand not wanting to move too drastic but in my mind that seems to be a more realistic number. We should seriously consider. Secondly, on the wage growth I would definitely like to see that modeled in at the lower number of 3.25 and I wouldn't mind seeing a 3% handle on there as well, on the wage growth. Sean's comments about the fact that we won't see wage increases for I believe two or three years, the fact that we do revisit these numbers possibly every three to five years, means if it's probably a realistic assumption and the fact that if we look at the data, the five year data ending June of 2010, the real experience for this plan shows 3.45% wage increase. So those two factors I would really like us to focus on are investment return moving towards 7.75. We haven't done anything in addressing that since the board has changed in complexity. The wage component to either a 3 to a 3.25% number, and I think Sean's comments on the amortization is right on the mark. We should look at trying to smooth out that gain/loss and the impact to the city by expanding the amortization table and looking at the impact of doing so.

>> Conrad Taylor: Sean.

>> Sean Bill: So the 7.5 or 7.25 number, is that based on a passive investment strategy with passive indices for those returns?

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

>> Sean Bill: So my thoughts there would be, that we should be thinking in terms of active management, adding, and we should be setting a high bar in terms of trying to achieve outperformance relative to our index. I mean if I'm a bond manager at Pimco, I'm expected to outperform my benchmark by 100 basis points plus. I think we should be pushing our team to try to outperform their benchmark with active management, with, you know, a -- with a higher standard. I mean if we did straight passive 7.5, what have you, great. But presumably we could beat our benchmark.

>> Carmen Racy-Choy: Well, just remember the benefit of the investment return assumption is front-ended. Which means if any individual joins today the actuary looks at what he's going to earn at retirement and will try to make sure that every year from today, till the day he retires, that the normal cost is reflective of the appropriate cost. And the benefit of earning whatever the investment return assumption is front-ended. The standards on manager alpha, and I just want to be clear because manager alpha you probably have less than a 50% chance of achieving should not be front ended, and it should be recognized when it happens. So --

>> Sean Bill: I disagree with that. My main point is over a 16 year horizon, presumably, we would be picking up a significant amount of alpha above our benchmark.

>> Carmen Racy-Choy: Not if you look at historicals. You have a very significant level of detracted alpha, in the 200 basis points level over the last --

>> Correct but --

>> Sean Bill: Currently we have that. But I think that's due to unfortunate manager selection. Is why you're underperforming your benchmark by 200 basis points. I assert the point of that. With more -- with a better selection of managers, that number should be the other side. It should be above your index.

>> Sean Kaldor: I don't disagree with you, I'm just sensitive to the point of, in this plan, it's 50-50 but when it comes to active management we can recognize above 50-50.

>> Conrad Taylor: So Sean, are you saying that you agree on reducing the discount rate but not to 7.25, or just at 7.5 because it's going to have active managers that's going to outperform the benchmark?

>> Sean Bill: Right, I think that if the 50-50 comes in at 7.25, I would hope that we are able to actually -- and this is using an assumed benchmark that we've created for ourselves, right? That's using our assumed assumptions

that we've created for ourselves using passive investments, correct and if that's the case, if we are moving towards trying to find active managers and moving towards going into hedge funds and things like that, we should be able to add a emergency of outperformance above these passive assumptions. That is the standard. That is the standard in the private sector for any asset manager.

>> Russell Crosby: Of course, but there's a disconnect between asset management and asset valuations and projections around the plans. And I think you have to build your plan and your assumptions within the plans on a more conservative basis and you can't front-end that assumption that you're going to outperform every other plan in the country across a 30-year period. I don't think that can you make that assumption. I think you have a very good board. I think you have some very bright people. And you are unique in certainly public plans in California, in the quality of the board, particularly around the investment knowledge. But to build that assumption in, up front, that you're going to outperform, my experience over 25 years of being around institutional investing and having very good boards in certain places is sometimes it happens and sometimes it doesn't. And you make a big mistake to make that assumption off the top, that if you do have superior performance like this year, we had vastly superior performance than what's in the valuations. That's to our good. That's to the plan's good and that gets built into the plan almost immediately. And very short amortization period, only five years there to recognize the benefit of those additional income amounts. So there is a mechanism to recognize that superior performance and to recognize it much more quickly than a 20 year amortization schedule would imply. So I think that yes, you do want to have this -- a target. But then you -- and you want to build yourself around outperforming that target. But to assume at the beginning that you indeed are going to out-perform I think is a very big mistake.

>> Sean Bill: We'll agree to disagree.

>> Russell Crosby: Okay.

>> Sean Bill: Maybe 100 basis points is aggressive but I would think that we could add positive alpha over a five year period or over a ten year period. I would hope so.

>> Russell Crosby: I hope so too.

>> Carmen Racy-Choy: And if you do, then you recognize it, as soon as it hatches the actuary will recognize it. I just want to be clear on the fact, the issue is not whether or not it should be recognized, it should be recognized. And it is recognized. As soon as it happens. The question is, do you front-end the benefit over a 30-year period, of manager alpha, when the reality is, you might have a lot less than a 50% of achieving it. And I believe the actuarial standards such as studied ought not to be. I think Gene can say more on that front.

>> Conrad Taylor: Did you have a --

>> Richard Santos: Just a comment. Listening to all this, it's hard to understand all these interlocking assumptions. Because after we're together for over a year I think the behavior and the way we've been doing business is going to change. Then would I like to see some more numbers that we can take a look at assumes certain things. But we just haven't had that opportunity. We're on the right track and I think my friend here expectations may be too high. But I still think we are going to get up there but first we've got to operate everything from investments contributions, longevity, retirement age, so many things are I believe going to change. And then again as the city changes, maybe salaries go back to a certain area, more employment, I sure hope so. But I know we can take care of business here first and these numbers then will change. So I can't see us locking into anything. I can only assume certain good things whether it be 7.25, 7.5. But my expectations are that's where I want to go. But we still got to measure after one year find out we got so many things to do and we're doing a lot of talking. We got to start implementing. So.

>> Conrad Taylor: So Damon and then -- Damon did you have anything?

>> Damon Krytzer: Yes, I just -- how do I follow that? I was just going to suggest that you know, we're going to see a lot of this stuff again next month, and we're nitpicking rightfully over an impactful but very made up quarter of a point, over a ten year period or a 16 year period, right? So maybe I was just going to suggest that you know,

we carry this discussion over to next month when we see some of the impact numbers and you know we bake in our actual beta portfolio assumption.

>> Conrad Taylor: I agree with you.

>> Richard Santos: So moved. I take that as direction.

>> What I want to say is, this was a wonderful opportunity for us to observe the board and what your thought process is and this will grating e-greatly enhance us coming back next month with a refined analysis. This is our first shot out of the box here and typically boards don't in one meeting absorb all of this information and make a decision. I want to tell you on behalf of Bill and I we both really appreciate this kind of back and forth.

>> Conrad Taylor: Sean.

>> Sean Kaldor: Just a procedural question, and it's because we have new committees and we're still hammering out the rules and everything, that what was the change made to the investment strategy that altered our view of how much we can return as a plan?

>> Carmen Racy-Choy: This was a gross assumption. The 7.52 percent, not a net of vex return assumption. However since the actuary is not reserving for investment manager fees, the assumption should be on a net of fee basis. So the investment committee asked staff for two things. We took the assumptions that underline the 7.52 and we made them net of fees and we went back to the committee. And so the committee at that point in time, the median would have been below 7. The committee liberalized variation assumptions were they said well equity, we think we can do a little bit more than for example 7.50. Just giving you an example. I'm not giving you the exact numbers. So two things, two major changes. One, this is a gross number. It really should be a net of fees number. The committee moved it to a net of fee number and increased it to 7.25, 7.27, approximately.

>> Sean Kaldor: Why in the first place would we have done it on a gross versus net basis?

>> Carmen Racy-Choy: I think in the past staff did the capital market assumption and we did them on a gross basis.

>> Sean Kaldor: So now they're doing them and they didn't --

>> Carmen Racy-Choy: I mean the --

>> Damon Krytzer: If I can respond to that, that came up at our meeting on the investment committee side. That is, if you are hiring active managers you expect them to exceed the return net of fees, you wouldn't take the capital market return and reduce it for their fees. If that were the case you'd never hire the manager.

>> And we're not assuming alpha, we're just assuming a beta portfolio.

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

>> Sean Kaldor: What was the second piece of that? We've changed some of the investment returns we'd have on some of the asset categories?

>> Carmen Racy-Choy: That's correct. So we made the assumption from gross. We moved them from being net. In reality what's underlying the 7.5 was the mixture of some net, some gross and the committee, rightfully so, says that doesn't make any sense. So we moved everything to net and they changed some of the underlying assumptions.

>> Conrad Taylor: Russell.

>> Russell Richeda: I'd just like to know if the board -- I'm jumping to this issue of normal cost and now the actuary's recommendation to add administrative expense and SRBR estimated expense to normal cost under -- and as board member Kaldor mentioned that may or may not have come within the 8 to 3 split. In other words, employees may have to start paying a share of that based on this assumption. And I understand that we've said that's a little question that will be referred to legal for analysis, and perhaps may or may not be meet and confer elements on it. I'm not talking about those issues. I'm just suggestioning that this is a change. It may be a major change. I'm not sure. But it's a change that needs I think more explanation and rationalization before the board adopts it. At this point, I don't recall seeing an elaboration of the rationale and the impact of this change. And the board may want to request staff and the actuary to provide that. You know for example how many other systems do it or what's the underlying assumption. This is not how we've done it before. And so the more, just reason, not legal reasons, just the actuarial reasons, the practical reasons, the common sense reasons. Because this may be an issue that comes back or that may receive some challenges outside of this board. And the more due diligence is done on it, I think, the better.

>> Russell Crosby: I think Gene wants to say something.

>> We attempted to provide the rationale. But I'm certain that we're not going to change our SRBR recommendation because I mentioned the mountain tops and the valleys. And you skim off the top by definition you're going to get a lower return.

>> Russell Richeda: I'm not asking you to change anything.

>> I'm saying there's no rationale not to reflect the SRBR.

>> Russell Richeda: Well, I'm just saying, we're -- the -- you're proposing doing something that we're not doing now. It would be helpful to have the reasons why you're proposing that. Or why you think what we're doing now is nonsense. Or not in accord with actuarial assumptions. I think the more information to justify those

recommendations will be helpful, particularly in the event where the code is interpreted, the employees are now going to have to start paying a share of that when traditionally they've not had to pay a share of that.

>> We'll come back with more information on that, thank you.

>> Carmen Racy-Choy: Just in a nutshell, currently what's happening is, we believe that every benefit that is provided needs to be actuarially funded. That's really just basic actuarial standards. And that's the right way to run the plan. Currently, the money that is set aside by the actuary, to meet pension benefits is used as a slush fund for the SRBR. And the SRBR is not actuarially funded. So really the actuary is trying to remedy that issue so every benefit provided by the fund, whether it's a pension benefit, whether it's SRBR, is properly and adequately reserved for. That's really the underlying rationale.

>> Russell Richeda: I just think some written documentation and elaboration is going to be very helpful to the board, assuming they adopt the recommendations.

>> Carmen Racy-Choy: Sure.

>> Conrad Taylor: Russell, Mollie I have a question for you. I understand actuarially, we have to fund benefits. But does this board have the authorization to make a change like that to request to start funding, either on behalf of the city or the employees?

>> Mollie Dent: So I think the question that -- the only question that we really looked at was with respect to the SRBR and the normal -- and whether calling it a normal cost means that it should be or could be shared between the city and the employees. With respect to the administrative expenses, I mean the code's pretty clear that the administrative expenses are supposed to be paid by the plan. I am not really sure what issue I see there. But I mean we could think about it. On the SRBR, I'm not quite sure what Mr.-- I'm not quite sure what the question is, with respect to whether or not it should be costed or not. I mean it sounds like the actuaries are saying it should be costed. There is an issue about who should pay for it, and we will look at that. But I didn't see any way, so I

understood the actuary's rationale of why it should be costed from an actuarial standpoint. Of course we do know that the benefit is in the process of -- it's being discussed in negotiations so if it were to go away, that would, as a result of the negotiations, or to be substantially modified, that would impact ultimately how this turns out. But right now, the benefit is there. So --

>> Conrad Taylor: Pete.

>> Pete Constant: I just wanted to mention. I know it was mentioned, this is the first time we've discussed this. But I believe about a year and a half, two years ago, Carmen did an extensive presentation on the SRBR. I know many of the board members were not on the board at that particular time. Remind me, it was you that originally brought up this needed to be costed. And there were lengthy discussions at both the Police and Fire and Federated, not only the part that it had to be costed out but the drag that it was providing to both funds.

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

>> Damon Krytzer: I don't even think that's -- I mean, it's an option, period. It's a -- you know, somewhat capped call on the plan and I don't even see a rationale for it not to be costed in.

>> Conrad Taylor: Any other questions on this? Okay. Gene, William, thank you. Enjoyed your presentation. Expect you back next month.

>> Thank you.

>> Conrad Taylor: Okay, moving forward we'll move back --

>> Richard Santos: Can you hear everything good here? Everybody hearing it okay?

>> Pretty much, yes.

>> Conrad Taylor: Okay, moving forward, we'll move under 1, investments, 1.1, staff presentation of quarterly performance report as of June 30th, 2011, deferred from October 2011 board meeting. Carmen.

>> Carmen Racy-Choy: Thank you. First, I'll start by providing a quick update. The first quarter of the current fiscal year has so far been a tumultuous one.

>> David Bacigalupi: Can you speak up a little bit, I'm having a hard time hearing you.

>> Carmen Racy-Choy: Sorry?

>> He's asking you to speak up.

>> Carmen Racy-Choy: Basically I was starting by providing a snapshot what has happened since June 31st, and then we'll dive into the report for the fiscal year ending June 3rd. For the quarter ending September 30, the plan experienced a gross return of minus 8%. As I'm sure you're aware, that the markets took a dive down. We will have more information, more information is being prepared for the investment committee at the end of November. And from that perspective, we'll try and bring some of the conclusions to the board so that you have more timely information. So with that said, I'll go back to the -- NEPC report for the fiscal year ending June 30. First I'll start on slide 2. Just a snapshot of what actually transpired over -- all of my comments are generally going to be geared towards the year ending June 30, 2011. So the -- all of the equity, and this is experienced or most of the equity and this is experienced returns in excess of 30%. The -- on the fixed income side, the core fixed income, so it indexed to the Barclays act experience, a very modest return, 3.9 to be specific. However, other segments of fixed income in which we are, the plan is invested, high yield bank loans and TIFs, experienced fairly good returns. High yield came in at over 15%. Bank loans came in at 9.7. And TIFs came in at 7.7. Additionally -- and this is that are noteworthy, the Dow Jones, UBS commodity index had a return of 25.9. Obviously the plan has a 10% allocation to commodity. Two indices that are significant are real estate, and this is the Nick REIT property index had a return of 16.7, and the Wilshire REIT index had a return of 35.6 so this

was a great year for the market as a whole. With that said, I'd like to take you to slide 7. So what does this slide show? This slide is showing the allocation to public equity for public plans bigger than $1 billion. If you look at the calendar year 2011, which is the right-most column underneath the graph, you can clearly see, first, the allocation for this plan, then on the next row you see the fifth percentile, followed by the 25th, followed by the 50th percentile. So again, the gift percentile basically means the median. And this is showing us that the median allocation of public plans larger than $1 billion was 57% to public comment equities. Our plan's allocation as of year end, again this is a snapshot as of year end, was 47.6, which suggests that we are about ten percentages points below the median. However in reality the picture was significantly different, because as you might remember, the plan was undercommitted to various alternative asset settings. And the underallocation which was approximately 10%, for most of the year, resided in fixed income. And I believe the decision, the board's decision to change, to move away from fixed income and to allocate that underallocation across all asset, liquid asset classes, happened late in the year. I believe it happened in May. And as a result, for 11 of the 12 months, you were actually 17% lower equity allocation than the median public plan. Now, the can he is, I just want to provide a reminder of why that decision was made. As I'm sure you are aware, an allocation of 57% to public equities, when you add in private equities, and when you add in the equity component of for example investments and various other asset segments would end up with 90 plus percent of the risk coming from equities. So by adopting a lower allocation to public equities, the attempt was to try and diversify the risks across various risks, as opposed to being a one-bet plan, the idea was to try and have basically better performance across a range of economic scenarios. This lower volatility suggests two things. One, it basically hopefully will result in less volatility in the City's contribution which again means that more people will be employed. Because if in down periods you're going to do a little bit better than everybody else, this means the City's contribution will be kept at a lower level. Clearly, though, this would hurt in a situation like the current market environment for the fiscal year ending June 30, where just all markets, especially the equity markets, did really well. This plan would end up underperforming. Or at least the policy benchmark would end up underperforming other similar plans. With that said, I'd like to take you to slide 10. Again, all of my comments will really be pointing to the fiscal year-to-date column. As I have mentioned in the past presentations, the difference between the first row, which is the gross return of the fund, and the third row, which is the allocation index, basically the difference between those two numbers is actually 100 basis points. That 100 basis points pin points that we lost 100 basis points of manager alpha. This was fundamentally due to four managers, the two international and two emerging markets managers, William Blair, Brandis, Alliance Bernstein and Boston Company, those four managers are being removed as part of the restructuring that took place. And a move towards global mandates, basically, the managers will be replaced with global mandates. I do want to point out the one bright light on the manager side was RS investments. Although they were not there for the full fiscal year, they added 13 basis points of positive alpha. So we hope to be able to put in place more managers like that. The other component that I would like to point out to is the difference between the allocation index, which is 19.4, and the policy benchmark of 20.5. The difference between the two is really, the impact of deviations from the board-chosen long term asset mix. The absolute majority of the 110 basis points of detracted value came from the underallocation to real estate. Real estate obviously experienced a very significant year, where the underallocation resulted in the almost 100 basis points of the 110 basis points that were detracted. Are there any questions on this slide?

>> Vincent Sunzeri: So can I just like summarize what you're saying here is that you have 200 basis points of underperformance relative to the policy benchmark, half of that is equated to weak managers, half of that is equated to the fact that we are not in line with where we should be.

>> Carmen Racy-Choy: Uh-huh.

>> Vincent Sunzeri: So as far as a priority for getting this plan on track, that seems to be where we need to focus on, moving in that direction, getting that accomplished.

>> Carmen Racy-Choy: And so the transition, and we'll provide an update on the next item, is already underway. With respect to a restructuring the equity component. And so we'll provide greater information on in a future meeting and at the next item. The last comment that I wanted to make was on slide 26. The -- I basically would like to bring to your attention just -- Sykes is an organization, it is a manager that we have a very high opinion of 80 why the plan has currently two mandates with Sykes. One core fixed income mandate and a bank loan mandate. It seems to be experiencing not investment turmoil from a performance perspective but turmoil in the leadership. Mike McEkern which is the president and CIO of the high-yield group retired. He handed the rein

basically of that group to three individuals who are very examine and competent individuals and in whom NEPC places high esteem. So the issue there is not about the potential investment performance. But the issue is that NEPC believes that there is significant risk content within Sykes. And so there is a potential for more, really, leading investment professionals to leave. And if that were to happen, then we need to kind of reconsider the mandates. At this stage, NEPC recommended that we do not allocate additional money to Sykes, and that they will keep reporting back to us about basically what's ongoing within the organization. This is really the only manager we're, you know, we basically have on watch. And we'll continue to report back to the board. FTC.

>> Damon Krytzer: And Carmen for the managers we went paves with, are we going to sort of spell out a time line as to how we're going to replace them or do search or if we --

>> Carmen Racy-Choy: You mean for the mandates where we are passive?

>> Damon Krytzer: Uh-huh.

>> Carmen Racy-Choy: Absolutely. I think that's the goal of the investment committee is to kind of kick off the process of at least the equity components. And I think we can, in the immediate, do kickoff I think the private equity allocation. I think we have significant holes in emerging markets, and potentially in areas such as distressed and all small PE that we could be putting more money through. So these are two areas that we can target. Real Estate is an area where I think we want to wait until the asset liability study is done. Given the expected return of the -- that the investment committee chose, I'm not sure what the actual allocation will be. And when we actually determine the allocation, we'll have to consider how to fill it.

>> Damon Krytzer: So we're going to start with the -- the higher volume, higher alpha stuff like the emerging markets and the PE, we'll also check out what we're going to do for more global mandate standpoint.

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

>> Damon Krytzer: Within the emerging markets standpoint too --

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

>> Damon Krytzer: And obviously the credit portfolio?

>> Carmen Racy-Choy: That's correct. The hedge fund portfolio would be one where I would need to be involved. So as soon as my involvement in the asset liabilities study is done, then I can initiate that component. Whereas, the equity and the private equity pieces can be done by other members of the team.

>> Damon Krytzer: I don't recall either from the investment committee meeting but did we -- do we need to do something else from an Alborne standpoint or any of the --

>> Carmen Racy-Choy: The -- yes, we --

>> Damon Krytzer: Do we need to do anything else, the board?

>> Carmen Racy-Choy: The board will need -- the board will have to receive a memo from us fundamentally stating what the outcome of the RFP is. And the board would have to approve it and give us the go-ahead to do contracting with the appropriate providers, yes.

>> Okay.

>> Sean Bill: And then Carmen we are looking at kind of two pieces there, we have a potential of the hiring of Alborne as a database/secondary check, and then a second piece which is the RFP that you're referring to in terms of a consultant?

>> Carmen Racy-Choy: It is an RFP. Yes.

>> They responded.

>> Sean Bill: So that was all one RFP, okay.

>> Conrad Taylor: Any further questions? Vince.

>> Vincent Sunzeri: First on Alborne, I believe at the September investment committee meeting they approved at least that group to move forward with Alborne, so can you give us a sense on the delay in getting that then to the board, to approve to move forward to actually hire them?

>> Carmen Racy-Choy: I mean, obviously since I have to be involved, and I'm currently booked up in doing the asset liability study, fundamentally it's a matter of the project can't move forward until I'm free from the -- the ALMs are don'ted and I can then dedicate time to work with Alborne. Because at this stage even if we get them on board, I really don't have the time to kind of direct them on how to start constructing the portfolio for us. So it's -- it's not that the -- it's just a matter of prioritizing since the ALM needs to be done first. And since it must be because the allocation to hedge funds, the committees might consider that 5% is not adequate, that it should be a different number. And you can't really task Alborne to start building something until you fix what the number is and potentially what the components ought to be.

>> Vincent Sunzeri: So then discussion on the A LM, do we want to cover that now? Is that going to be covered later on in the meeting? I'd like to get a sense of where we are in the process versus the discussion at the investment committee level and where Federated is.

>> Carmen Racy-Choy: Sure. Well, let's do it now since you've keyed it up. Basically the asset liability study involves a projection of both the asset and the liabilities.

>> Conrad Taylor: Carmen not to interrupt you but are you moving to 1.3?

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

>> Conrad Taylor: Can we do this -- I know we have a bunch of folks in the audience that want to have their disabilities and retirements and we have it at 10:30. Can we take a five-minute break and we'll do the retirements and disabilities and after that we'll move over to 1.3.

>> Carmen Racy-Choy: Sure, sure.

>> Conrad Taylor: We'll take a five-minute break and we'll start hearing the retirements.

>> Conrad Taylor: Everybody get back to their seats. Chairman Bacigalupi are you on the phone?

>> David Bacigalupi: I am on the phone.

>> Conrad Taylor: Okay. All right I'd like to move ahead to go to section 5, retirements. We'll do the 5.1, service retirements first. 5.1 A, David Cavallaro, deputy chief of police, police department, effective December 10, 2011, with 29 of 4 years of service. Do I have a motion for approval?

>> Approval.

>> Conrad Taylor: I'll second all in favor, all opposed, motion carries, motion passes, 5.1B, Alan R. Cavallo, police lieutenant, police department, effective December 24th, 2011 with 26.71 years of service. Motion on the floor for approval?

>> Move.

>> Conrad Taylor: I'll second. All in favor, all opposed, motion carries, motion passes. 5.1C, Nolan S. Lem, police officer, police department, effective November 26th, 2011, 25.01 years of service, is there a motion?

>> Motion.

>> Conrad Taylor: I'll second. All in favor, opposed, none opposed, motion passes. 5.1D, Carlos A. Valencia, police officer, police department, effective November 26th, 2011, 26.94 years of service. Motion on the floor?

>> So moved.

>> Conrad Taylor: I'll second. All in favor, motion passes. I don't see any of those gentlemen out on the floor. Just like to recognize them. Are any of them out on the floor that I don't see?

>> Pete Constant: Real quick, just a point of order. When we have someone on conference call, it requires a roll call vote.

>> Conrad Taylor: I was not aware of that. Thank you. Do we need to redo it or is it -- a roll call vote?

>> Pete Constant: You can take them all at once.

>> Conrad Taylor: Do it all at once and make them all?

>> Sean Kaldor: I'll make a motion to redo item 5.1 A through D.

>> David Bacigalupi: I'll second.

>> Conrad Taylor: Trustee Santos? Aye.

>> Conrad Taylor: Sean, aye. Vince, aye. Damon, aye. Drew, eye. Chairman Bach.

>> David Bacigalupi: David is yes.

>> Conrad Taylor: Motion passes.

>> Richard Santos: Mr. Chair, with respect to all these officers who left, I just want to say from the fire, thank you very much for a job well done.

>> Conrad Taylor: Thank you. 5.2, service connected disability and they're going to be in seniority order. 5.2 A. Edward talley. Police officer, police department, request for a services connected disability retirement, effective November 3, 2011, 22.72 years of service. This was deferred from the October 2011 board meeting. Looks like Mr. Talley is present with his attorney Mr. Boyle. Donna.

>> Donna Busse: Police officer Edward talley is requesting a disability based on his left knee right knee right shoulder and neck 45 years old with 22.72 years of service. His current work status is --

>> David Bacigalupi: Donna could you speak up please?

>> Donna Busse: Yes, he was on modified duty and at the time of application on modified duty. His work restrictions that he should avoid sustained kneeling, squatting or running and should avoid altercations with suspects. There is no permanent modified duty available.

>> Conrad Taylor: Dr. Das would you like to add anything?

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

>> Conrad Taylor: Mr. Boyle.

>> Thank you. Edward talley has worked for almost 23 years for the police department of the City of San José. He was working in a permanent modified position. He vacated that position at the request of the department, and on page 265, lieutenant Nguyen indicates there's no position available for officer talley. The problem with his left knee started when he was in training in police academy in 1988. Page 2-61 is a report that mentions that incident. The problem with his neck began with an injury during a training session for arrest control in April 5th, 1992. Page 250 of your 2-50 of your report mentions that incident. In over 23 years of service, officer talley has sustained multiple injuries and the recent ones are all outlined by Dr. Das in his report including the surgeries on his knee. Dr. Rollins the primary treating physicians at pages 47 and 48 of your materials indicates Mr. Talley's condition with regard to his left knee is permanent and stationary, and that his future treatment includes medications, injections, physical therapy and knee replacement surgery. Dr. Rollins has indicated officer talley does not have the abilities to do the sustained duties of a uniformed officer on patrol. In regards to officer talley's right shoulder Dr. Rollins on page 64 and 65 of the materials indicates that future medical would include injections, medication, physical therapy and that he would be unable to use his right arm in sustained and required duties of a uniformed officer on patrol. On pages 128 and 129, 129 of your materials, Dr. Rollins has indicated as far as officer talley's neck is concerned, he's permanent and stationary, and that his cervical spine has limited motion which precludes driving the patrol car in an urgent situation. Dr. Das and his interdepartmental memo on pages 1 through 4 and 1 through 9 has indicated that he should avoid sustained kneeling, squatting or running and he should avoid altercations with suspects. As indicated by lieutenant Nguyen, there is no permanent modified position for officer talley in the department and we would respectfully request that you approve his application for a service connected disability retirement.

>> Richard Santos: Mr. Chair, based on the information I read my motion would be to grant him a service connected disability.

>> Technical second.

>> Conrad Taylor: Discussion on the floor? Damon?

>> Damon Krytzer: Yes, actually. Do we -- Dr. Das are we -- trying to find where I -- I guess the medical records for the original injuries on his knees were not available or not present. Are we just -- are we just deciding whether the arthritis in his knees is disabling in itself, does it not matter?

>> Dr. Das: Well the issue to me is the reason I provided restrictions is based on the meniscal tears and the progression of arthritis in the knees. And as far as the earlier prior injuries in terms of what was existing prior to the original injury, I -- yes I don't have those. But it's plausible that after meniscal tears that you can have advanced osteoarthritis due to the meniscal tears and that's what I'm basing my restrictions on.

>> Damon Krytzer: Well because I guess the way I see it based on what we talked about is it's almost immaterial because there's no -- some medical professionals will say yes, this is the cause of arthritis, some will say no it's not the cause of arthritis, but the arthritis itself is what we're considering?

>> Dr. Das: Yes, there's degenerative, there is two -- there is the issues, there is a degenerative issue to component. At least with knees, that with increased weight and weight-bearing on that -- on that structure, the cartilage degenerates due to the load. And then there's an issue that if you get rid of some of the cart cushion like the meniscus, it will put an increased load or pressure on the remaining tissue and can advance or accelerate the degenerative process and that's kind of the premise for the osteoarthritis being related to the meniscal tears. But the issue that you're bringing up is whether this was -- predate -- whether there was degenerative changes that predate the meniscal injuries. And yeah, that I don't have the information to provide you.

>> Damon Krytzer: Over the course of the career, it's seems to be rather immaterial, is that right?

>> Dr. Das: Well, in terms of duration, I mean, it depends what you're doing over the course of the career. And I guess you know, whenever you talk about an injury I'd like to look at the dose or the frequency and the duration. And so I don't believe that you can just put a rubber stamp on top and say that just because you have this one classification or job that this is the regular exposure that you're expected. It's going to vary, vary with the

individual. So I would rank genetics and age higher than the other issues. But when you have a meniscal tear it definitely is -- there is a relationship between that and accelerated osteoarthritis.

>> Damon Krytzer: Thank you.

>> Conrad Taylor: Any further questions? I have a motion and a second for approval. All in favor? Aye.

>> David Bacigalupi: Roll call.

>> Conrad Taylor: Oh, roll call. Okay.

>> Trustee Santos made the motion. I seconded.

>> Conrad Taylor: Do it by roll call. Drew? Yes, Damon, yes. Sean, yes. Vince yes, yes for me, Sean, yes. Richard, yes. Chairman Bacigalupi. Yes. All in favor -- motion passes. Sorry about that, it's different. Ed, good luck, I know you wanted to go out there, and take care of yourself. 5.2B Gabriel Dekock, police officer, police department, request for service connected disability retirement, effective November 3, 2011, 22.11 yeast of service, continued from October 2011 board meeting. Gabby is present, represented by herself. Donna.

>> Donna Busse: Police Officer Gabrielle dekock is requesting a service connected disability based on lower back, neck, right knee, right shoulder and right bicep. 49 years old with 22.11 years of service. She was currently on modified duty at the time of application was on modified duty her work restriction is that she should avoid sustained squatting and kneeling. There is no permanent modified duty available.

>> Conrad Taylor: Thank you, Donna. Dr. Das?

>> Dr. Das: I have nothing to add.

>> Conrad Taylor: Thank you. Gabby.

>> Good morning. I was hired by the San José police departments in 1989. During my career with San José police department I worked in the following units, patrol, narcotics, the Department of Justice methamphetamine lab task force, field training program in patrol and at the police academy and at the swat unit. Over the course of my career, I've suffered numerous injuries to my body, the most significant injuries are to my back, neck, shoulder, bicep and knee. For all my injuries I chose to be treated by a team of medical practitioners including medical doctors, chiropractic doctors, physical therapists, occupational therapists and acupuncturists who worked with me as a team to determine the best course of treatments. This included over 110 appointments with traditional western medical doctors and therapists. I'veen taken numerous types of drugs and received various injections over the years. I've also had surgery on my knee, bicep and shoulder. Due to my injuries I'm unable to perform the full duties of a police officer. For the past three and a half years I've worked in a modified position. And at times have not been able to work full time since August 2010. Twice I attempted to return to full time modified work and was unsuccessful. I'm respectfully requesting a service connected disability retirement.

>> Conrad Taylor: Thank you, Gabby. Do we have a motion on the floor for approval?

>> Richard Santos: So moved.

>> Conrad Taylor: I'll second the motion. I'll do a roll call for approval of the disability retirement. Drew, yes, Damon no. Sean, yes. Chairman Bacigalupi, yes. Vince, yes. Myself I'll say yes. Sean.

>> I'm going to abstain.

>> Conrad Taylor: Richard?

>> Richard Santos: Yes.

>> Conrad Taylor: Motion passes. Gabby good luck.

>> Thank you.

>> Conrad Taylor: You take care of yourself. I know you worked the merge unit and you worked undercover narcotics and you got hurt so you take care of yourself.

>> Thank you.

>> Richard Santos: Police officer, the best to you from all the residents of the City of San José.

>> Thank you, sir.

>> Conrad Taylor: 5.2C was deferred. 5.2D, Mark Freitas, police officer, police department, request for a service connected disability retirement effective November 3rd, 2011 with 21.78 years of service continued from October 2011 meeting. Donna if you could please.

>> Donna Busse: Police officer Mark Freitas is requesting a service connected disability based on his heart. He's 47 years old with 21 of 69 years of service. His work restrictions are that he should avoid physically strenuous activity in an uncontrolled setting. He -- at the time of application he was on modified duty. There was permanent modified duty available until he resigned.

>> Conrad Taylor: Dr. Das anything to add?

>> Dr. Das: Cy have nothing to add.

>> Conrad Taylor: Mr. Boyle.

>> Thank you. Officer Freitas has approximately 22 years of service as a police officer for the City of San José. In September of 26, he was experiencing stresses at work and while at work on September 10th, 2006, he was seen at Kaiser hospital and was told that he had had a myocardial infarction, a heart attack. He was hospitalized and transferred to Good Samaritan hospital where he had a coronary angiography and placement of three stents. In May of 2007 he had further complaints of chest pain but did not have a myocardial infarction or a heart attack. After a thallium treadmill test he was contacted by the catheterizing cardiologist, and had a second cardiac CAT they arization procedure and had three additional stents inserted into his left anterior descending coronary artery for a total of six stents. He was then placed on modified duty. On September 11th -- on September 9th, 2011 the primary treating physician Dr. Ho reduced officer Freitas' work hours to a maximum of 32. He worked these 32 hours from September 9th, 2011 through October 6th, 2011. The department was notified of the reduction in work hours. On October 7th, 2011, Dr. Ho took officer Freitas off his modified work effective October 7th, 2011. Dr. Ho's conclusions agree with those of Dr. Katon that even the modified work would cause a bad outcome. Therefore she precluded officer Freitas from working in the modified duty. Dr. Katon the agreed medical examiner in his report of September 6th, 2011 on page 15 of the materials, says that officer Freitas was having regular chest pains on a daily basis, and using nitrates on a daily basis. On page 22 of the materials Dr. Katon indicates that officer Freitas is having chest pains even at rest. Dr. Katon the agreed medical officer concluded that even at working in a modify job would be dangerous, problematic and productive of a poor outcome. However, officer Freitas has vacated his position in the modified work for police officers, and he no longer has that exempt position available to him. Lieutenant Nguyen on page 118 has indicated that there is no position available. Therefore, we would respectfully request that you grant officer Freitas' application for a service connected disability retirement.

>> Conrad Taylor: Motion on the floor for approval.

>> Richard Santos: So moved.

>> Conrad Taylor: I'll second the motion. Open for discussion.

>> Sean Bill: Did Mr. Freitas voluntarily leave the modified duty position?

>> Voluntarily at the request of the department. He was offered -- there is a vacate -- there is a memo to vacate the position --

>> Sean Bill: Could you explain why there -- you would ask somebody to leave a modified duty position?

>> Before I begin, let me introduce lieutenant Ed Schroeder who will be taking my place at the next meeting. Could you give me again your question, sir?

>> Sean Bill: If I under this correctly, Mr. Freitas was working on a modified duty position and then voluntarily he left a modified duty position and now we're saying there's no modified duty position for him to go back to, is that correct?

>> Yes. Once he -- what happens was, when there are more officers than positions available, within the exempt program, the consent decree require us, the police department, to ask for voluntariness to vacate the positions for officers that are outside the program to be able to move into those spots.

>> Sean Bill: So Mr. Freitas then if you had what I would say is a safe seat with your job, where would you voluntarily leave that knowing that there probably would not be an opportunity to go back to that?

>> My health condition became worse. My last job duties for example I was your last ward officer for the City of San José. I was performing the duties of three full time employees. I helped start the new prisoner transport authority program for the police department. And quite frankly, it took everything out of me. I have nothing else left. I am -- I live every day with pain, every morning I wake up, I live on nitrates and I just can't do it anymore.

>> Sean Bill: My follow up question would be --

>> Donna Busse: Sorry to interrupt you. Mollie from the attorney's office can explain the consent decree. This is consistent with what the practices of the department and allowable by the consent decree. So I just wanted to let her explain the rules.

>> Sean Bill: Okay. All right.

>> Mollie Dent: So we have a 2005 consent decree that governs the process. And specifically the consent decree does provide for the officers to be able to voluntarily vacate the position and yet, for disability retirement purposes, be considered to have no job available to them. And there are arguments back and forth about the article, about the exempt officer program. But I think as the lieutenant articulated, the idea is that they only call for the vacations when they have other officers that are disabled that need to move into the program. And what's happened most recently with the cut-back in the number of positions, they had officers that needed to move into the program, and no room in the program from true voluntary retirements. So these are not what you would call a true voluntary retirement. They're doing this in response to the request of the department per the consent decree would be the way I would put it.

>> Damon Krytzer: What do you mean by need though, like if someone is in the program, and can't return to full duty, they need to be in the program too, right?

>> Mollie Dent: They do. But they have an opportunity to get the disability retirement under the consent decree. So that's -- that's the way the consent decree was negotiated.

>> Damon Krytzer: But they don't know they're getting the disability retirement.

>> Mollie Dent: No, there are other factors that have to be -- but for the purpose of whether or not a position is available, a position is not available for him.

>> A position is not available.

>> Mollie Dent: If you are looking at other things, whether or not his injury is service connected or whether or not he is disabled, the department's decision only goes to whether or not a position is available for him, and a position is not available for him.

>> Damon Krytzer: But I guess can I -- were you going to to. Up on this?

>> Sean Bill: Go ahead.

>> Damon Krytzer: Were you going to ask on this?

>> Sean Bill: Actually led into my second follow-up question but go ahead.

>> Damon Krytzer: I was just curious, so what -- the way I'm hearing this is basically, you're saying, okay, I understand that you can't go back to full duty, there's oat people that want your seat, so we'll allow you to roll the dice if you want to effectively resign, I mean aim hearing that right? That doesn't sound like an opportunity to me.

>> Mollie Dent: I don't know that I would call it rolling the dice but he has the opportunity to apply for a disability retirement. It does not mean that the disability retirement has to be granted but it does mean for the purpose of this hearing you -- the department does not have a position available for him. That's just a fact that has to be considered, that the department does not have a position available for him.

>> Sean Bill: It sounds like between the labor groups and the city that you have agreed to that if they voluntarily step out they will still be treated as though there is not a modified duty position from our consideration.

>> Russell Richeda: Sean, there is a step up from that. A federal judge has adopted this consent decree. It's a decree, it's not just a private agreement between the parties.

>> Mollie Dent: It is a stipulated consent decree but it is a court order.

>> Sean Bill: Okay, so my second follow-up question is really more towards Dr. Das and possibly Mr. Freitas. So the second thing I'm looking for here is, the tie of your condition to being caused by your role as a police officer. And so if you would like to elaborate on how your heart condition developed as a result of your work as a police officer, rather than being a hereditary condition, that would be helpful.

>> Let me address that first, then officer Freitas can speak. Dr. Jerome Chester, the Kaiser physician in occupational medicine on page 84 of your materials has said in his report of February 27th, 2007, that the disability is 100% caused by the industrial injury and that there is no basis for apportionment. Dr. Revels Katon on page 74 of your materials, the agreed examiner in the workers compensation cases, in his report of September 25th, 2007, says Mr. Freitas' myocardial infarction etiology is industrial, substantial medical and epidemiological literature supports this assertion. On page 23 of the packet, Dr. Katon also indicates unit apportionment that there is no nonindustrial factors present, and there is no contrary medical evidence in the record.

>> Sean Bill: Then Dr. Das, if you could speak to how the industrial element of a heart condition how that comes about, because not being a medical practitioner I have no idea how that all would work.

>> Dr. Das: Well, there is a presumption in place in workers compensation and therefore, that is the primary basis for determining something is -- the cardiac heart condition is work-related, in workers compensation. Is in terms of weighting the risk factors for heart disease, I believe that you -- that the -- you have to look at genetics, look at lifestyle, and those are the -- and those are the primary issues. And then when they talk about stress, I believe one of the articles referenced by Mr. Boyle was an article of American association of occupational health nurses talking about self-perception. So it's not really a cause -- a cause and effect or a dose response relationship, it's more -- it's a perception that there is increased stress, and that there may be an increased incidence of heart disease among these individuals. And the second reference is to the cohort in the Iola population and basically they're saying that after considering genetics, lifestyle, there still appeared to be an increased incidence of heart disease in these police officers. And from an epidemiologic standpoint even though

we don't necessarily have a cause and effect, and we can't identify what the cause is, there is at least an association with a specific subset in the population that has an increased risk for this particular problem compared to the general population. So as far as identifying a specific risk factor, and everyone says stress, but stress like I said, there's -- it's a perception issue number 1. It's a response issue. And then in terms of trying to control what is a good stress, bad stress, et cetera, and how does that cause a physiologic reaction in terms of, you know, an obstruction in the heart, there's a huge gap in that. So hopefully, I haven't gone too far. But in summary, it's very difficult to isolate a specific cause and effect with relationship to the work but at least according to one epidemiologic study, there seems to be an increased incidence or prevalence of this type of problem compared to the general population in a group of police officers in Iowa.

>> Sean Bill: So Mr. Freitas, your father also passed away from a heart attack, is that right?

>> No, he's living.

>> Sean Bill: So then that was something I missed, okay.

>> Conrad Taylor: Any further questions? Vince?

>> Vincent Sunzeri: Dr. Das on page 6, so item 6 refers to counsel's comments about Dr. Chester, indicating that the disability is 100% attributed to industrial injury. But then item 9 seems to conflict with that a bit. It says he doesn't have a history of heart disease. It states that his father did have heart failure 16 years earlier and underwent surgery. And that there is a family history of hypertension. So they conflict. How do you reconcile that?

>> Dr. Das: I -- you know, different doctors have different opinions. I'm not sure -- it's really hard for me to understand why Dr. Katon felt that there is no contributing factors from known risk factors like genetics, which would be family histories. I think for workers compensation purposes he wanted to state that this was a work-related injury is my guess and I'm not sure exactly where he didn't identify other contributing factors because he

quotes the literature in his report saying that there are other factors involved. So I -- it seems to me that it would be obvious that there are more than one contributing factor to developing heart disease. It's really just hard to say that it's one stress at work would be the only contributing factor. Obviously lifestyle and genetics would also be a component.

>> Vincent Sunzeri: So as a physician, if this profession is susceptible if you have a family history to increasing the odds of having a heart attack, and if in fact that took place, you would attribute that then to the work environment? I'm not talking about this particular situation, but in general, you see a case, the work environment or the family history?

>> Dr. Das: In terms of -- in terms of when you have a predisposition to a particular type of problem as you're suggesting you still -- you look at both. It's just, someone would have a more -- a higher propensity to have a problem so you would want to control the environmental factors and the risk factors so that's what I would do. I wouldn't dismiss the environmental factors completely but I just think that the genetic component or the family history would have a little bit more of a prominent role in someone who has a history of it, compared to someone who doesn't. The one problem that you have when you talk about family history and you're not really looking at DNA is that it's -- the family history is more than just genetics. It's also lifestyle. And so it's kind of hard to -- it's hard to separate out sometimes the lifestyle from the genetics because you grow up and you eat the same foods, you have the same type of exercise habits and so it's hard to pull out the -- those are still -- those are risk factors that are not genetic. But they're related to family history because you grow up with a certain types of foods that you eat, a certain exercise, a certain lifestyle. And that's what I'm trying to say. It's hard to separate out the genes from a lifestyle when you talk about family history. So when you say someone's father had a hard attack, it's hard for me to say that oh yes it's purely genetic because I also look at what are the lifestyle factors that the father had. And if he had all really bad rift of lifestyle factors and no genetic predisposition, he could still have a heart attack. And the son doesn't necessarily have a genetic predisposition to it because the lifestyle factors were overwhelming. Did I say that clearly enough or -- not well?

>> Vincent Sunzeri: I understand where you're going with that.

>> Dr. Das: Okay, thanks.

>> Vincent Sunzeri: Then to follow it up in officer Freitas case, the situation appears from the data that the anxiety increased, because of the heart attack, and any additional stress put him further at risk, in maybe having another heart attack, would that be fair to say?

>> Dr. Das: You know, the problem is, in terms of when you're -- you know I look at blood flow to the heart as the -- kinds of the criteria. And when I -- it doesn't seem like Mr. Freitas has, at this time or at least based on the most recent studies, significant compromised blood flow to the heart. Does he have stents in place and have a history of cardiac disease, absolutely. Do I recommend that he avoid all physical activity? No. He needs to be active to maintain the profusion of the hard. So I have a -- I have a hard time reconciling the mental stress component that causes chest pain with the fact that there's blood flow to the heart during physical exertion. So that would suggest to me that the chest discomfort is not necessarily coming from cardiac ischemia due to a blockage in the heart. You could also have a coronary Vasospasm which may be triggered by stress, which could cause diminished blood flow to the heart which would cause chest discomfort and chest pain which would respond to nitroglycerin but that would be a different mechanism. But we don't have any information saying that that's exactly what's going on in terms of is he having coronary vasospasm when he experiences stress.

>> Conrad Taylor: Sean.

>> Sean Bill: Dr. Das, on page 6, point number 8, it says he is considered a class 2 patient by the American society of of anesthesiologists and an individual with systemic disease. What does that mean in laymen's language?

>> Dr. Das: I would have to look that up. I can't remember that to be honest with you. I believe it's in terms of -- the weight and girth, I believe, in the ability to pass the ET tube down, but Sean, do you remember?

>> Sean Kaldor: I don't think that would be that classification, they won't talk about systemic disease. You're talking about some scale for intubation for an anesthesiologist?

>> Dr. Das: I think so, yeah, I'm not sure --

>> Sean Kaldor: I don't know why that would be relevant to this whole --

>> Dr. Das: Okay. Yeah.

>> Sean Bill: I'd never heard of it before, that's why I was asking about that. And then I see in bold point 9 that your father had had heart failure, that's why I was thinking he had passed on. What was his profession, was he in a high-stress occupation as well?

>> I was just going to tell you. He served in the military as a young man. He later worked for PG&E. Was involved in an industrial accident. At which point he became a union rep for IBEW for 20 years. He also, he had a stressful job. As far as myself, I was a high school athlete, I was a triathlete, I went to college, participated in sports. I rock climbed, I bouldered, I stayed very active. Hired age -- married at 21, hired at 25. Oh yes, sorry, my dad also, his -- military picked up the habit smoking, 20 years smoking.

>> Sean Bill: And then page 7 under the discussion it says the echocardiogram revealed no significant cell death, since he has normal left ventricle function, furthermore he is able to tolerate up to 12 METs on the exercise treadmill without any profusion rapid REs. What does 12 METs mean?

>> Dr. Das: It's just a measure of the oxygen consumption. So it reflects a high level of physical activity on an exercise general test.

>> Sean Bill: Okay.

>> Conrad Taylor: Sean? I have a question for Dr. Das too. Dr. Das two questions. One if he came in for the physical today would you pass him to put him out on the street and two is he meeting the post guidelines?

>> Dr. Das: He -- I believe he has left ventricular hypertrophy. So he'd have to go through the -- he would have to go through an exercise treadmill test to see if there is any profusion abnormalities. I would -- if he came in, my druthers would be that he should not be out there on the streets. Whether I could legally do that is another issue, with respect to FEHA and ADA. But my personal opinion is that if he came in today, asking to be a full duty police officer, I would not want him on the streets.

>> Conrad Taylor: Thank you. Russ.

>> Russell Richeda: Sean, I'm sorry. Conrad, I think one important factor that needs to be mentioned, only on the issue of service-connectedness or causation, I think Mr. Boyle accurately said, there's no evidence in the record on service causation except evidence that is in favor of finding of causation. There's no written evidence here saying that these cardiac condition was not caused by the job. That puts you in a pickle. You either accept that information, and then at least, and Mr. Freitas gets a check in his favor, at least as far as that element, you're considering worn to grant it, yes, you have some oral information from Dr. Das that perhaps is equivocal on that, or separately, perhaps you weren't persuaded by this. In which case you could ask for further elaboration on causation. But unless you do that vast weight of the evidence is in favor of causation.

>> Sean Bill: And then how would you interpret the father's hard condition in terms of the hereditary versus work related? Mr. Freitas?

>> Russell Richeda: For me, that goes -- to the degree that the board as a whole shares concerns of that nature, what you want is additional false of that issue. But to deny Mr. Freitas' application on this record, on the issue of causation, I think would be very unwise. And I think it would be very unlikely that a reviewing court would uphold your determination. Because the vast weight of the evidence here is in favor of causation.

>> Dr. Das: So would you like me then to do an analysis of causation with cardiac and reviewing the presumption and go over the literature and discuss it and kind of review the specifics, is that what you're suggesting?

>> Russell Richeda: I'm not suggesting anything.

>> Conrad Taylor: We have a motion on the floor so I'd like to roll with the -- I'd like to do the motion first before we even move forward with that.

>> Richard Santos: So would the maker of the motion.

>> Mollie Dent: Because the motion is to approve.

>> Conrad Taylor: Yes.

>> Mollie Dent: Correct.

>> Sean Bill: If that's signaling that's not necessary for me.

>> Conrad Taylor: So we have a motion for approval. We'll do it by roll call. Drew.

>> Drew Lanza: I can't tease out the difference between genetics so I vote yes.

>> Conrad Taylor: Damon?

>> Damon Krytzer: Yes.

>> Conrad Taylor: Sean?

>> Sean Kaldor: Yes.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Yes.

>> Conrad Taylor: Chairman Bacigalupi.

>> David Bacigalupi: Yes.

>> Conrad Taylor: Myself, yes. Sean?

>> Sean Bill: Abstain.

>> Conrad Taylor: Richard.

>> Richard Santos: Yes.

>> Conrad Taylor: Motion passes. Mark, you take care of yourself. I know it was hard for you to get out of uniform. You take care of yourself.

>> Thank you.

>> Good thing you weren't smoking for 20 years!

>> Conrad Taylor: 5.2E I've been advised by the attorney that that is being deferred. So we'll move to 5.2F.

>> Conrad, can I comment? As trustees we spend a lot of time preparing and reading this information. And this is the second one that's been deferred. In addition to numerous ones from the prior month. I mean, this is a lot of wasted time on our part. And we need much more advance notice on this.

>> Conrad Taylor: Yeah, I don't disagree with you but I was just advised of this, right after the break that it's been deferred.

>> Sean Bill: Would there be something we could do to say, we would like four days notice? I think most of us are probably like a weekend preparation type of thing for these meetings. Maybe they could give us four days' notice on these things or else it goes to vote.

>> Mollie Dent: I think you'd have to probably look at that a little more closely as to the reasons for the deferral, because you have to give person due process. And if they're not prepared to proceed or their attorney has some problem or something I think you really probably -- you could certainly request it. It's reasonable to request it. But proceeding with a hearing when someone has --

>> Sean Bill: Or maybe it would make sense to really emphasize that don't bring your case in front of the Board of Trustees unless you are certain that you're ready to go to a vote. Because it is a very large investment of our time to go through these documents for each of these cases, and then when they end up cancelling the last minute you burn two hours on some of these things.

>> Richard Santos: Well through the chair, I hear everybody's concerns but you have the person's representative here. He or she might be able to enlighten you on this issue.

>> Conrad Taylor: Mr. Jeffers.

>> I requested this deferral. And the request was because it was today I was -- I learned that there was a job available for the applicant. Whereas the memo received --

>> Richard Santos: I can't hear.

>> The memo I received indicated there was no job. There was an issue of accommodation. If she's accommodatable, we didn't think we should be here. But I didn't know that until 15 minutes before the 10:30.

>> Is that the result of decisions on prior cases we've made today?

>> No, it was because I asked Lieutenant Nguyen if there was a job available for Ms. Millhone, and he said there was.

>> Conrad Taylor: And part of this Vince is going in seniority order is now we'll find out with the following ones if there's going to be a job or not.

>> If there had been no job available we'd be ready to go.

>> Sean Kaldor: Could we ask Mr. Nguyen why we just found out today there was a job available?

>> I'm sorry sir?

>> Sean Kaldor: Why was the applicant just notified today that there would be a job available?

>> Well, the -- we found out that the last day for anyone in the program to vacate was October, I think it was October 19 or so. And so the time was very tight and we would have to look at the list of who was eligible to go in and make sure that the person could come in to take over a position that's vacated that person is able to return to work.

>> Sean Kaldor: And this is all this kind of exceptional process where they're eliminating several defined modified duty jobs. It doesn't happen on a regular basis, is that correct?

>> When there is -- when there are positions -- when there are more officers waiting to go in we will continue to do this process every month.

>> Sean Kaldor: Okay. Thank you.

>> Conrad Taylor: Lieutenant Nguyen, on 5.2F and 5.2G based on the granting of the disability retirements that we've just had and one that went out on the service retirement is it going to be necessary -- or I guess is there going to be jobs available for these two?

>> You know, until the officers can return to work, in some capacity, until we know what the restrictions are, I cannot make that determination.

>> What does that mean?

>> Donna Busse: We have permanent work restrictions that were begin to you. The letter in at least the next case we're looking at was dated back in September. So I think what the chair is asking is, has the status changed based on your call for voluntary vacating?

>> You know, those two officers, if you can refer to them, because I don't have the --

>> John Mitchell.

>> Conrad Taylor: John Mitchell and Francis Keffer.

>> Those two officers are on full disability. Because on full disability until they come back we don't know what their restriction will be.

>> Donna Busse: But the work restrictions were provided to you from Dr. Das.

>> Right. Based on the work restriction alone and without knowing ahead of time who would vacate or who would require for the position to be available, we don't have position for them until we know that.

>> Mollie Dent: So I think the board is sort of starting to go into these two items. And I would suggest if the board wants to get an update from the department on availability, based on the retirements that have occurred, then the appropriate motion for the board would be to defer the two items. If the board wants to proceed with the items then you should open the hearings up and proceed with the items.

>> Conrad Taylor: Well, I think the appropriate avenue to go is to ensure or to see if the department will have jobs that will facilitate these individuals based on the openings of the -- for the individuals that have been granted a retirement.

>> If I might --

>> Conrad Taylor: Yes.

>> I'm Ed Schroeder, acting captain of bureau of administration. If I could explain this. Currently there's three people that vacated. Those three were all seen just previous. So there's three openings in the program of 10 positions. Two people, one of which includes Tracy Millhone who just deferred, is going to take one of those three spots. Another officer who is not on the agenda is going to take one of those two spots. These other two officers in question that are here today, and it's officer Keffer and Mitchell, they are both on full disability at the moment. So they're not work -- they don't even have restricted work hours. So in our opinion, we do not have a

position for them because they cannot come in and fill the spot that's vacant. There is an officer behind them that is able to actually come to work to fill the spot now.

>> Conrad Taylor: Okay.

>> So I'm not sure if that explains it for you but it is our position that since they are full time disability at the moment they cannot fill the spot because they cannot show up to work in that position.

>> Conrad Taylor: Okay. Thank you. We'll go forward.

>> Donna Busse: Mollie, does that mean are they ready to move forward, are they permanent or are they still temporary?

>> Mollie Dent: That's my point. You're going to either have to open the hearings to hear from the applicants, their representatives in order to get into the details of their case or you're going to have to defer the matter if you want to get more information on certain issues. But I don't -- I can't sit here and answer questions about the particular applications without having them in front of you.

>> I think that was pretty clear?

>> Conrad Taylor: Yeah, that was for me, so we'll just continue the hearing or the process as we're going. I'll just go 5.2 F, John Mitchell, police officer, police department, request for service connected disability retirement, effective November 3, 2011, 13.33 years of service deferred from October 2011 board meeting.

>> Donna Busse: Police officer John Mitchell is requesting a service connected disability based on lower back, heart and neck, 49 years old with 13.33 years of service. He is currently on disability leave. And at the time of application he was on long term modified duty assignment. Work restrictions are that he should avoid extreme physical exertion in an uncontrolled situation, there is no permanent modified duty available.

>> Conrad Taylor: Dr. Das.

>> Dr. Das: Nothing to add.

>> Conrad Taylor: Mr. Boyle.

>> Thank you. Officer Mitchell has worked for almost -- for over 13 years as a police officer for the City of San José. He's unable to do the job of a full duty patrol officer because of his cardiovascular condition. He is currently on disability leave and previously was doing modified work in the exempt officer's position. As lieutenant Nguyen has stated officer Mitchell no longer has a position as of October 1st in the exempt officer's program. Lieutenant Nguyen indicates that the program no longer has anything available for him, and that's on page 111 in your materials. After a full examination and a review of the medical records Dr. Das has concluded that Mr. Mitchell should avoid extreme physical exertion in an uncontrolled situation. Based on the fact that he cannot do full duty patrol and that there is no position available for him in the department, and also, based on the fact that Dr. Smith, in his report, the treating physician, in his report on June 30th, 2011, page 149 of your materials, concludes that the work related contribution from the City of San José's work as a police officer is over 50%, and we would respectfully request that you grant officer Mitchell his application for service connected disability retirement.

>> Conrad Taylor: Thank you, Mr. Boyle. We have a motion on the floor for approval?

>> Sean Kaldor: Motion to problem.

>> Conrad Taylor: I'll second the motion for discussion. Damon.

>> Damon Krytzer: So again Dr. Das, since there's no restrictions for his back, I'm curious about the hypertension.

>> Dr. Das: Well, the basis for the restrictions for his heart were based on his poorly controlled blood pressure. Since his blood pressure's poorly controlled his heart had to work a little bit harder and has had a mild increase in size over a one year time frame, which indicates that -- so it's gotten bigger that means that the blood pressure -- it's had to work against a higher resistance. That indicates to me that his high blood pressure is poorly controlled. And when you have left ventricular hypertrophy it can on the long term cause issues in terms of heart attacks in the future and valvular problems. So that is the basis for the restriction that I provided.

>> Damon Krytzer: Are we -- should we be considering this in a similar way to the previous case? I mean because there's no -- there's nothing really to grab onto, right?

>> Dr. Das: As far as the hypertension, you know hypertension is distinct from the heart, with respect to presumption, I believe. I'd defer to the attorneys on that. But -- so in terms of there would be -- it would be important to kind of identify the specific risk factors in the workplace and I presume that the risk factor would be identified as stress. And then you'd want to probably look at from a dose response in terms of the duration of career, et cetera, in terms of response and how the blood pressure -- how the blood pressure responds to that. Is there anything more I can add?

>> Damon Krytzer: I don't evento what to ask you right now. I mean --

>> Dr. Das: Is there anything specific that I can identify and say, this is the cause and effect?

>> Damon Krytzer: Is there anything different from the prior case that we should be considering different from -- I mean you know, we basically were looking at --

>> Dr. Das: The other gentleman had a heart attack, so it's a different problem. It was the heart. This is actually hypertension. It's a different problem. And so it's affecting the blood vessels. It's affecting the blood vessels and the heart problem is caused by the increased blood pressure over a long period of time and that's why there is a

heart problem. The heart is a secondary problem in this one whereas in the first one it was a primary problem because of poor blood flow and he needed stenting, is that --

>> Damon Krytzer: So how do we view causality of hypertension?

>> Dr. Das: I believe it would be in the same context, as far as looking at stress. I don't know that there's anything else to really identify that would be a risk factor. I mean essential hypertension we don't really know the cause of so --

>> Damon Krytzer: So is there a different presumption then to Mollie or to Russ?

>> Mollie Dent: First of all we don't operate under a presumption. The presumption affects the workers comp proceedings. So you're not operating under the presumption that either the heart disease or the hypertension is work related. But I think that maybe we should ask the applicant, as they did in the prior case, to point to the parts of the record that they think support the work-connectedness of this particular individual's hypertension. So -- or the applicant's attorney. And I -- and perhaps can you can remind the board of that part of the record that you were talking about in terms of the work-connectedness.

>> Are you asking, Ms. Dent, what is stressful in the job of a police officer?

>> Mollie Dent: Well, the board was asking for the evidence supporting the fact that the hypertension was caused by the job. So this, that's -- I think that was the question so --

>> Okay. Do you want to talk about the stressfulness of your job as a police officer?

>> Russell Richeda: I think Mr. Boyle the board member is interested in seeing page 149 of Dr. Smith's report which you already referred to from June 2011. It's the one sentence towards the bottom of that page as well as

somewhat similar brief comments on 150. I think that's all there is. But at least in terms of the written packet, the -- Mr. Boyle may -- should feel free to correct me if there's something else. On hypertension.

>> The only other thing in the record is Dr. Anderson's report. And he's the agreed medical examiner. And I didn't mark it down, the page. But I can look after I read this to you. Dr. Anderson concludes the police officers are covered by legal presumption and apportionment does not apply. Mr. Mitchell's condition would be considered work related. Nonindustrial contributing factors would include genetics, American diet, family and social stress. Industrial factors include work related stress, the use of nonsteroidal anti-inflammatory medications for work related injury. That's the only other comments in the medical records that speaks to causation. Officer Mitchell could talk about the stress of a police officer, I would assume, if that's what the board is interested in.

>> Damon Krytzer: I don't need to hear about the stress of a police officer. I could tell you about the stress of a stock trader, too.

>> Okay, I agree.

>> Damon Krytzer: I guess the two questions I have is, one is, now, Mollie, you said that we don't operate under presumption.

>> Mollie Dent: That's correct.

>> Damon Krytzer: That's not accurate.

>> Mollie Dent: You don't operate under a presumption. But you're looking for evidence in the record and evidence if the applicant wants to present it. So the applicant's attorney has pointed out to two doctors' statements that refer to the work related contribution. The one that refers to a work related contribution of over 50% clearly isn't based on a presumption. Because if it's based on a presumption it's 100%. It does say there's specific details available in the chart. They're not in here so it's hard --

>> Damon Krytzer: That's not consistent with what Dr. Das I don't think just said.

>> Mollie Dent: And can you hear from Dr. Das also. He can also address whether he thinks the condition is work related.

>> Dr. Das: And I can comment definitely on the use of nonsteroidals as a known risk factor for hypertension. So if he was using ibuprofen on a regular basis to treat the lower back pain, it's an identified risk factor for hypertension. And that would be a secondary cause, not a primary. But it would be a consequence of his industrial back injury.

>> Damon Krytzer: I just want to add, I know this process is incredibly insensitive. I don't enjoy it in the slightest bit because I recognize that you know no one's actually spoken with you, we've talked to your attorney and the doctors and everything else. I'm concerned that we start to get into these gray areas where all of a sudden, hypertension starts to equal disability, without any kind of direct link. Or not just hypertension, I'm using that as an example or you know cumulative shoulder trauma, all these -- it's concerning because we do wind up in this big gray area, right? And it's like we need to try to find a way. And I'm just -- I guess I'm asking/begging for someone to show me how this has a direct link and everything is obviously conflicting. And I'm just -- that's just a comment.

>> I don't know what else to say other than what's in the medical record that supports industrial causation. I don't know what else to talk about.

>> Damon Krytzer: Well you're hearing the same things I am, too, right?

>> I am. But I don't see any contrary medical evidence in the record that this is not a work related condition.

>> Damon Krytzer: But there is none either way, right, that's the challenge.

>> There is, Dr. Smith has said there's over 50% related to work. And Dr. Anderson has also said it's work related one on the presumption but then gives the industrial factors which are the stress, the nonsteroidal anti-inflammatories, as both being industrial factors. So it's been spoken to.

>> Damon Krytzer: Thank you.

>> Conrad Taylor: Sean.

>> Sean Kaldor: Turning the topic to the back for a moment. On page 105, the physician provided restrictions. Said he's restricted from heavy lifting, has lost approximately 25% of preinjury capacity. No climbing. Anything involving comparable efforts, any sites that's based on incapacity, and mentions the MRI with degenerative disk disease at L-3-4, L-4-5, and L-5, S-1. But you gave no restrictions for the back so there's no evidence of instability or frank neurologic damage. How do I reconcile those two?

>> Dr. Das: Easily. Number 1, those are degenerative changes in the back. There could be incidental, there's no direct cause and effect between the mechanism of injury, number one and the responsibility for his symptoms. These are imaging findings so it's not necessarily -- does not necessarily translate to a problem or pain. And so -- and these are not significant findings where you would say this is a frank disk herniation that is pressing on a nerve. It's not a big herniation pressing on the spinal cord or even causing stress on the annulus that would be responsible for symptoms. So yes, I feel very comfortable stating that there's no -- and the other issue is too if you look at the restrictions and all the boxes that are checked there is also a prophylactic component as well. So trying to tease out the --

>> Sean Kaldor: How much is incapacity versus prophylactic?

>> Dr. Das: Yes.

>> Sean Kaldor: Then on the neck side of things, there was a restriction provided but there was no medical records, I think you indicated?

>> Dr. Das: Yes.

>> Sean Kaldor: Thank you.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: So Dr. Das, this might be a stretch but can we assume that this officer may have had this condition, and has chosen a profession that puts him at risk because of this condition, this hypertension? And aggravates that condition?

>> Dr. Das: In terms of having a genetic predisposition, I don't know that this is a qualified answer for me, but I believe that all illness and injury is a genetic predisposition to an environmental trigger. Meaning that there's some type of predisposition that we all have and there's certain reason why some of us have certain things and get certain things that other people don't. So I -- so for me, I believe that yes, there probably is a predisposition on a standpoint to have the absent any other risk factors including lifestyle and all those other things, that may make him more susceptible in this position than someone else would. But then it's a matter of teasing out the other risk factors. And the nonsteroidal anti-inflammatory drug use is an additional risk factor that he has as part of this job, compared to someone else who wasn't taking those pills for a problem.

>> Vincent Sunzeri: And if he wasn't provided with the work restrictions and he continued, he does run the risk of a heart attack because of this profession?

>> Dr. Das: I'd have to see what his -- I don't know what his coronary vascular profusion is. I believe he did okay on the exercise treadmill test. So if he had uncontrolled blood pressure for a long period of time it would increase his risk for a heart attack. And I don't know that that's a separate issue from working. There's medications, other

treatment approaches to control the blood pressure. So I guess the assumption would be that irrespective of the only treatment that will work for him is to remove himself from the job and then his hypertension would be controlled, I don't know that I could say that.

>> Conrad Taylor: Any further questions? Russ, you're looking like you have a question. Do you have a question?

>> Russell Richeda: Just again, this undeveloped record on causation. All you have before you is evidence in favor of causation. It's -- I'd call it the thinnest evidence but it's all you have. You don't have anything that's saying it's not caused. So you either grant this on -- at least as far as this evidence goes, the evidence is only in favor of causation. Now you can always request that there be additional evidence but as far as you have before you now, that's it.

>> Conrad Taylor: Thank you.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: Yes, trustee Bacigalupi. Go ahead.

>> David Bacigalupi: Just not really clear on the department's position on modified duty. Are all the ten spots taken even after today's retirement? Now I understood the department said that there was no position available because he was out on disability. But he's out on temporary disability as I understand, not permanent disability. So you know, what -- how was the department or does the department know if they can accommodate his restrictions after his temporary disability and the doctors return him to work in a modified fashion? Are there positions available in that ten that officer Mitchell could do?

>> Conrad Taylor: Lieutenant Schroeder.

>> Yes, make sure I understand this correctly. But at the moment, we have -- we don't know when he will return to full duty or not full duty but full time he exempt employee status. So in terms of the restrictions that Dr. Das gave, that's one thing, we don't know if he is going to return with different restrictions. But regardless, we don't have anyplace to put him at the moment because he's not prepared to come back in any capacity in terms of time he could work per week. So I'm not sure if that answers your question. But I'm not sure I have anything further than that, beyond that.

>> I thought you stated there was one position available.

>> There's one position available but there's also one person below this officer in seniority that is able to come back to work immediately.

>> Donna Busse: Mollie. It sounds like they're describing a non-MMI position. I'm confused.

>> David Bacigalupi: I can't hear Donna.

>> Donna Busse: David, I was just saying that it almost seems like the department's describing a not MMI situation.

>> Mollie Dent: So I think what the department is saying is that what they have from the streeting physicians are temporary work restrictions that for the purposes of accommodation they have to accommodate. And that their modified duty position can't accommodate those work restrictions that the treating physician and the workers comp doctor gave, am I saying that correctly?

>> I'll have to refer to those restrictions but the restrictions I'm referring to are the ones that Dr. Das has given.

>> Mollie Dent: So then if you are talking about Dr. Das's work restriction, and there is one position available, are you saying that you could or could not accommodate him in the one position that's available, with Dr. Das's work restriction?

>> Okay, so let me take a little step back. The reason we're saying there's no position is because he cannot return at the moment to fill the position. If -- I'm I'll have to take a look at his restrictions itself. But if you're asking me based on Dr. Das's restrictions there would be a spot for him. He just can't come back at the moment.

>> What does that mean?

>> Russell Richeda: Because a doctor hasn't released him?

>> Because he's on full time disability.

>> Sean Kaldor: So he's on work disability?

>> He's on work disability.

>> Sean Kaldor: He doesn't need to be on disability retirement if he's on, and at some point, the only restrictions in here say shouldn't be in an uncontrolled environment. Or is that basically the -- so if there's -- none of them -- you're saying none of the modified duty positions can, that?

>> I'm not saying that. I'm not saying that.

>> Sean Kaldor: His doctor won't release him?

>> I'm saying at the moment he is not able to come back to work so he cannot fill the vacant spot. I at one point mentioned the restrictions by Dr. Das. But I'm not referring to the fact whether he's able to come back based on hi

restrictions. What I'm simply saying is at the moment we don't have a job for him because he can't return to take the vacant position immediately.

>> Russell Richeda: Because his doctor --

>> Conrad Taylor: Can I make a suggestion? They are both on disability and the department is going to make a new list where everybody is going to fall on this new list. I know we've read these packets and we've gone through them. I think we're splitting hairs now, is he on disability or not on disability, can he do the job or can he not do the job? Can we hear this at a later date next month where the department will have a list, will he be on that list or be qualified to be on that top 10?

>> I'm not sure I know what you're asking me.

>> Can I add something here?

>> Conrad Taylor: I mean just defer it till next month because he may be -- or his restrictions may change or there may be a job available or he may come off of permanent disability. Go ahead Mr. Boyle.

>> Okay. That's what I want to know. Should I be coming back here, if he's still on disability, because then lieutenant will say the same thing, that we can't make that decision because he's not back to work. Or not able to come back to work. He's on total temporary disability, no restrictions, totally can't work. So I can't tell whether we can accommodate him. Does that mean that we have to make sure that he's MMI from all of his conditions? Because he's out for a different physical injury than his heart. He's not out on his heart and Dr. Das's restrictions are only on his heart. But he's out on a different -- for a different condition. So -- and officer Keffer is in the same position. He's out on disability as well. So should I not be bringing these cases if there's any --

>> Conrad Taylor: Russ what's --

>> Russell Richeda: Conrad, I don't know if this addresses the board's concern. But if the applicant or Mr. Boyle can indicate that for the foreseeable future his doctor is not going to release him from full disability so that he's not going to be able to take a position even if one was open. Is it --

>> Mollie Dent: I think that -- I think that what the department -- what Conrad is suggesting is the department is going to have to go back and re-do its list and it will have to go back through the process of making the offer. And if it turns out that it makes the offer to the people that are eligible in the seniority order and this individual is still not able to come back, because they're still on disability leave, then you'll come right back and say next month this is there's no position available for this person.

>> I think they just said that. They said there's one spot and someone else is going to take that.

>> Mollie Dent: They have to make the offer in a certain order.

>> Russell Richeda: Or if we're just talking about that phase it would seem reasonable assuming the board wanted to that you could grant it contingent on him not returning. I mean that's going to be resolved in what, ten days? You're going to issue a letter. His doctor is going to say he's still fully disabled and can't take the job, end of story.

>> Donna Busse: I don't know if you could do contingent on a different body part. You have a body part in front of you and there's a work restriction in front of you for that body part, that he is permanent -- or maximally medically improved MMI on, and the department can accommodate that work restriction, then that's a different issue than they can't accommodate restrictions for a different body part that's not in front of the board.

>> Sean Kaldor: Am I to understand that he's on temporary total disability while a certain body part is healing?

>> Correct.

>> David Bacigalupi: That's what I heard.

>> Sean Kaldor: And if that body part heals, that restriction would go away, and he would be able to come back to work with the restrictions we're looking at here, and if there's a position open, if there's a position the department would be able to accommodate that. So this purely comes down to a question of regardless of the current disability situation temporarily, is there a position available for the permanent disability?

>> Russell Richeda: No, at the time he recovers from his temporary disability.

>> Sean Kaldor: Yes.

>> Russell Richeda: We don't know when that's going to be and we don't know if there's going to be any vacancies at that point. So he's going to be in limbo until that's determined?

>> Sean Kaldor: At that time then the department could say there's no permanent -- there's no position available for him right? At the point he's released from temporary disability, the department would say we don't have a home for you, and we'd do permanent --

>> At this very moment, because he's on temporary disability, and we don't know when his doctor will release him, I'm telling you we do not have a position for him. Could that change in the future? Certainly. I don't know when and I don't know if he knows when.

>> Sean Kaldor: Donna, do we have a process for someone who's gone out on a disability retirement to return to service if a position opens up?

>> Mollie Dent: Sure, there's -- there is a reinstatement process. But I think that the -- I think that the analysis for us is whether or not the person is capable of assuming the responsibilities of a position that the city may have. It's not necessarily that he actually be able to return to it today. On the other hand, if, during the course of the next

month, you wind up having someone else fill that exempt officer position, then we're going to be right back where we started from. And I think Sean's --

>> Russell Richeda: No, opens.

>> Mollie Dent: Sean's thinking is you're not sure whether the person is permanently disabled at this point because they're out on disability leave. And at the point when the physician returns them to work, after the disability leave, then at that point, we'd be in a position to make the permanent assessment of their disability, is that what you're suggesting?

>> Sean Kaldor: Along those lines, if he's released, we know he has a permanent or it's stated that he has a permanent restriction. But it sounds like there's a scenario where the CD might be able to accommodate that. And we won't know whether that's true or not until he would be able -- or the city can't tell us for sure until when he's able to come back then they could say yes or no. I think that's when the city should say no we don't have a spot and okay.

>> Mollie Dent: I think you're accurately stating it that the city can't say yes or no as to whether or not they can accommodate him at this point. They can't say yes or no because they don't have a person who can come back. And they can't make that decision until he's able to come back to -- until he's been released from his temporary disability. I guess that's your thinking on it.

>> Conrad Taylor: Mr. Boyle.

>> So you're telling me that you should not bring this case back until he's been released from his current disability and the city can then say we have an exempt officer position available for you or we don't? Is that what you're saying? Because the same case applies to officer Keffer and we wouldn't bring that case next, we'd wait. We'd defer -- unfortunately you've already review it but we'd defer again. Is that what you're asking me to do?

>> Mollie Dent: And I think you'd want to defer the item so that the application date would stay.

>> Yes, defer it means we're still all okay, but it doesn't mean it's coming back next month because we don't know.

>> Mollie Dent: Correct.

>> Correct, okay.

>> Conrad Taylor: Okay so we had a motion on the floor --

>> I'm okay with it.

>> Russell Richeda: You can just defer I guess.

>> Sean Kaldor: Did I second it? I'll withdraw.

>> Donna Busse: You made the motion.

>> Conrad Taylor: Mr. Boyle?

>> So we'll defer Mr. Mitchell's case until he's off of temporary disability and able to assume the modified position, if one's available. And we'll do the same for Mr. Keffer's case, the next item on the agenda. Is that what we're going to do?

>> Conrad Taylor: Is the situation the same?

>> That's fine with me, I understand because I don't think we're going to get anywhere on this vote so -- that's all right.

>> Conrad Taylor: We had a motion on the floor.

>> Sean Kaldor: To Claire I'll withdraw my motion if you will. That was you.

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

>> Okay then we will defer Mr. Mitchell's case and I don't know if you have to call Mr. Keffer's case separately but at least Mr. Mitchell's case we will defer.

>> Conrad Taylor: Donna, do we have to call the case to defer it?

>> Mollie Dent: No, you can --

>> Conrad Taylor: Just put on the record that --

>> Mollie Dent: Yes, that the applicant requested deferral.

>> Conrad Taylor: Okay, on 5.2G, Francis C. Keffer has asked us to defer his request for a service connected disability retirement to a later date.

>> Thank you, Mr. Chairman.

>> Just so I could make a quick comment --

>> Sorry Mr. Chair, I know you're still on the telephone. I didn't mean to call Mr. Taylor the chairman.

>> Sean Bill: So we've had about half of our cases been deferred now, which is about eight hours, seven hours of time. So just purely as a comment for our disability subcommittee, I think there's really a strong case to be made here that you know, the full board should just -- should really be moving this stuff to a subcommittee. Because the amount of time that we're spending, we just spent an hour and a half on this conservatively. Plus the last meeting. And, you know, my -- I would really strongly urge that we really try to make some progress on getting this stuff to a subcommittee and focus on it and spend some time on it rather than have the full board burn collectively, eight people here probably 64 hours of our time that was burned. Pretty much needlessly. Second thing that I would like to say is, I think that it might -- would it make sense for the disability subcommittee to explore, and I don't know, maybe you guys have explored, the idea of having a hearing officer deal with these cases. You know, from an efficiency standpoint for our board, my understanding is that most other boards in the state of California are doing that. I don't know why we're not.

>> Conrad Taylor: All those issues that we are all -- we have looked into but I just want to remind you that we are going into uncharted territory with the collapsing of the exempt officer program. We've had some issues that we've never had to deal with on this board. And as you're seeing here is that there's questions that are coming about because of the collapsing of that program, that this board has never had to face before. So -- but all -- with your concerns yes, the ad hoc committee on the disability committee we are looking into those issues that you have suggested.

>> Sean Kaldor: Just to throw out a couple of comments there.

>> Richard Santos: (inaudible) or need to be done?

>> Conrad Taylor: We're done with the disability retirements.

>> Mollie Dent: So I believe there are a couple of other items that you can discuss this issue on later on the agenda. You've got item 3.5 and item 7.2 where you can talk about the -- the disability review committee, okay? So if you want to continue the discussion you can do it later in the agenda.

>> Conrad Taylor: Did you have something in particular?

>> Richard Santos: No I was just saying did you have something else for me to participate in, I'm getting ready to leave. I'm already half hour late and I've tried to stay here --

>> Conrad Taylor: No, we're done with the disability retirements.

>> Richard Santos: Same conversation we've had every meeting, we said let the committee have the opportunity, so give us an opportunity. It doesn't come overnight on these disabilities.

>> Conrad Taylor: We're done with that. Going forward, would you guys want to just eat through lunch or -- eat through lunch okay, let's go forward. We were going to step back and go back to -- 1.2, we'll go back to investments, 1.2, discussion and action regarding implementation of global equity exposure as approved at the August 2011 meeting but without hedging the emerging market dedicated mandate and to start the search for active managers.

>> Russell Crosby: Carmen's not here but --

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Well, this was presented to us at the investment committee meeting that we held in October. And just as a kind of a refresher, the concern in moving to this global equity mandate was that there was an overweight allocation to emerging markets. To the point that we would have almost twice the weighting of our benchmark that we were looking at being compared to. And I see Carmen's coming here so she may be able to

respond further. When the board approved to move to the global mandate, my specific concern was that the timing may not have been eloquent to overweight emerging markets. And in fact, what happened in the third quarter is that the emerging markets declined 23%. They were down 28% from the high. If, in fact, we had a hedge in place it would have provided some cushion of that down side. It's not to say that the environment has completely changed and the risk has completely eliminated, but at the investment committee meeting, after going through the presentation, the committee decided that it wasn't as relevant, given that the decline had already taken place and that we wanted to move forward to implement the global mandate, equity mandate as initially approved by the board in early August. And in addition to that, a bit of a surprise I would also say that came out at that investment committee meeting is that the entire allocation was held up because of this hedging strategy. And I wasn't thrilled frankly with that because we're talking about a 40% allocation to equity and only 5% of that is going to emerging markets. So the remaining 35% was never implemented per the board approval. The reason for that which was discussed at the investment committee was that Russell investments advised against doing it until the hedge was put on. I think in the future, that should be communicated to the board so we understand that decision. It's a delay that's taken August, September, October, about three months now. So in effect we, at the investment committee level, agreed to move to the global mandate, terminate our active managers which we just saw through an earlier presentation is responsible for underperformance, and move to a passive strategy to implement the global equity mandate. Once that's in place then we can begin the search for active managers.

>> Carmen Racy-Choy: I just want to correct one thing. It's not true that the -- and I know I didn't provide that because I wasn't sure when the trading had commenced. But it's not true that the implementation for everything was held up. The implementation for the international small cap mandate, and I believe the Russell 2 and the Russell 3 went ahead and was actually underway at the time of the investment committee. The -- there are -- the emerging market mandate was held up. And I believe two other mandate, the MSCI, AQUI, I don't believe, I believe it's just the MSCI AQUI was held up and another two percentage point, another small mandate, and the reason was given at the investment committee and that's because we perceived that the strategy we were proposing was actually very relevant, for those two mandates as well and wanted the investment committee to consider it. That was my call, to defer those two mandates. And I think having a discussion around hedging and looking at where it could be applied was a good discussion. We take note of the fact that maybe the -- there

should have been a greater consideration of what to -- what should have been implemented. But I just wanted to correct the component that it -- that I didn't correct at the investment committee, because I wasn't sure where we were at with that specific transition is that the mandates that were not affected by the hedging strategy were actually moved forward on a faster track.

>> Vincent Sunzeri: But not all of that, right Carmen?

>> Carmen Racy-Choy: But not all, that's --

>> Vincent Sunzeri: We still have our international emerging market -- I'm sorry, we still have our international managers in place, which we approved termination on August 4th at our meeting.

>> Carmen Racy-Choy: The mandates that were kept, I do believe the international were kept because the -- where the money was moving, which is the MSCI AQUI was a good -- another good destination to do the hedging scheme if hedging was desired. You're absolutely right in that sections moved forward. Sections did not. But the sections that were held up, were held up in part because the thought was that the investment committee should consider, to the extent they want to do hedging, to include more than emerging market.

>> Vincent Sunzeri: Right. So the only thing I would say is that communication is critical here. And not only did month one on the board know, but the investment committee wasn't even aware of that decision being made to hold that up. And I'm operating off the assumption that the board approved the mandate and it's being implemented. And to find out two, three months later that it wasn't is a bit of a surprise and a bit of an embarrassment to me. So I think in the future if decisions are made outside of what the board's approved that that should be communicated to the board.

>> Sean Bill: I have a quick question. Vince, you highlighted the volatility in the market, the numbers you threw out here for this past quarter were quite extreme, quite amazing in terms of the volatility that we're experiencing. In terms of the implementation, is the idea that we want to go kind of jump in the pool all at once or

are you of the opinion that we perhaps should maybe scale into these positions, maybe so much per month? Because we are seeing the market move ten, 15% in a period of two weeks.

>> We're not in the (inaudible) right now.

>> It is somewhat of a lateral move.

>> Sean Bill: So would it make sense to be doing it in pieces main over a three-month period or do you think you should be going all at once in one spot?

>> Vincent Sunzeri: That is a philosophical discussion that we can have I think at the investment committee level because it could take quite some time to go through that thought process. But it's a matter of what is being communicated to us.

>> Sean Bill: Okay but if I was doing this for my own account, I won't go from 100% one investment into 100% investment in another all at once. I would most likely take it 30% --

>> Vincent Sunzeri: In general Sean to respond to that --

>> Sean Bill: It's the same beta exposure to --

>> Vincent Sunzeri: Right.

>> Sean Bill: Is it going from international to emerging or international to international?

>> Vincent Sunzeri: In general it would be what I would consider to be somewhat lateral move within an asset class. I would make that move instantly. The only holdup was the emerging market because of the

concentration. If we're talking about going from cash or fixed income and changing, the thought process might be constructive to consider moving in a more measured fashion.

>> Sean Bill: So maybe I'm missing something here, as you I couldn't really hear the last investment committee meeting. But it sounded to me that we were increasing our exposure to emerging markets and that was one of the reasons we were considering a hedge. Is that incorrect?

>> Vincent Sunzeri: No, no that's absolutely right. But that's the only piece we're talking about is that 5%. However, that decision on that 5% is the only piece that we were discussing a hedge. However, it held up the remaining 35%, unbeknownst to myself and the investment committee --

>> Carmen Racy-Choy: Not the 35% but probably some component -- another 25%, probably or another 20.

>> Vincent Sunzeri: Okay. But that piece I didn't realize was being held up. Whatever portion of it that was. So that's why I think the communication is important.

>> Damon Krytzer: Other than the rebalancing, the only remaining material beta change we were making was the -- adding the 5% emerging piece, is that sort of right?

>> Carmen Racy-Choy: The -- the 5% dedicated mandate already existed. What didn't exist was the additional exposure to emerging that you're getting through the global mandates. And assuming the managers hold the benchmark, that's approximately 3 percentage points. So you were really going from five to eight. However, offsetting that, you were tilting the equity portfolio towards a value bias, which provides fundamentally a lower volatility. So I think the increase in the emerging allocation is kind of counteracted by the move towards a value bias. And so overall, you were not moving to a higher vol structure. You were maintaining the volatility of the structure.

>> Damon Krytzer: So if we are just addressing Sean's comment though, I guess the point I'm making not so elegantly, and you're doing a better job of it than me, is that our beta exposure -- how much is our beta exposure changing? Just addressing whether or not we should do it right away or over a time period?

>> Carmen Racy-Choy: Not much. Not much.

>> Damon Krytzer: Right, okay.

>> Carmen Racy-Choy: In such a situation we wouldn't phase it in. If however we were to maintain a 15%, for example, allocation to real estate, and if it was the wish of the board that we implement by investing in real estate investment trusts, which are very, very volatile, we would enter that type of an asset class in a -- or at least we would recommend that the board enters that asset class with a phased in approach, just because it has almost double to triple the volatility of equities. So short of that, typically we implement whatever the board's decision in one shot. Unless somebody at the board or at the investment committee, suggests otherwise.

>> Damon Krytzer: Sean, does that make sense? Are you okay with that?

>> Sean Bill: I guess my sense was that there was some concern that the changes have been made but it sounds like really the changes are just going from one similar beta to the next beta so it really wouldn't have had much impact --

>> Damon Krytzer: Active to passive right now.

>> Vincent Sunzeri: To some extent we have retained Brandis on the international side. I believe is William blare on the international side, had that been terminated or had not been terminated?

>> Carmen Racy-Choy: Do you mean we've retained them as in the new structure or do you mean we've --

>> Vincent Sunzeri: They had not been terminated yet and moved in the other direction towards the global mandate?

>> Carmen Racy-Choy: The investment committee meaning? I'm not sure I understand what you're saying.

>> Vincent Sunzeri: Given what the board approved in August, we still have Brandis as our international manager.

>> Carmen Racy-Choy: No.

>> Vincent Sunzeri: When were they terminated?

>> Carmen Racy-Choy: Um -- the -- I mean the trading started last week. However, they might not -- we might not have actually undertaken the reconciliation on their specific securities. But they are part of the managers that we will no longer hold as part of the --

>> Vincent Sunzeri: Prior to our investment committee meeting last month we still had Brandis as our international managers.

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

>> Vincent Sunzeri: Which is not our understanding that the board approved termination three months ago. That -- I think we've kind of beat this point up a little bit.

>> Carmen Racy-Choy: The board didn't approve the termination of specific managers, because if that had happened it would have been done immediately. The board approved a restructuring of the equity component. And the board also gave staff discretion to implement the hedge, or not to implement the hedge. Based on revisions of the document in place. It typically takes, assuming the board had approved it on

August 3rd, and we had not been asked to come back to the investment committee to discuss the hedging scheme, the norm is for the implementation to take somewhere around two months. Now, when we came back to the investment committee, it took us a little bit longer, maybe two Ω months, partially because we were asked to hedge in a very volatile environment. Hedging was super-expensive and we were given a lit budget of 100 basis points. So I understand the comment with respect to the fact that the board did not suggest hedging other than emerging. And maybe, the discussion should have happened at the -- at an earlier investment committee meeting where staff should have said, we're considering doing XYZ on the other mandates. So I agree with the point that further communication should have happened. But ultimately, the implementation is not that far off the norm.

>> Damon Krytzer: Is there a way to communicate that, I don't know, it would be great to the investment committee in between investment committee meetings. Or at least maybe to the chairman or somebody, because you know, I mean just waiting a full month sometimes, I could see the challenge with the communication, too. I mean we're missing a lot of -- a lot of data. Like is there any way to communicate between meetings whether or not we're considering a hedge on something else and the volatility changing for instance or can we give more broad discretion? Can you help us to word more broad discretion maybe --

>> Carmen Racy-Choy: I think what would be helpful is for either the board or the investment committee rather than to give discretion to the for example the investment committee to give discretion maybe to the chair to work with staff. And this way we'd be in closer communication on what's ongoing. I think that can definitely help with the -- with the flow of information.

>> Mollie Dent: So just directly to your question, the staff can provide informational updates. They can provide informational updates updates if the board wants to ask for them. But they can't really ask the board to tell them to do anything in between the meetings, or to get any direction from the board.

>> Damon Krytzer: Can we (inaudible).

>> Mollie Dent: No, you really can't, you're a standing committee. You could call a special meeting if you wanted but it would need to be Brown Acted ahead so --

>> Damon Krytzer: So it would need to be three or four days ahead.

>> Mollie Dent: Yes. The special meeting requirement, I -- boy, I'll look at my sunshine binder. But yes, there'd be advance noticing for the special meetings for your committee.

>> Damon Krytzer: I mean three days beats a month, right?

>> Carmen Racy-Choy: Sorry, Mollie, does that mean the board cannot decide give discretion on one member to work on an issue such as hedging, is that what you're conveying --

>> Mollie Dent: I guess I'm --

>> Damon Krytzer: She's saying you can push data to us, we can't interact in between meetings if it was not Brown Acted. If you can push -- if you are saying volatility is too high, I'm hearing that you could push the information to us.

>> Sean Kaldor: We could work with staff between meetings. Not as a committee --

>> Mollie Dent: Right, not as a committee.

>> Vincent Sunzeri: Then Mollie can you clarify what we can do on a communication basis between meetings? Either one individual or --

>> Mollie Dent: The problem you have with your committees, are four people, is that no more than two of you can really be communicating with staff on an item that's going to come back before the committee. And so -- and

if two of you were to communicate on an item that was going to come back to the committee, you would absolutely have to make sure that there wasn't anything else going around to the other committee members. Because if you were to do that, you would be having an ad seriatim meeting.

>> Sean Bill: I think that's a very interesting point too, because I think that you know we may have boxed ourself into a little box here by having set up an investment committee meeting of four people, that you have four people that have expertise in four different markets but they can't communicate with each other because they're a majority of the investment committee.

>> Mollie Dent: In board meetings.

>> Sean Bill: Right but things happen between the board meetings, right?

>> Mollie Dent: And you can have special meetings.

>> Russell Crosby: That's part of what the institution investing, you know you have got to give discretion to somebody or you're just going to have to recognize that can you not turn the trust fund on a dime. And there's not any institutional management in the state that has interim board -- that has you know -- what you seem to be talking about is let's have triggers that where we can have additional committee meeting meetings in the middle of a month, a month isn't that long. You know, in institutional investing it's really not that long. And you need to be targeting your investments in ways that you're not having to do things to the portfolio on that short a turn around.

>> Sean Bill: Correct. No, no, I'm not even thinking about having a full meeting I'm thinking like, let's say there's an opportunity out there that the markets have moved down 28%. And well if I talk to Damon about it it sounds like I can't talk to Vince about it because I'd being breaking a rule on the Brown Act.

>> Russell Crosby: Correct.

>> Sean Bill: Now I may value Vince's opinion and maybe would like to get some feedback on it to organize with staff to say hey, gee, we've just had a huge sell off. This would be a great opportunity for us to kind of step into this space but we can't do that because we have the four people on the investment committee and we would be breaking the Brown Act.

>> Russell Crosby: You can call an investment committee meeting. That's the way it has to work in this environment, is you have to call a meeting, it has to be a Brown Acted meeting and then it has to be recorded and televised and all the other stuff. And you just can't have conversations outside of that structure.

>> Mollie Dent: Yes there --

>> Sean Bill: That's why I'm wondering, would it actually be more productive, when we didn't have the investment committee meeting, investment professionals could chat, could talk, swap ideas.

>> Russell Crosby: But then you still -- you can't make decisions and you still have the problem from a board standing then, if more than a majority of the board --

>> Sean Bill: But four could talk.

>> Russell Crosby: Four can talk.

>> Sean Bill: And you would get a lot of leverage because those four could talk to each other.

>> Damon Krytzer: They can still talk now if it's not on something specific, right?

>> Sean Kaldor: If it's not a decision that's going to be made by the board as a whole.

>> Mollie Dent: If it's not a decision that's going to come before the board. But I think investment, it's --

>> Russell Crosby: It's all going to come before the board eventually.

>> Mollie Dent: Yeah. I mean I'm not going to say you can't talk to each other in general about market conditions or something like that. But if it seems like you're talking about something that would be coming back to the board because it's something you want to direct to happen, then you have a Brown Act problem.

>> Russell Richeda: Russell would it make sense just to calendar, assuming the investment committee wanted to talk weekly, you just have a standing date, you all know 8:00 a.m. Friday morning, we're having a committee, assuming you have a quorum in the jurisdiction, I don't know if we do in the investment committee --

>> Damon Krytzer: I don't particularly want to participate in that.

>> Russell Richeda: And you don't have in-person meetings --

>> Russell Crosby: Russ, let's step back and look at that from a logistics standpoint. Exactly what is the staff going to do except continuously be in a mode of preparing for the next committee meeting?

>> Mollie Dent: And you've got to have an agenda. You can't --

>> Russell Crosby: And you've got to have an agenda and you've got to have it published a week in advance.

>> Carmen Racy-Choy: We really already --

>> Russell Crosby: So from one meeting to the next you're really not going to be able to produce an agenda or a meeting.

>> Russell Richeda: And so that's a huge down side but the investment committee members might see if that meets their needs. Maybe it doesn't.

>> Damon Krytzer: Let me make this simple.

>> Sean Bill: I don't think we want more meetings. I think actually we want less meetings.

>> Damon Krytzer: Yeah, let me -- let me just make this simple. I'm speaking specifically in this case to being able to respond to what we were just talking about with like the hedge, for instance, right? I mean, we -- it took us a long time to see this -- to see this emerging markets hedge. It took us, unfortunately, seeing that, in order to act upon a few other -- a few other markets that you wanted to also classify in a similar way. And we -- there was no way we knew. We didn't know. So now we're saying, there really isn't a way outside of the investment committee meetings for Carmen and staff to communicate with us if we're not implementing changes that we've already approved because --

>> Russell Richeda: No, you can.

>> Damon Krytzer: Of the capital market reasoning.

>> Mollie Dent: You can have information memos from staff about the status of items. What I'm going to suggest because we're kind of getting off anything that's on the agenda is, maybe this discussion could be referred to your governance consultant. Because it seems to me that that's one of the things that the governance consultant is looking at, is the committee structure and how the committees should operate. That's --

>> Vincent Sunzeri: Legality me sort of conclude, let me wrap this up, because I brought this matter to our attention because there's a gap in communication. And I think it would be valuable to communicate with myself as the chair, or on a unilateral basis, one board member communicating with me a particular issue and it's deemed important, then we can call a committee meeting, in between our monthly committee meetings, if it's not deemed

important, its been there's a transfer of communication, end of story. It prevents them having a weekly meeting, getting prepared for a weekly meeting, get sidetracked on everybody's priority, which is, there's 20 different priorities. Does that make sense?

>> Russell Crosby: Yes, it does.

>> Sean Bill: So could we have something to the effect that you know, Vince coordinates with Carmen on what are important action items and Vince gets an update from Carmen or Russell, whatever, on the progress of the action items that we've deemed to be important, and then Vince can communicate that information, is that my understanding, we would be able to do that?

>> Vincent Sunzeri: Sure.

>> Carmen Racy-Choy: For what items currently?

>> Sean Bill: Anything. You know like it could be on the implementation of the global equity exposure. Maybe we want to get an update you know like every two weeks to see how that's going along or you know maybe it's on the absolute return, you know, investments investments or the private equity or whatever. And Vince would need to determine what would be the priorities and hopefully that would come through via the investment committee and we get some updates.

>> Conrad Taylor: Not to get you off, are we on the same matter? 1.2?

>> Sean Kaldor: It is about the implementation of this.

>> Mollie Dent: I think we are -- I think we are probably off of item 1.2. But I think that there's been a good enough discussion, that under future agenda items, proposed agenda items, the staff can come back and make some kind of recommendation based on the discussion that has occurred here today about additional

communications either with the whole board or with the investment committee. Does that -- does that -- I think you're going to have to agendize this for some further discussion under an actual agendized topic.

>> Sean Kaldor: So under this item then, I would make the motion that one of the things that can be done is coming up with a list of the key things that are being implemented or changed, as far as investments go. Just to track when it was authorized, and where it stands and maybe each month be able to come back and just a quick update, informational, this is moving along, this is done, this is delayed, this is --

>> Damon Krytzer: We're doing that on the investment committee now.

>> Sean Kaldor: That's fine.

>> Carmen Racy-Choy: To so would you like us to bring it to the board after the investment committee?

>> Sean Kaldor: I think when their minutes are added to the board packet, it can be part of the minutes.

>> Sean Bill: We can include that from the investment committee.

>> Sean Kaldor: We don't need to review it.

>> Russell Crosby: But I think what's really needed here is a motion that addresses the action item.

>> Mollie Dent: Right, right.

>> Sean Kaldor: I just made one motion.

>> Damon Krytzer: What's the action item, to just -- okay?

>> Sean Kaldor: Yes.

>> Vincent Sunzeri: Let me make a motion to move forward on the implementation of the global equity mandate without hedging strategies for emerging market.

>> Conrad Taylor: I'll second that motion. I'll second it. Open up for discussion. I think we've discussed it enough. Bring it to a vote.

>> Russell Richeda: Roll call.

>> Conrad Taylor: Oh, roll call. Drew.

>> Drew Lanza: Yes.

>> Conrad Taylor: Damon.

>> Drew Lanza: Please, thank God.

>> Damon Krytzer: Yes.

>> Conrad Taylor: Sean.

>> Sean Bill: Yes.

>> Conrad Taylor: Chairman Bacigalupi.

>> David Bacigalupi: Yes.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Yes.

>> Conrad Taylor: I'm yes. Sean.

>> Sean Kaldor: Yes.

>> Conrad Taylor: Motion passes.

>> Sean Kaldor: So just for clarification, I had a motion on the table before that and I did that for the reason that if we wait to agendize this for our next meeting, then our next meeting we'll come back and talk bit and then it will be a meeting after that before we ever see a list of action items.

>> Damon Krytzer: It's on the investment committee agenda, though.

>> Sean Bill: Can I just respond?

>> Sean Kaldor: But it is more global than just the investment committee I believe, that there are other things we are doing as an organization that needs to -- we should be tracking what we're doing. I don't want to I don't think that organization should be run that way, but these are exceptional times when we're light on staff and resources. And for a period of six months to be able to say you know, what the big things and the valuation study, where do we stand on that, the FLSA thing has been going on for a year and some, where do we stand on that? Here are the 20 key things going on and the investment committee or the disability subcommittee may have a finer level of daytime going on with their own stuff but I think we need to track that here to see what's fallen off the table. Because we have no checklist. Just so all of a sudden someone says oh, didn't we talk about that four months ago, oh, we're not doing that because oh, we didn't know.

>> Vincent Sunzeri: I'll second your motion.

>> Mollie Dent: So the concern I'm having is that you're making a motion on something that's not on the agenda. I mean, for example, you do have, under item 1.3, a discussion and action, a verbal discussion and action regarding timing of the asset liability modeling study. So I guess that's the kind of thing you're talking about. I haven't heard the presentation yet but I guess that's the kind of thing you're talking about. I'm a little concerned about just a very amorphous direction to staff to put --

>> Can we agendize it under the project management structure?

>> Conrad Taylor: Can we put it under proposed agenda items?

>> Mollie Dent: I think it should be a future agenda item. So that --

>> Sean Kaldor: We can't just direct staff without it being an agenda item?

>> Mollie Dent: Correct. You can't act without it being an agenda item.

>> Sean Kaldor: We can't direct staff to produce a report for us?

>> Mollie Dent: As a board you can't. You a expressed your desire for that to them, I think. But as a board, it would need to be -- that's why there are items on here for direction.

>> Russell Richeda: You could probably proactively take it upon yourselves to --

>> Conrad Taylor: I think we'll just put your agenda on the proposed agenda items.

>> Sean Kaldor: I just don't want to lose track of it. That's all I'm trying to do.

>> Conrad Taylor: Under proposed agenda items, maybe we could have a list of top five items that we're concerned about and we'll put that under proposed agenda items. Moving forward, 1.3, discussion and action regarding timing of asset liability modeling study for presentation to investment committee and full board. Carmen,.

>> Carmen Racy-Choy: Thank you. Just as a way of background, that the past asset liability studies for both pension plans of the Federated and the Police and Fire were in the past done by the investment consultants. I believe the investment committee perceived that there was a need to really move forward on a unified asset allocation, and to have preferably a similar asset allocation and a very similar investment structure. And so one of the ways to accomplish that was to actually, given the fact that we currently have the two consultants, was for staff to internally take over the ALM. The Federated board has asked staff prior to the Police and Fire board to start working on the asset liability study for their plan. And currently, we've set a date that we're trying to present that to the investment committee for the end of November. Once I -- typically when an asset liability study goes to the investment committee, the investment committee will typically take two to three meetings to consider it to make suggested changes to it before they pass it on to the board. The thought was, once we get the Federated ALM to the investment committee to start working on the programming for the Police and Fire plan. This takes a little bit of time up front to set up because the liability modeling basically amount of work. However once it's set up it can be done and it can be changed quite easily. We anticipate that we would be going to the January investment committee with revisions to both the Federated and the brand-new ALM for the Police and Fire plan. So that's basically, in short, the project update.

>> Sean Bill: So I have a question on this. And the question is, moving this internally and having staff take this function over, how is that impacted staff's ability to get other action items taken care of? And is this necessarily, you know, the best use of staff's time, or would it maybe in the future, we're already into it so I don't think we can change course, but in the future maybe we should have this done by an external entity so you guys can focus on the investments?

>> Carmen Racy-Choy: To be perfectly honest, this is something you can still consider. I don't necessarily view -- for Federated it's a bit too late for this stage but for police -- to the extent that you convey that maybe having the same asset allocation and the same structure, isn't necessarily important to the joint investment committees, then by all means, you can get external providers involved. But typically if you get somebody external and you have different people on each of the two plans, you're not going to get to the same answer. That's clear. So really, it's up to you to consider what is the best use of staff's time. Staff was asked to do this internally, which is why we're trying to provide the info. If you believe that staff should have different priorities then that's up to you to convey.

>> Sean Bill: And then would there be differences between the demographics of the two plans that would affect the ALMs in terms of getting them to the same asset allocation? I mean maybe there's actually an underlying fundamental difference from us moving that close together.

>> Carmen Racy-Choy: It is possible. But if it is so then we'll explain to you what is the difference in benefits, what difference in demographics is resulting in a potential difference to the asset allocation. So for example the Police and Fire plan has a higher sensitivity to inflation meaning if inflation were to go up, the -- you know basically the liabilities would inflate at a higher rate than Federated. This suggests that the allocation to real assets should be higher. Where that's the case, staff is still going to recommend potentially different allocations.

>> Sean Bill: And in the past who would typical do an ALM for us, fire and police?

>> Carmen Racy-Choy: NEPC for fire and police.

>> Sean Bill: Okay. So I think that obviously we have the skills here to do it in house. The question is, is this the most efficient use of our staff's time or is this maybe part of what's cutting into our ability to get other things done on the investment front?

>> Conrad Taylor: Vince -- Carmen, when did we take it in-house doing this study? Or not have NEPC do it?

>> Carmen Racy-Choy: Federated started by asking and they wanted staff to take it over. I think the presumption was, given the joint investment committees whatnotted to have a similar asset allocation, that given that staff has taken over the Federated piece that we would do the same for Police and Fire. That's kind of the rationale behind it.

>> Vincent Sunzeri: So at the investment committee level, there's definitely a desire to move in a unified fashion where it makes sense. There's certain advantages we have if we can have consistent service providers for both plans. Similar asset allocations, leverages of resources that we have. However, with the ALM there's going to be distinct differences. And I wasn't aware that there was a specific request, I apologize if I'm not aware of that, to have this done internally. But the delays have delayed a lot of different activities that we want to have accomplished. The list of items on Carmen's plate is longer than someone's rap sheet, I can imagine, and I think we need to think about prioritizing. And if this can be done by a consultant that we're currently paying, and it can be expedited instead of waiting till February, when Federated will have theirs done in December, we ought to utilize our consultant.

>> Sean Bill: The only thing I would add to that is I almost think your time is too valuable to be focused on that type of stuff. I almost feel like you know as a CIO, the way for us to leverage your time is really to be purely focused on the investments. I think the ALM thing, you know, I mean, you know it's a different -- obviously you have that skill set from your actuary side, but it's a different skill set from the investment side. As the CIO I think there's more importance of having you really focused on investments than actuarial type of stuff.

>> Carmen Racy-Choy: Just conveying that the last time NEPC did the ALM it did take them four months to deliver the project. And Italy they only delivered the project four months later because Mr. Crosby called them and threatened serious harm if they don't come to the -- so ultimately just -- I think maybe working on a dual track might actually be beneficial. Because if I was to call NEPC today, and make the request, they already have clients that are in queue for an ALM. They have to fulfill the ALMs first and then get to yours. And typically this is quite standard for consulting firms. Typically the wait is three to four months.

>> Sean Bill: And you're anticipating we would have ours right like January or February?

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

>> Sean Bill: And would it make sense maybe to high a consultant to hire you internally a contractor or some sort or is it something you really can't --

>> Carmen Racy-Choy: The ideal would be go one way or the other. Either free up my time to do other things so I don't have to be tied in because definitely it is a major project and it's a major -- it is a major time commitment. And if I don't have to do the Police and Fire ALM I could be doing other things such as implementing our hedge fund allocation and so forth.

>> Sean Bill: To me I think that's almost more important, really, in terms of the performance standpoint of our plan, I mean, again I just kind of feel like your time is too valuable to really be having you dedicating time to actuary stuff that we can have our consultant do. You know.

>> Conrad Taylor: Any other comments?

>> Vincent Sunzeri: I also think it would be valuable at some point and probably not a long time frame to have NEPC here. These are the types of topics that we should be hearing from them about. I understand their time line, and realizing how responsive they're going to be to our request. The investment committee is already looking at RFPs for alternative consultants, yet we've had zero dialogue with NEPC. And I think that they should be not only at our investment committee meeting but they should be at our board meetings as well. And if in fact that's going to take longer that might not be in our best interest. I want to hear from NEPC at our board that that's going to take that long to accomplish that.

>> Conrad Taylor: I agree, Vince. I think NEPC should be here on these discussions. Damon.

>> Damon Krytzer: I agree with that as well as long as they're engaged. And my concern is that we've like been in this perpetual state of limbo, with our external relationships, right? So we only have so much staff resources, there's things we need to do, get it, I do. And you know, whether or not we have a discussion as to how we're best using limited resources that we have right now, you know is one thing. But either we should -- we should engage, you know I know where staff's coming from. But either we should see if or how we could engage with the resources we have, even if they're not -- even if they're here for a limited amount of time or decide not to have them at all. And do something about it either direction. Right? Like I just -- I don't want another six months to go by, and have us you know continue to have unutilized resources, if that's not the right group or we want to go in a completely different direction I want to at least begin that dialogue. Because I know it's going to take a long time. And I really -- you know key could defer this again. We'll talk about it in the investment committee. Do we have one next week already? We do, don't we, next Thursday.

>> Carmen Racy-Choy: The investment committee meeting is November 30th, I believe. So you have a few more weeks.

>> Damon Krytzer: Okay. Maybe this is a good conversation to have in there. You know, not taking more time. We still have a long agenda today.

>> Conrad Taylor: We do have a long agenda.

>> Damon Krytzer: So that is my point. I'm really kind of concerned or -- that we're in this state of limbo, and we talk about challenged resources on one hand. I don't feel like I've done anything to help address that other than have in conversation. And I'd like to -- I'd like to agendize that somehow.

>> Carmen Racy-Choy: At the investment committee or at the board?

>> Damon Krytzer: At the investment committee would be wonderful.

>> Russell Crosby: Needs to be there first.

>> Conrad Taylor: If we have nothing more we'll move forward. Under 2, new business. 2.2, discussion and action regarding a letter to the City Manager regarding staff salaries. I don't know who --

>> Russell Crosby: Yes, the letter was drafted by one of the Federated board members and has been circulated among the Federated board members. And they authorized in fact the chairman of their board together with the secretary to draft and forward something to the City Manager. But they also suggested that it would be good to have Police and Fire sign on. And so that's why the letter is here.

>> Conrad Taylor: Damon.

>> Damon Krytzer: I would like to just throw two things out there. I won't even call them suggestions yet. One is that Cortex is still addressing this. And I don't know that we should necessarily get in front of that process. And number 2, in light of the conversation we're going to have at the investment committee meeting on what resources we can and can utilize, I just assume unless anyone has any strong thoughts or I'm still happy to have a discussion bus I just assume kind of defer this to post-core Texas and post-that discussion.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: Go ahead, Chairman Bacigalupi.

>> David Bacigalupi: Yes, Russell brought that to my attention from the other board. They requested or let it be available to our board if we wanted to join in on this. And I asked Russell to agendize it, to just see what the board's desire was. I am not necessarily supporting it, but my philosophy to bring it to the board and let the board decide.

>> Conrad Taylor: Vince and then Sean.

>> Vincent Sunzeri: So being (inaudible) I had a conversation with the Federated board member so I'm not in violation of the Brown Act?

>> Mollie Dent: No, as long as you didn't have a conversation with a majority of them.

>> Vincent Sunzeri: Correct did I not.

>> Mollie Dent: You're not creating any problem for anybody.

>> Vincent Sunzeri: So I'm very aware of the letter, and actually, have somewhat of my fingerprints on the letter and very much in favor of this. I think we had an opportunity for the City Manager to come and hear our frustrations. She said, tell me what it is you're asking for. That took place several months ago. And we haven't responded back. Fortunately with this letter, and this was part of my concern early on, is that we did not have Cortex data. We now have the Cortex data. I had hoped we would have that. I think that if Cortex is the consulting firm that we recommended we change board structure it carries weight in the city. So the data is valuable. I had written out some additional comments, I'm not sure we want to revise the letter any further. Because I think we want to move forward as quickly as possible. Of note, essentially, on the second page, in the second paragraph, there is reference to the fact that the inaction has cost the city plan tens of millions of dollars in the past quarter. We could be more specific if we wanted to. And in fact, the markets declining as much as they did in the third quarter and that we don't have equity allocated to absolute return and private equity to the levels that we want to has in fact cost the city more money. If we want to get specific we can add that in there. But I don't want to delay this. And I know they're eager to move forward and I think it would carry a lot more weight if both boards signed off on this letter than just Federated.

>> Conrad Taylor: Damon. Vince, regarding this letter, is it that we're a shortage of staff? I think with the sky as a limit, would the salaries just go up, would the problem be resolved or would more staff be the issue? And I know you could say that we can't get staff because of salaries. The market's saturated right now with large business --

financial companies putting layoffs right now. So if we put the sky as the limit on these salaries right now, is it really going to resolve anything? We have a shortage of staff right now that we can't get items done.

>> Vincent Sunzeri: Let me respond to that. Certainly, you can argue there's a shortage of staff and I would agree that that's the case. However, the biggest concern that we have at the investment committee level is, we lose our investment staff. We'd lose our chief investment officer because they're not being compensated at a fair level relative to what compensation is in the current universe for chief investment officers. No one on this board wants to be involved in actually managing these plan assets. That's a liability that I don't think any of us wants to assume. And so a priority for me is to make sure we can retain our chief investment officer, and senior staff, and our CEO as well, so that we can continue to operate and move forward in the direction that we'd like to go. This, in my mind, is a response to what the city asked for. The data is supported here. And in the event that we don't take action, we lack credibility as a board because we've never responded to the City Manager. We have supporting data here from Cortex. And frankly, I don't want to be here in two or three months with even lighter staff or loss of senior personnel because we didn't fight to get them competitive salaries. And now we're looking at one another trying to figure out who's going to manage the assets in this plan. That's a scary proposition for me as a trustee.

>> Sean Bill: Are we waiting for anything further from Cortex on salary surveys? This is what they were going to deliver?

>> Russell Crosby: This is what they were going to deliver on the subject. But I think this is probably a good point to interject a couple of thoughts. One is that the City's going to have great difficulty in compensating to the levels that are indicated in this report. The City Manager has been before you, indicated the hierarchy, indicated what her salary is. And indicated a certain unwillingness to go in a structure beyond that. I would also point out, and the lawyers can address this. There are a couple of court cases that have been directly on point, that limit the ability of trustees to pay staff salaries. The plan sponsor can intervene there. Then when you look around the state, there's only one -- there is one similar plan, San Bernardino, had put in bonus plans and compensation schemes that are very similar to what Cortex is talking about here. And as soon as the county got in trouble, and

the current downturn occurred, the county reached in, eliminated the bonus program, reduced the salaries for CEO, CIO and investment staff and San Bernardino lost a big chunk of its intellectual capacity. So what I'm trying to say, the city holds the cards on this. You're not going to be able to compensate, other than within bounds set by the city. Secondly, the track record is not good when salaries have been set with some eye toward the private sector. And I'm killing myself here, but you need to understand the reality of this. And I believe the board needs to look at other structures, not just continuing to go down and beat its head against the wall called staff and staff salaries. And in the particularly public plan business right now one of the big discussion elements is CIO in a box. Because other boards are recognizing this very same problem. And when you look around the state, there are at least three CIO positions open, there are probably three or four CEO positions open. There are IO positions, investment officer positions open in every public plan in the state. I've talked to some of the top head hunters in the country in this business. And even with the kind of salaries that you're looking at in this Cortex report, plans can't hire appropriate people with appropriate backgrounds, even at those levels. Because you're competing with the private sector directly. The farther up the food chain you go to get to perhaps a real asset investment officer ore a hedge fund investment officer, those salaries, either you're going to get a very inexperienced person who you're going to pay a fairly high salary, given city structures and civil service, which also brings me to another point of civil service, which, when you do pay these high salaries, you have to understand that these people are going to be civil servants. You're not going to be able to terminate someone just because they haven't performed. So let's say you're paying $300,000 for a hedge fund IO. If he or she doesn't work out you're just stuck. So you need to think very carefully about continuing down this road of beating your head on the compensation question. Because maybe you need to step back and look at a different structure entirely. And one of the things that plans are looking at is the CIO in a box structure.

>> Conrad Taylor: Thanks, Russell. Damon, Pete, Sean and Vince.

>> Damon Krytzer: That pretty much 100% spoke to what I was going to mention. So I'll keep this short and sweet. I think that I -- I agree because I do think that we need to look at a different structure. Whether it's a different comp structure if we're going to stay committed completely with her on internal staff or whether it's to partner externally as well, I do think that we need to address this. While I -- I adamantly agree that you know

compensation should increase, for sure, that in itself also just, in a box, is not going to -- people don't stay at jobs because of compensation or another $100,000, right, especially if we are trying to compete with the private sector. They're going to stay because they enjoy what they're doing and I think that getting the structure in place is -- is, on -- to a place where we're actually making forward movements with the portfolio as well, in partnership with increased compensation and reduced sort of reactive workload in itself is going to just create a way better work environment and I think that's part of what we need to find in a structure.

>> Russell Crosby: And when you read some of the surveys and read reports about why do professional staff leave these government plans, in some cases it's the salary. But more often than not, it's the bureaucratic structures of being inside government. And that the kinds of people that you want who are creative and innovative and thinking thoughts about marketplace and totally engaged with markets, aren't the kind of people that fare well when we have the kind of travel restrictions we have here, and most of you haven't submitted expense reports yet, but when you do you'll be amazed at the kind of fine-tooth detail that goes into them. And it's totally outside the realm of what good investment officers are used to. They're used to being in an environment where, if you've got good ideas and you're producing lots of money for the plan, then you can travel and do things and nobody looks very closely at what you're up to. That doesn't work in government. And it's an institution that counts pennies, will often miss the hundreds of millions, but will county pennies. And that's another element of this that when and if do you get high quality people we've lost one here on a similar kind of situation. Very high-quality individual, very creative, made literally tens of millions of extra money for the trust funds but travel issues and bureaucracy is what essentially drove him out of the place. So you need to understand this full picture of it's not just salaries. It's that whole work environment. And you can't make up for that work environment with pure salaries.

>> Conrad Taylor: Thanks Russell. Pete.

>> Pete Constant: Yes, I was going to make my comments fairly similar, about not getting too myopic on one part of it. Because there are as we've discussed before a lot of different facets of this. Quite frankly, there is two distinct issues I think. There's the CIO-CEO issue which has gotten most of the attention in this discussion so far,

but there's also the vast number of vacancies that exist throughout the department. And I think that addressing those solely on dollar and cents without discussing the issues that Russell brought up, and specifically, in my mind, the classification issues of having the appropriate classifications for people to do the appropriate work that needs to be done, I personally think should be a higher priority of the board. And the director, to deal with those issues and get a full of complement of staff as possible where their jobs are specifically tailored to the needs of these two funds. And I just want to remind you of that, because I heard that yet yet, except for Russell's comment. But I think that's where the importance and the weight should lie on the discussion.

>> Russell Crosby: And it's important to understand that with we have spent -- how long have you been here Carmen, three years?

>> Carmen Racy-Choy: Three years.

>> Russell Crosby: Three years and change and I've been here four years. And the amount of advertising we've done, the amount of recruitment, the amount of meeting with individuals, you run into a problem of yes, we can hire people who don't have the right kind of experience, or don't have the depth of experience that's really needed to manage these portfolios. Or you got to step back and leave the position empty and at some point look outside. Look outside in the sense of either consulting resources or the CIO in a box structure or something different. Because we've spent literally hundreds of resumes, I mean stacks that were two feet tall, on some of these recruitment efforts. And what you find is that there are lots of applicants that, yeah, don't really have the background, and don't have the experience, particularly within the narrow asset classes or the narrow specialties of hedge funds or real assets or commodities or any of those kinds of things. Yeah, you can find some public plan -- public market experience in equities. But again it's not from an institutional perspective. What you'll find is that there's lots of brokerage people out there that would love to get a job in an institution somewhere. They don't have the institutional experience already. So either we can put additional burden on the CIO to try to train those people, hire, you know, the 125,000, 140,000 inexperienced investment person that maybe has a CFA or is working towards their CFA. But then she's going to have to spend the next six months or a year bringing that individual up to speed. And so now you've got how many of them in the department, four or five that are having to

go through that same process. So in one element it is related to salaries, in that we can't pay enough to get somebody experienced. But on the other hand, if you do pay enough, you're going to run into the civil service question of okay, this person is now a very highly compensated individual and the day they decide that they don't really want to work anymore or that their ideas haven't panned out, you have no ability to terminate them. You are stuck with that individual.

>> Sean Bill: And that's a distinction that is somewhat different than say a 1937 act plan where my impression is that the CIO is on a contract rather than a civil servant?

>> Russell Crosby: No, well often -- and in this case Carmen and I are both at-will employees.

>> Mollie Dent: It is a classification issue.

>> Russell Crosby: But the employees are all inside the classifications. And then you get to the administrative staff and theyer all within unions --

>> Mollie Dent: That was the issue that the council councilmember was speaking of was the --

>> Sean Bill: Would it make sense to get the IOs moved to an at-will status as well so you then have flexibility over hiring and retaining and firing?

>> I think that's what Pete is referring to.

>> Russell Crosby: Well but I think you're still going to run into the civil service problem. They're unit 99, they're not in a union or anything, but you can't just terminate them.

>> Pete Constant: That's exactly what I was getting at. Without addressing the classification issues and really looking at the needs of the department and the two plans, everything else I think is just spinning your wheels until

we figure that out. And whether it's external the CIO in a box type, or coming up with the internal classifications in the proper unit, classification within the department, within the city, it's got to be them first.

>> Sean Kaldor: So couple of things on there. You asked about the governance committee. That was pretty much at that level of detail, they're mostly dealing with much higher level how shall we be structured and organized, and I don't think they're going to give us any more on that, although I think they're going to do one more cut on that more focused on the public side of things. As far as the letter it seems what's coming up here is salary's an issue and there are other issues too. I completely support putting our own cover letter on top of this and saying, to the City Manager, this is our problem that we're suffering from, but ultimately, the City Manager's office has to resolve. There's good data in here that explained a piece of the problem. But last time she came, she said send me information. This is following up on that and asking her to come back, say we need to see the plan, maybe work with Russell, come up with a plan of how you're going to resolve this problem. Because if we don't have that plan we'll have to do something else. We'll have to do the CIO in a box offer outsource, whatever we have to do, contractors fill in that place. But to identify this is clearly a piece of the issue and we need to see a plan as to how you're going to deliver the service to the department.

>> Conrad Taylor: Vince --

>> Sean Bill: I was going to say I kind of view it as we initiate a conversation with the City Manager and this kind of closes the circle on that which is kind of what you're saying, kind of coming back around.

>> Sean Kaldor: The dollars are absolutely true and something that absolutely needs to be looked at.

>> Vincent Sunzeri: And I think this has been framed as to where we are sort of short sighted to focus on that. I don't think that's correct. Actually, we're aware of the global issues. The fact that we have Cortex working on governance for us is the fact that we had a retreat, have engaged them to help us move in that direction of changing our governance, and that's all positive. The investment committee has had dialogue about the matter of using a CIO in a box and is starting to entertain that. That's something that we hope to have at future investment

committee meetings and the entire structure of the department is certainly something that will need to evolve after we've gone through the governance piece. But you can't ignore the importance of this. If in fact we had the chief investment officer or the CEO leave and we didn't do anything, we didn't publicly go on record to say, this is what are the median salaries, we're just looking here at the CIO position in the public space alone, the 50 percentile is $100,000 more in income. And if we lost our CIO because we're undercompensating by that much and we haven't gone on record to request that, I think we are assuming a lot of the responsibility. I'm not saying this is completely shifting the responsibility but it's making it very clear where that responsibility lies in compensation. And it's not with this board, it's with the city. And I don't want to be in a position to have lost the senior person and we didn't take some action. I completely agree with all the other discussion. I think that needs to be dealt with. But I think this is the first step in the right direction.

>> Conrad Taylor: Thanks Vince. Russell.

>> Russell Richeda: Just the minor point, since I certainly think Vince's point is absolutely accurate, that that point has to be pursued as far as it can be pursued but, if Russell's accurate, it seems like a recognition that that path is not going to lead to anything, though it's still very important to send this and have the documentary record. So -- and I hear you saying Vince the investment committee's doing something with alternate structures. But is there anything the board should do now, or in a future agenda topic on this issue to at least keep it going?

>> Vincent Sunzeri: I think that's critical. I'm not sure we want to address that under this one particular agenda item. I think that will come out of governance and we'll be dealing with that. And I'm not disillusioned to think that this letter is going to go to the City Manager and the following day we've got a pay raise. I'm not naive to that situation.

>> Sean Kaldor: Is the action item for her to come back or the City Manager's office to come back with a plan to fix it and we're identification the cost issue but if they come back and say reclassification and rules and work habits and work policies and hiring rights and here's the complete scope?

>> Vincent Sunzeri: My suggestion is if I can make a motion that this board approve signing our name to this letter, and have it submitted to the City Manager, it is specific in requesting a response from them, in a particular time frame. And we can move from there. All the other issues are matters that we can deal with at a later point in time on this one particular agenda. I move that the Police and Fire add their name to this letter.

>> I second that motion.

>> Conrad Taylor: Okay I have a motion and second. We bring it to a vote.

>> Sean Bill: I would say just for the record, for the sake of expediency, I agree it might be just easier to sign this letter and say Sayonara. I will say the tone of the letter was a little bit, you know, not how I would have written it.

>> You could tell who wrote it. [Laughter]

>> Sean Bill: I think I would have written it, I think there's a little bit of lack of respect in the tone of the letter to whom it's addressing and I think that you know, if the fire and police were going to put their name on it I don't know how long it would take us to maybe Sean said do a cover letter or maybe to put with it but maybe it's a different tone, we are all on the same team here, the City Manager and the city council and everybody else are all on this boat on this plan and you know I think you know a little bit friendlier tone, I don't know maybe it would hold up things too much.

>> Russell Crosby: No actually what the Federated plan did was authorize the chairman to draft and send the letter. Now somebody else actually did the writing on the piece of paper. But she gave discretion to Matt Loesch to modify what was draft thread and to send something else to the City Manager. If you did a similar amendment to your motion, who made the -- Vince -- yes, if you made a similar kind of allowance for the chairman --

>> Sean Bill: Chairman Baci could kind of soften the letter a little bit.

>> Russell Crosby: Yeah, we could work on the letter a little bit.

>> Sean Bill: In terms of the tone.

>> Sean Kaldor: It wouldn't need to be rewritten, I mean, you could fundamentally say we support the conclusions reached in this letter and would like to work with the City Manager's office.

>> Russell Crosby: Well I would suggest he give me his concerns, show me which sentence, which phrase sticks out, and maybe we could modify those a bit.

>> Damon Krytzer: Well, I think the way we should modify those, in my opinion, we could talk about this after, look, it's simple. We know there's more than just compensation to this. We're doing our part, we're working on the structure part and we need the city to work with us and increase the compensation levels. That way we have our record on order, we're saying look immediately we think you should increase the compensation per this you know very simple report but we know there's more structure and we're also working hard as well to try to come up with a structure that's going to solve some of the other issues.

>> Mollie Dent: So there -- so other -- we do this all the time in the legal arena. We call them me-too letters. So instead of signing the letter, you just -- you do your own separate letter that says, we agree -- you know, we agree with what is set forth in the Federated letter, and oh, by the way we also want to make you aware of these other concerns. That way if the Federated board doesn't want to alter their letter, they want to send it the way it is, you can put whatever you want in your cover letter. There are two ways you can do it.

>> Vincent Sunzeri: Actually that makes a lot of sense. Because having conversation with them, they really dragged their feet on this, to bring us on board. They're not going to want a rewrite of their letter. So if we can attach a letter, as I went through, and this is just a specific example, again, going back to the second page, the second paragraph, when we're talking about the cost to the city, we could be specific, in Police and Fire, we have

the data here in front of us that was presented earlier for just the year-to-date information, our plan is behind the policy benchmark year-to-date by 1%. That's about 20 --

>> Carmen Racy-Choy: 210 between manager alpha and the deviations from the --

>> Vincent Sunzeri: I'm looking at just the year-to-date data.

>> Carmen Racy-Choy: Okay.

>> Vincent Sunzeri: On a plan this size that's approximately $26 million. I think we need to be concrete and specific. So we're talking about number one a request of increase of compensation. If I'm the City Manager, and I'm looking at paying a lot of money out I want to know what I'm getting back in return. And the fact that we could be at risk of losing personnel, and are really strained with resources, we're not where we should be. And this is really what it's costing the city. In just the year-to-date numbers through June, $26 million because we don't have the resources to get to our policy benchmark.

>> Sean Kaldor: Have increased unfunded liability. We're doing everything to reduce the unfunded liability and here is something that brings it up by $26 million.

>> Vincent Sunzeri: So I would suggest a letter be placed on top of their letter, signed by our chairman, and maybe add something to that specific content in there. That way we're not utilizing their tone. I very much agree with your comment, Sean, and we are also being specific on what it's literally costing the city for Police and Fire.

>> Sean Kaldor: I second.

>> Mollie Dent: I thought we had a motion.

>> We withdrew.

>> It's a modified.

>> Mollie Dent: Could the maker of the motion either move to modify and get the second.

>> Vincent Sunzeri: Okay so let me amend my motion and state that I agree that we should join the Federated board in sending a letter to the city. However, we should attach a separate letter signed by our chairman with at least a specific paragraph that states the cost to our plan on a year-to-date basis for not being at policy benchmark. So the city has an understanding of what that unfunded liability, how much it's increased.

>> Sean Bill: Ask the chairman to get it done by the end of next week or something just to keep the thing moving forward?

>> Vincent Sunzeri: Dave, is there a sense of the timing of how we could --

>> David Bacigalupi: I think we should get it by early next week. I think this is really important and I agree with everything that I've heard here and I do prefer changing the tone to more of ours. It also responds after the City Manager's challenge to us, you know, as to what's needed. And I really agree with the specifics, for pennies, you're losing millions. And so I think we could have that done early next week, if Russell grace.

>> Vincent Sunzeri: And the only other thing we might consider adding to this and it's not specific and it might be applied because of the attached letter from Cortex, but this is an independent study done by Cortex the same consulting firm that you utilized to change your board structure. I think that carries weight and credibility.

>> Sean Kaldor: So I'll second the motion and for the author to consider maybe ending it with a sentence asking the City Manager to return to us with a plan to address the issues in there as the action item.

>> Conrad Taylor: So I have a motion, a have a second. Do a roll call for approval. Drew.

>> Drew Lanza: Yes.

>> Conrad Taylor: Damon.

>> Damon Krytzer: Yes.

>> Conrad Taylor: Sean.

>> Sean Kaldor: Aye.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Yes.

>> Conrad Taylor: I'm yes. Sean.

>> Sean Bill: Yes.

>> Conrad Taylor: Motion passes.

>> Sean Kaldor: Bacigalupi.

>> Conrad Taylor: Oh, Chairman Bacigalupi.

>> David Bacigalupi: Absolutely yes.

>> Conrad Taylor: Motion passes.

>> Pete Constant: Just to let you know. After Federated took their action, I made sure to notify the council through my regular report-out the specific concerns and I'll do the same on this, as well.

>> Conrad Taylor: Thank you, Pete. 2.3. Moving on. 2.3, discussion and action concerning impact to the plan of director's January 2011 e-mail concerning general employment matters. Did I skip something?

>> David Bacigalupi: Conrad?

>> Conrad Taylor: Yes.

>> David Bacigalupi: This was information provided to me by members of the plan. And I've had a discussion with Russell about it. But I just thought the board should be made aware of it. I'm not necessarily sort of any action needed by our part but I did think the board should be made aware.

>> Conrad Taylor: Any comments, anybody want to discuss?

>> Sean Kaldor: I just think sensitivity on plan records something coming from the director of retirement services, personal e-mail of personal opinions that would be one thing. That's just reflected on the actual members of the plan.

>> Damon Krytzer: One of the comments under the actual article kind of summed it up which was, if there's -- if there's only 10% it beats any other organization out there. So they say you were actually complimentary of --

>> Vincent Sunzeri: And I don't know if anyone's had any chance to read the article. I have the article in front of me. I would say it's worth reading, it's a very enlightening article. I don't want to go into the details of the article but I would say that I believe the e-mail, and the particular few words were taken very much out of context.

>> Conrad Taylor: Thank you. Sean.

>> Sean Kaldor: Everyone must to some degree be able to appreciate sensitivity to that a senior leader of an organization, you can imagine a CEO of a company sends a letter to shareholders saying, 10% of my employees are useless. It's -- for someone in a senior leadership position, the assumption would be there's a way to manage your workforce and work through those things and any professional manager should do that. So it -- understanding underlying data and things like that, it's -- it did not go across well. And probably could be expressed in different terms. But again it's just as official e-mail as opposed to something coming from a concerned citizen.

>> Conrad Taylor: Drew.

>> Drew Lanza: Yes, I would echo what Sean said. I've sent out e-mails like this before and please don't do it again. I would like to direct a response back to the union. You know guys, you probably had a really good point make, and I think you could have opened up a productive dialogue with Russell but to totally misquote what he said in this thing, just as a guy who deals with this stuff every day, you lost all credibility with me. So to the extent that you are trying to transmit a message to us about how to treat Russell, I'm not listening. Because you're misquoting -- the guy sent an e-mail he shouldn't have sent, he's nodding his head, he won't do it again. And then to misquote him just childish. Just childish. He didn't say the workforce was totally useless, he did not say that. And he did not ever mention age. So your press release was wrong. I went on all the Websites where your press rerelease was, and everybody on those websites is saying, I don't get the correlation between what he wrote and your press release. If you're going to put out a press reason something, get it right. We deal with this every day in the business world and you just step on your own foot when you do that. So Sean I absolutely agree. Russell, bad dog, don't do it again, right? I know you have a lot of respect for the police and the firefighters. You and I have spoken. I know do you, right? I know you don't think they're totally useless and to the union for God sakes, if you are going to quote the guy, quote him correctly. Don't light a fire under this thing. It's a stupid thing to light a fire under it.

>> Sean Bill: I would second Drew's comments.

>> Drew Lanza: But bad to both sides.

>> Sean Bill: I would second Drew's comments. That was my kind of take away, as well. I thought it was kind of disingenuous the way it came across. I think it does affect the other side's credibility as well. So -- but yes I agree, but Russell nothing in writing and nothing in public e-mails like that.

>> Sean Kaldor: This is one thing we were talking about in the governance committee, just about the rules of conduct or the game -- the rules we play by in terms of communication from retirement services, from the -- our board and from the board chair and who carries messages and how we do that. So it will be helpful to have that kind of understood.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: Go ahead, Baci.

>> David Bacigalupi: The other thing I passed on to the people that sent this to me is that, and Russell and I have discussed this, sometimes you know not favorably, but Russell doesn't work for us. Russell works for the City Manager.

>> Conrad Taylor: Any other comments? Okay. Moving forward.

>> Mollie Dent: I'm sorry. Staff just informed me you had a member of the public that wanted to -- that did ask to address you on an item you've already taken action on. That would be the immediately preceding item. So I think the proper procedure would be for you to allow the person to address you and then after they've addressed you to decide whether you want to reconsider your vote. And it's on the staff salary item.

>> Conrad Taylor: 2.2?

>> Mollie Dent: Uh-huh.

>> Thank you for giving knee opportunity to speak. My name is Aurelia Sanchez. I'm a retired City of San José employee. And the reason I'm here was because an article that I read in the paper. And you ail just finished discussing it. I just want to make a comment that what I read and what I saw on TV really offended me. You know, I don't -- someone saying he -- Russell said this, someone saying that wasn't true. But if I could get a copy of it, you know, that would settle that for me. But after I said that, thank you. After I said that, another reason I'm here is I also read in the paper about some of the investment board people here want a salary increase. And I'm really against it and I'm going to tell you why. First of all is that, as you know, the city financial status is pretty low right now. A lot of employees have been taking cuts. It's affected not only the employees, but our quality of life here in the City of San José. Now, if you give the board a salary increase, to me it's almost like a golden parachute. You know, if you -- if we were earning millions of dollars, then I wouldn't be here. But we're not. And to me, it's just wrong to ask for a salary increase, when we have this undefined pension problem. I also feel that if you give an increase, that salary increase to go -- could go for a part time librarian or maybe someone else who works for the city. Your actions here, while -- I'm not going to say they're not great but they don't really have an impact on the quality of life for the residents of the City of San José. So that's all I have to say, and thank you for giving me the opportunity to be here.

>> Conrad Taylor: Thank you.

>> And thank you for this, too.

>> Drew Lanza: I think you did a good job of summing up the dilemma that we feel we're facing here just about every day we meet here as a board.

>> So do we do anything with that?

>> Mollie Dent: Unless a board member wants to move to reconsider, that would be your prior action. But if you don't, that's fine.

>> Sean Kaldor: I think the tone of our cover letter would include that there's a lot of issues going on here. We just want a solution to our problem is our focus.

>> Conrad Taylor: We talked a lot on that one issue.

>> That included the impact.

>> Drew Lanza: You should also know that when the City Manager came and addressed us she expressed those exact same concerns to us. So --

>> Conrad Taylor: Okay, moving forward, under 3, old business. Continued deferred items. 3.1. Discussion and action on conflict counsel's memorandum concerning trustee's role in an environment of discussion and negotiations on vested rights.

>> Russell Richeda: Just quickly. You may recall that you asked me to do a memo on the board's role and responsibilities kind of with respect to challenges that might face us, and you have a memo before you where I zeroed in on the current version of the mayor's ballot proposal. And with respect to that, or things like that, tried to emphasize two themes that, for me, crystallized the board's roles and responsibilities in this area. Number one, that whatever happens, in this kind of area, whether through vote of the people or of the citizens of San José, or whether something enacted by the council, you need to be clear about what is enacted. And that's really a tougher job than you might immediately think. Clarity in drafting is critical, and seldom achieved on complicated areas like retirement modifications. But then, also, number 2, with respect to serious legal issues, not trivial or minor legal issues, but serious legal issues, you also need to obtain clarity as to whether part or all of the changes are legally invalid. You have the responsibility to administer the plan. By definition, the plan's been modified either

through a vote of the people or by an action of the council. You're obligated to administer that plan if it's legal. You as a trustee and I put some of the analysis to the private law trusts, don't have a similar obligation to administer illegal terms. And I think implicit in that is you need clarification in the context of where you've been advised there are serious legal issues. Not trivial legal questions but serious legal questions concerning the enacted matter. And you can see I've also given you certain -- summary of the law that's applicable to you I think during the ballot phase if what we're talking about is something that's on the ballot. And the important but limited things this kind of board can do during that stage. And I have also tried to describe at least in general terms some of the things that the board would be interested or permitted to do in the context of the measures that have been passed by the council or passed by the voters. But in your mind, in your considered mind based on input from staff and your professionals raises issues of meaning, you're not sure what critical terms mean or secondarily, you have been informed that the items raise serious legal issues. You need clarity. And I've outlined efforts to get clarity. And the related issue. This is the issue Sean has raised several times. What do you do during the pendency of litigation? Let's say that there are ballot measures enacted that at least in the eyes of some stakeholders raise serious issues under the vested rides doctrine? And they commence litigation? You need to know how to administer this plan during the pendency of that litigation. And I think the only useful thing you can do during that pendency is by intervening or somehow invoking the equitable jurisdiction of the court, during that proceeding, get direction. Whether it's maintenance of the status quo, whether it's implementation of the changes, whatever, you need to seek, in a manner analogous to what trustees of private law trust do in somewhat analogous situations, you need clarity. And really the only way you can get clarity as to your obligations is from a court.

>> Conrad Taylor: Russ, do you wait till it goes on -- let's say it's a ballot measure do you wait or do you do it in advance? I mean how can you act before you not even know that it's going to occur?

>> Russell Richeda: Well I don't think you can act before you as the board can usefully act to get clarity on serious issues while the matter is pending. I think you can do education, and raise issues, or describe your uncertainties, if that's informational. But there's significant limits I think in I'll call it preadoption phase, whether it's a ballot measure or whatever, on what you can do.

>> Conrad Taylor: Molly.

>> Mollie Dent: I did want the board to know that the city attorney's office will be obtaining an opinion from outside counsel for the city on some of the same issues that are raised in Mr. Richeda's memo. We when we're dealing with vested rights issues go outside, it's not done within the city attorney's office. So I anticipate that there will be an opinion available to you after it's been distributed to counsel. I think that we, the ballot measure and the proposals are constantly evolving, if you will. And that's one thing that I made sure to make Mr. Richeda aware of, that you practically have to check the City's Website every other day to see what the current proposal is. So I actually don't know that he looked at the most current proposal because I think it came out on October 27th.

>> Russell Richeda: I looked at the most recent one as of the date of authoring the memo.

>> Mollie Dent: And I think maybe our councilmember can be more specific but I think that the council is scheduled to take this up at the beginning of December in terms of what the actual ballot, proposed ballot measure might be. So -- and I agree, we agree with the -- so you've got a problem there that you don't even -- you really -- it's hard for the board to respond to something that's still that much in motion. And there -- but I think there is a two phased approach to looking at it. Assuming there is some ballot measure that is approved to go on the ballot, what is -- what role does the board have to play in that time period between that and the actual election, and then what role do you have to play after the election. And I can't go any further than that because I'm not doing the analysis even for the city.

>> Pete Constant: Conrad if I can just comment on that one part before I step out for a --

>> Conrad Taylor: I know you have another meeting to go to.

>> Pete Constant: Mollie's characterization is correct. Currently we're on what's called Seal Beach negotiations with the unions and that's moving forward. That has a series of steps that you go through. But ultimately the council will make a decision in early December on the final ballot language, and as well as the specific date of the

election. Because most likely it would be a special election. There's flexibility on when that date could be, council has a window of time that they can choose to call that election. And then just one comment before I step out. On the overall memo. And I don't know if this would be deregulated to Russ or just a comment generally you guys can think about. But wondering if as negotiations are going back and forth, when you have a proposal like what's on the table right now to effectively cause this plan to potentially go into a terminal status, if that is something that the forum should be discussing and looking to the impact to proposals like that would be on this board, if that were to happen.

>> Conrad Taylor: Sean.

>> Sean Kaldor: A quick question of timing. If there were to be any information from this board, I understand the board doesn't take a position but if there's information to be provided would city council rather receive that before December or after the vote?

>> Pete Constant: I don't know if I could answer on behalf of the whole council but I think that if this board has concerns, that are specific to, you know, the impacts or whatever the case maybe be, within the guidance of that your two counsel give you here, that you should get those so the entire council can know what you're thinking. And I'm defer to them on when the appropriate time is. But after that December date it's not going to make much difference because it will be going forward.

>> Sean Kaldor: It's done.

>> Pete Constant: Or not, depending on the council vote, of course.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Russ, I mean, this is fantastic. From my perspective, to have this document, I spent a lot of time going through it and getting a sense of how we should or should not be responding so I really appreciate

that. There were a few things on it that came up that I would like a little clarification on. One would be on proposed measures. And on page 2, you're making reference to the fact that it should be educational in nature how we respond. But yet, on page 3, bullet point 9, you're talking about determine if it's appropriate for the board to take a position. So there's a difference between educating and taking a position. And I think maybe we need a little bit more clarification on that.

>> Russell Richeda: Well, just a quick, I think your dominant role is education. And we also know that in the city structure you cannot independently as a board take a position on a ballot measure. So education is what you can do. You have resources, you have staff, you're experienced you have knowledge. Perhaps greater than other stakeholders. That might be useful to bringing into the public discourse. But you also exist in a certain relationship with the council. The council may be interested or I think you at least have the ability to decide yourselves whether you think the council would be interested in hearing your position on the merits. The education is not a position on the merits. Your educational function.

>> Vincent Sunzeri: So that's a you communication only with the council, not with the public?

>> Russell Richeda: Well public records act.

>> Vincent Sunzeri: It would be public records certainly, so now you move into a gray area because you are compressing a boards opinion.

>> Mollie Dent: I guess I am trying to go back to what the role -- what your -- what you're looking at is the impact on the plan. On the existing plan. And I think that's what -- he's not there anymore. But I think that's what the councilmember was talking about. If you want to understand, if you as a board want to understand the impact on the plan that you're currently administering, if some of these things play out, if that's -- and then you want to inform the city of what you have found out, I -- the caution I would have there is that you still don't know. You might be playing out a lot of scenarios that are not going to happen. But you -- but you could certainly -- that's your role, if you want to look at what the impact on this plan would be, for example, of not having new -- any new

entrants in the plan. Let's kind of look at it on a more global level. Let's assume what comes out is there are no new entrants to the plan, the plan is closed. There are ways to look at the impact to this plan, of having that happen. That is not an uncommon thing to happen.

>> Vincent Sunzeri: So this then goes to the matter of one or two meetings ago where we had retired, I believe it was police requesting that we utilize plan resources to evaluate a proposal. And if I'm reading this correctly you're saying that we should be doing that.

>> Russell Richeda: Well, no. I'm saying you should evaluate the situation. For example that earlier one it was very sort of hypothetical, sketchy and it was only the position of one party, one stakeholder. An important stakeholder but a stakeholder that in and of itself could not affect anything. Here, I haven't heard the latest. You mean they're talking about closing the plan, is that what's happened, is that the latest?

>> Sean Kaldor: Proposal for new hires would be a 9% total cost, which would be roughly 6% Social Security and 3% for health care. It would be implemented any number of ways, just a 9% total city cost.

>> Russell Richeda: I mean to the degree and to Mollie's point, in some sense this is a moving target, that's one of the factors you'd want to think about in deciding whether or not to devote resources to it. At some point if it's clear that a real solid concept being pushed before the voters is closing this plan, an analysis on that might be helpful to everyone. The chiropractor -- I'm sorry the actuary has that knowledge, there are lots and lots of closed plans in the city -- I'm sorry in the state of California. But I think the facts and circumstances as they solidify is what you'll want to think about.

>> Mollie Dent: All you can do in terms of looking at what's out there now in terms of proposals, again, is check the office of employee relations Website. You'll see what the City's current proposal is. You'll see what all of the various and different unions' current proposals are. I don't know how many of them are there are. But there are a number of them out there. So --

>> Russell Richeda: And going along with that, I think that is an important factor. Things are too fluid, then it is I think not necessarily a rational response from the board to devote resources to analyzing something that may exist today but not tomorrow.

>> Sean Kaldor: But once they're no longer fluid it's done, it's no longer able to be influenced.

>> Russell Richeda: I know, and that's the rock and the hard place.

>> Vincent Sunzeri: Doesn't that put you in the position as a board that when you're evaluating through actuaries or other service providers ballot measures, potentially falling on one side of the debate or other? Because of the outcome that you glean from that? And is that something we should be doing?

>> Russell Richeda: Well again first if we're talking about the sort of pre-solidifying stage, I think well I'm sorry. If there's some general principles that I think the board would like all the stakeholders to keep in mind which is something different than a specific analysis of the pros and cons of a concrete proposal, I think the board could issue those as an educational matter. For example, other things being equal, it would be preferable not to adopt measures that directly and concretely and unequivocally the vested rights doctrine as that's currently understood for the following reasons that you know it's not clear at all that there would be a sympathetic response by the court, it leaves retirees and actives in a very uncertain state for a long period of time during the pendency of the litigation it makes it very difficult for the board to administer the plan, whatever.

>> Vincent Sunzeri: But that may not be a legal opinion.

>> Russell Richeda: No, no, it's educational, all these things don't have to be legal, except -- you're right the example.

>> Vincent Sunzeri: On page 9 you actually have an example here, it looks like Marin County created a policy on how they were going to respond to a ballot measure.

>> Russell Richeda: Right.

>> Vincent Sunzeri: And so you're using that as sort of a template of away we could potentially use.

>> Russell Richeda: With the bracketed proviso after the first sentence. To show the difference between us and them. They are a 37 act county board as you probably know. So they can take positions on measures which is what it says in the first sentence.

>> Vincent Sunzeri: They could, but we cannot?

>> Russell Richeda: That's right. That's why I added that bracketed material after the first sentence.

>> Vincent Sunzeri: And then the last thing is, if you are a board member but you're also in the union and you're in a negotiating position, does that -- how does that impact things? I mean does that put you in a conflict of interest position, the two-hat challenge that you face as a board member and how should that be dealt with?

>> Russell Richeda: No I -- there's a lot more law than I've talked about. I briefly mentioned on number 9 page 9 about restrictions on individual board members. You have, individuals who are also board members, have Lew latitude but not unlimited latitude, that the board as an entity does not have. So for example in some of the cases if you identify that you're a board member but you're speaking only as an individual, not in your role as a board member, you're not speaking on behalf of the board member, some of the documents in this area even give little templates that they think it's wise for individuals in this situation to read at public gatherings or whatever or when they're submitting letters to the editor, however they're involved. But you've raised a certainly different question than just expressing views. You're talking about what happens when a board member may in the old days might have been a member of city management in favor of a controversial ballot measure. Or still possible today, you're a board member who's also perhaps a president of an employee organization, for that jurisdiction that -- and the organization as an entity has come out strongly against the controversial measure. What is that individual

member supposed to do and to what degree does that individual have a conflict with respect to what the board of does on that action? And that is a little more complicated analysis. You know for example we have the analogy from the ERISA plans, and AMEX Coal where there's two hats, where Taft Hartley plans always have union representatives, management representatives who outside the room have strong positions that are usually divergent yet they can both come together and be trustees and vote on matters coming before the trust board. So now, is that -- is that general structure rendered inapplicable in whole or in part because of state law strictures that wouldn't be applicable to ERISA trustees? Yes, we have the preliminary reform act but that has an exception for retirement matters. We also have the common law bias that applies to us that doesn't apply to an ERISA trustee. And their prejudging is a problem. So it's a somewhat complicated analysis, it's probably not useful for me to just shoot off the hip or just say something off the top of my head. There are conflict issues in that -- in the specific factual context you've mentioned but they don't necessarily mean that the board member can't be involved.

>> Vincent Sunzeri: As you started address this on page 4 under fiduciary principles. And you're saying under the rule against divided loyalties, a fiduciary cannot contend that although he had conflicting interest he served his masters equally well. I can see the conflicts at a come up and I'm not sure how --

>> Russell Richeda: Exactly. This is a totally messed up area. But notice this court, this appellate court in 1991 sited the Amex coal case which is the U.S. Supreme Court precedent that gave rise to this two hat nomenclature that we all talk about in fiduciary classes and stuff. That when you come in here, you take off your management hat or your labor hat and you put on your trustee hat. And even though we all probably think that's psychologically unrealistic, but that is an accurate -- that is an approach that has been sanctioned by the U.S. Supreme Court as a legal resolution of the fiduciary obstacles. Or at least there is no per se legal violation. Yes, someone can come in and not really change their hats and still be a labor advocate here and that would breach these general duties. I really put that in as obligatory frosting on the cake. This stuff is , it's such a general level of abstraction, it is the context of which many of those are thought about. But as you see they are such a general level they don't provide as much help as we need.

>> Sean Kaldor: So just asking a little clarification on that, a board by design that has union membership on it, are those union members not allowed to participate in discussions or votes about disagreements or board position on ballot initiatives?

>> Russell Richeda: Yes. They are and the California Supreme Court in a slightly different case in the Lexon decision, that was the one involving the City of San Diego board members who were claimed to have criminally violated a section of the government code that prohibited a board member from being financially interested in a contract that the board entered into. And the local San Diego D.A. indicted these individuals and their case went all the way to the Cal Supreme Court. And I think the decision was about 2009. So the specific holding is not germane, it's on different issues. But in the course of their discussion they describe various structures, including the structure we're all familiar with and the structure Sean just mentioned, where the creators, the one who established these retirement boards, decided to have city management reps, for example, and employee reps, who could be elected from anyone in the relevant employee group including individuals active in their union. And that was a policy decision that's worth respect and does not mean there's any per se, I mean now I'm inferring a little beyond the case, any per se fiduciary problems. But the Supreme Court said in essence that is a respectable policy choice. Here we've obviously slightly modified the traditional policy choices most recently but their comments still go to your point Sean.

>> Sean Kaldor: So would it be appropriate to ask for official legal interpretation of any restrictions on the roles of union members in retirement board activities?

>> Mollie Dent: So I'm going to try to summarize it just you know a little bit. It is not a financial conflict of interest, that is what the Lexon case addresses. There are as Mr. Richeda mentioned issues of common law conflict of interest and issues of fiduciary duty that are not going to be a per se yes or no answer. I mean what that's really going to come down to is does the person come into this room with whatever decisions to be made in this room with an open mind, without their biases from the outside putting them outside. And you have to remember that this board isn't going to get to vote on what the benefits should be. I think even Mr. Richeda would agree with that. That's not what's going to be in front of you. What's going to be in front of you possibly is how to expend plan

resources in the fight, so to speak. And so yes, there could be a conflict of interest. There doesn't have to be one but there could be. There could be a breach of fiduciary duty but there isn't one automatically.

>> Vincent Sunzeri: So hypothetically if we're saying you're negotiating on behalf of the union for certain benefits with your union hat. Then we come in this room and we've done the study of a particular ballot measure and we find that that ballot measure actually -- that particular position you've taken on the union is in conflict with the conclusion that the board came to, how do you resolve that at the board level?

>> Russell Richeda: Well you can with Motorola's strictures, you have to have an open mind. You can't be tied to the view you took earlier. You're just in the losing vote. But, but it highlights a very -- what if you're on the union negotiating committee and then we're getting very close to the San Diego city situation possibly and you agree with the city that as long as contribution rates are below X, the salary increase for the bargaining unit will be 5%. And then you come here, and vote on issues concerning actuarial matters, things within your control, to achieve that level of city contributions that then results in a 5% pay increase, alarm bells should be going up all over the place. So I think having union officers on the board just raises great difficulties. And by the way, a lot of us might not even know that's a problem. Because we won't know what this board member's doing in union negotiations. And the board member might not realize that he or she has just committed a criminal violation until the indictment comes. So somehow we all have to favor transparency and open communications.

>> Sean Kaldor: Is there a difference for a union officer versus a union member?

>> Russell Richeda: Oh, sure. A union member has little or no control -- I mean maybe again these all get complicated, the union member's on the negotiating team and therefore has some decision making capacity. Depending on the role in that union.

>> Sean Kaldor: But if they have no voting power no senior leadership not elected by the membership to any senior leadership role --

>> Russell Richeda: Probably doesn't even go to union meetings.

>> Sean Kaldor: But even if they go to all the meetings are involved in helping out doing charts and tables and graphs they have no vote, not elected by the membership are they --

>> Russell Richeda: I don't think so. I mean again, under Mollie's strictures, you're not coming in here as a union advocate, wanting to use board resources. Remember I was very specific about as many types of board resources, that I said can't be used, you know one way or the other.

>> Mollie Dent: I'm not going to speculate on what might be going on at the union meetings. I think what this board has to look at is what goes on at this board meeting, what the union member would be doing at the board meeting. So that's all. I think -- I would want to --

>> Vincent Sunzeri: I understand your point, Mollie. I just think that I'm very sympathetic to the union representatives that are also on this board. It's a difficult position to be in, the two hat dilemma that you face and I think the education of that dilemma and how they should deal with that is a topic that should be addressed in the public.

>> Mollie Dent: I agree and it's outside the scope of this particular memo. That's fine if the board wants to have that issue addressed from a legal standpoint. But that's not what this memo was about.

>> Sean Kaldor: And to be clear. I'd love as much clarification as possible. Because if there's anything I'm involved with or enrolled with, that would somehow disqualify me from anything I'm doing I would certainly step back to enable full participation I'm not looking to cross any lines here.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: Baci go ahead.

>> David Bacigalupi: I have just a couple of comments. Number one, there was a letter from the retirees situation. It was not timely so I don't think it got passed on. I just wanted to let the board know it addresses Mr. Richeda's memo and I just want to advise the entire board that because it wasn't timely I don't think it got into the package and it will be coming up next month.

>> Mollie Dent: So I want to address that. Members of the public can submit things clear up to the board meeting. So the letter's being handed out. So the board can have it.

>> Conrad Taylor: We do have a letter right now that we just received and we have Mr. Wendling from the public that wants to talk. Go ahead Mr. Wendling.

>> David Bacigalupi: Let me finish. I wanted to make the board aware of that. I have a couple other comments I wanted to make or questions.

>> Conrad Taylor: Okay.

>> David Bacigalupi: One of the comments I'd like to make is, there's been some discussion here about wearing two hats and the role of union leaders. But it actually impacts all of us as board members, because we were all picked by someone to be in this position. And I have heard in the past concerns of nobody on this board, so let me make that perfectly clear. But the people that were appointed by the council concerned about not being reappointed, based on their voting record. So we all have to, you know, hopefully do our job as fiduciaries of the board when we're in this room, and as we conduct ourselves. So I mean, I can very there could be pressures on other board members as well as union board members. And then the last thing I had was, a question for Mollie. You mentioned that the city council was going to an outside firm regarding --

>> Mollie Dent: It's actually our office. It's actually our office. We have someone looking at Mr. Richeda's memo to see whether or not we want -- we have a -- whether or not there'd be a different position on some of the issues. That's -- it's our office.

>> David Bacigalupi: Okay so it's coming out of the city attorney's office. And can -- should I assume that once again this would be attorney-client privilege that this board could not get that information?

>> Mollie Dent: No I actually said the opposite. I said that I thought once we distributed it, because Mr. Richeda's memo was public. If we distribute a memo to council I'm I'll make sure you all have a copy.

>> David Bacigalupi: Okay, thank you, Mollie. That's all I have.

>> Conrad Taylor: Thanks Dave. Mr. Wendling. Would you like to talk?

>> Good afternoon, folks. I'm sorry for the late submission of our letter. I hope that you will all take the time to read it, and consider it in its entirety. I would like to point out, after this time, just two bullet points if I might. We strongly urge the Board of Trustees to take pro active measures to protect the vested benefits of plan beneficiaries, including retirees and survivors. My last point is, we think the passage of the California pension act provides you with the authority to take the necessary steps to ensure that benefit modifications proposed by the city are legal. Please consider our entire letter. Thank you for your time.

>> Conrad Taylor: Thank you, Mr. Wendling. Anybody want to comment?

>> Sean Kaldor: I take that into account as I look at the memo I have some questions about if memo. Russ, you broke your recommendations down in different categories as kind of after its implemented. That was my concerns at the outset, if this is passed, if there are lawsuits, what role should we take, you've analysissed the thought process we could take at that point. That's down the road. But then you come up with these categories of things that are being considered. And say what we could do and what we could review. So given that we are where

we're right now, we have a draft of a ballot measure, we have one month to provide any input before it basically would be reviewed and voted on. Thinking that there might be some information we could provide as a plan for consideration as they make that decision, not taking a stance on the ballot measure but providing the necessary information, you outlined on page 8 a range of permissible board activities. One was preparing an analysis, the other was adopt a position recommending to the council to take that position. Isn't that really us taking a position, though?

>> Russell Richeda: Well, I think yes and no. But you're certainly not going to -- all it is is, your recommendation to the council. Okay? You're making a recommendation. If you call a recommendation a position. In one sense I guess the recommendation would encompass it. But I myself think -- and I think reasonable minds can differ. I think it's a valuable role you could play. I think it's consistent with the council policy. Remember that's what we're talking about. The council policy doesn't prohibit recommendations to the council. That's all you're doing. And I think you have knowledge and expertise that the council doesn't have on issues that are complex.

>> Mollie Dent: So I would say that at this particular point in time I would go back to looking at the impact -- if you -- again if you are looking at proposals and how fluid they are, if there's any commonality among all of the proposals, say so that it looks like there's something that looks like it's acceptable to a large majority or there's some commonality out there, I still think you should be looking at is the impact of the proposal on this plan. I -- and then, it's not exactly a recommendation, it's just a -- I -- you know, this would be good for the plan. This wouldn't be good for the plan sort of thing. I mean, I -- I don't know if that's a position -- because there are some things that would be good probably and some things that would be bad.

>> Vincent Sunzeri: For the plan, Mollie or for the beneficiaries of the plan?

>> Mollie Dent: You have to look at it on a holistic basis, I think. You have to take into account all of the stakeholders. And again, I hesitate because we do -- our -- because -- every attorney in our office is a member of the Federated plan. We -- that's why we contract this kind of work out. So I really don't want to go too far. But you've got -- you have stakeholders who, in themselves, may not have all the same interests. You've got active

retirees who are not all going to have the same interest. You've got actives that are not all going to have the same interest. You have retirees that are not all going to have the same interest and you have the city who is a stakeholder, too. But you all have to bring it all together and try to administer the benefit of that plan for all the stakeholders. But I think there is data you could get at if you wanted to. But I still come back to what are you analyzing?

>> Russell Richeda: I think that's a very good point. You don't have anything to analyze now. And you have institutional constraints. You only meet monthly. And you can only authorize expenditure of funds at that period of time. It's going to take some time to get analyzed if you even decide you want anything analyzed. The timetable Councilmember Constant described pans out you may not have time to do anything reasonable. And that -- and not doing in that kind of context would be fiduciarily prudent.

>> Sean Kaldor: Would it be reasonable to forward this letter to forward this letter to city council and advise them we will abide by our fiduciary duties and our rights and responsibilities as we understand them by -- as it's been outlined here?

>> Russell Richeda: I mean, I suppose you could do that.

>> Conrad Taylor: Drew.

>> Drew Lanza: It seems to me russ as usual you've taken us down the right path here that rather than comment on the substance of this what we should do is become transparent and tell everybody what our process is it would address Mr. Wendling's concerns directly. We're going to have to figure out the process anyway. Let's figure it out now and let's tell everybody what it is. I don't know whether the answer is yes or no or up or down or right or left. But this is the process we will follow and that's really the gist of what you've given us here. I like that transparency. We'll have to do this anyway. Maybe we can tee this up for the next board meeting. Sort of a reduction of this that says here are the steps we will go through at the time. But I think telling people up down right left in out, just they have their own analysis. Let them figure out their own numbers, right? But I think being -- I'll

reiterate again. Being transparent, if we think it's legal or violates the vested rights doctrine, I think this is what we will do. I think Mr. Wendling that would address your concerns if we assured you during the process we're not going to be railroaded, we're not going to be arbitrary. We're going to be very thorough and thoughtful following a process which our counsel has said is the best process that can be come up with. Right? Yes, is that what you were really getting at here?

>> Russell Richeda: Yes.

>> Drew Lanza: Yes.

>> Russell Richeda: But particularly on the part of this that's going to matter, the stage when something has been enacted, you know, the law is surprisingly undeveloped. It's not just me saying it's in response to my phone call to my peers throughout the state, particularly ones who have similar issues like in Orange County, they had a different issue. We digress on that one. We're going to have the tougher one by definition because our plan has been changed. Orange County, the Board of Supervisors was trying to change a plan through litigation. So the plan was always the same plan. Our plan will have been changed. And there's a certain respect that goes along with that. Certain presumption that it's been done well. And we have to think through that, too.

>> Conrad Taylor: But what are you recommending in a short version? What are you recommending?

>> Russell Richeda: The immediate point, you also need as much other legal guidance, including from the outside counsel the City Attorney has retained. Just monitoring that. Mollie has indicated she will get that to you you if and when she can and that will be very helpful. What I'm really suggesting is that you produce some sort of policy. And I've tried to lay out terms of it but --

>> Mollie Dent: In terms of timing, I don't think it's possible that council is going to act on anything before you next board meeting which is actually December 1st. I think between now and December 1st you may see more things coming through. So I think you can carry this over onto your next agenda, and could still have an impact on

December 1st, if you don't -- on the other hand if there's something you really want to be done today, you can -- you can also you know make a motion to have it done. But I -- your next board meeting is going to be before council acts and I see the councilmember shaking his head.

>> Conrad Taylor: Mollie or Russ I don't know who would do this. Who would develop a policy? We don't have a policy correct on this issue?

>> Mollie Dent: I think you need to go back to -- our office will be getting something for the city council. So I think you feed to go back to your outside counsel just like you did in the beginning.

>> Conrad Taylor: Just to move this forward, Russ, would you come and develop a policy?

>> Russell Richeda: Sure.

>> Conrad Taylor: So that way, we would know.

>> Damon Krytzer: Are we cool with quorum with five present, two gone -- because he's --

>> Mollie Dent: There has to be a quorum in the room.

>> He's not here either?

>> Damon Krytzer: Is five okay?

>> Mollie Dent: Yes.

>> See you buddy, take care.

>> Sorry.

>> Sean Kaldor: So russ will still it into more actionable steps --

>> Conrad Taylor: Yes.

>> Sean Kaldor: And we could look at this in December and say --

>> Conrad Taylor: I guess you could just expand on this memo that you wrote and just come up with a policy that at least we know where we could go down, what road to follow since we don't have one.

>> Russell Richeda: Sure.

>> Conrad Taylor: Vince, I'm sorry.

>> Vincent Sunzeri: I was going to suggest I think governance and Drew's on governance has a committee meeting, ad hoc committee meeting meeting coming up.

>> Sean Kaldor: 18th, trying.

>> Vincent Sunzeri: It would be good to have the discussion at that committee level and bring it to the full board, I like the transparency level.

>> Conrad Taylor: If we had something next month. Richardson we'll know in a couple of weeks.

>> Conrad Taylor: Well for this board for next month.

>> Russell Richeda: Got.

>> Conrad Taylor: 3.2, discussion and action regarding legal services request for proposals. RFP.

>> Mollie Dent: Really briefly. We postponed the response due date for the RFP. We received quite a number of questions, and so we put up a pretty substantial addenda and felt we needed to give people another week to respond. The response time is now next Thursday, because of our Friday holiday. I would still like this board to go ahead, you have not appointed the members that would sit on our interview panel. So I would like to either have the board today, or authorize the chair to appoint the members to sit on the panel. Because I do anticipate having things to circulate before your next board meeting for screening purposes at least. I am doubtful -- I am doubtful that we will be bringing a proposal back to you in December as I'd hoped because your December meeting is so early. So unless this board wanted to have a special meeting in December, it would probably be January before we would be coming back to this board.

>> Conrad Taylor: Okay. I guess what we could do is anybody on the board that could contact Russell.

>> David Bacigalupi: Question for Molly.

>> Conrad Taylor: Go ahead.

>> David Bacigalupi: Mollie how many people do you have room from this board to participate in that?

>> Mollie Dent: I believe I set aside up to two and the secretary is going to participate. So there will be two attorneys and two board members and the secretary for your board.

>> David Bacigalupi: Okay. Might I suggest that any board member that's interested in participating on that, notify Russell as soon as possible and we can make that decision next week, so Mollie has that in hand.

>> Mollie Dent: And I will tell you what I will do. Once we receive all the proposals, I will let people know who the proposers are. Just because we do require RFP, people who are sitting on a panel to do a conflict of interest disclosure. So I'll -- but I think as many -- you know, I'll circulate that as soon as I know who is in -- on the list.

>> Russell Crosby: David, we just had volunteers from Krytzer and Kaldor.

>> David Bacigalupi: Okay, who volunteered so far?

>> Russell Crosby: Krytzer and Kaldor both raised hands.

>> David Bacigalupi: Okay. Why don't we make it anybody else that wants to think about it, and get back to you by Tuesday at 5:00 and we'll make a decision right afterwards.

>> Russell Crosby: Thank you.

>> Don't everybody rush at once.

>> Conrad Taylor: 3.3, discussion and action on payroll audit, FLSA and overtime payment issues. Veronica.

>> Hi. Sorry, excuse my voice. So you have a memo that's in your packet. And there's also representatives from the City's finance department here as well to answer any questions that you may have. The last board meeting, trustees had some specific questions about the timing of deliverables from the city. I went back and I extended an invitation to the City's finance department to attend our meetings to provide information directly from them related to the deliverables. In the memo what I pretty much tried to do was lay out that there are various payroll issues that are going on. Some have been researched and analyzed to the point where there is action that can be taken. And without trying to muddy the water too much what I tried to outline in this memo are those items that are at that stage. So if you will look at page 2 there's five items there that have -- there's at least some sort of 74thing document from finance with a figure at the end of it. So that we can take action on it. Or at least there has been

some indication from finance that they have the information. So what I've done here is outline them and specified what retirement services is waiting for. What I want to outline to the board is that even once we receive the files, this is really just the first step to correct our pension administration system. There's reconciliations that will be needed -- that will need to be done on an accounting basis to make sure that every dollar has been received and every file has been corrected. That is nowhere near to the end point this board wants where its pensions have been recalculated for those that have been affected. That is a whole secondary step that needs to happen above and beyond just correcting the payroll records. So in this memoranda I'm really focusing in on just correcting the payroll records. This is really step 1. So with that I'll take any questions or if you have any questions for the finance staff I'd invite them to come --

>> Conrad Taylor: On FLSA this is on --

>> Sean Kaldor: All I want to hear is it's done. It's going to be a long time before I hear that.

>> Russell Crosby: It's going to be a very long time.

>> Sean Kaldor: So one of these categories are one-time incidents, the 48.50 pay for one pay period, the EMT overcorrection for again one pay period. The other things like for example for number 5, higher class overpayments. We have people who worked in a higher class capacity for which they get an extra $20 a day or $50 a day, did we take pension contributions from them?

>> Yes, we did.

>> Sean Kaldor: But that's not pensionable. So we owe them the money back. If they retired are they getting a pension based on that?

>> Yes, they would. If it affected a final average salary, should be clarified.

>> Sean Kaldor: If it was in their last year and for a while people thought it was all included so everybody was doing a lot of higher classing if they could in their last year. It doesn't add up to a lot of money I understand. It's very small in the big picture but we don't have a total dollar amount on that, what it means to us or the members of the plan or anything. But we're not doing that going forward is that correct?

>> Yes, I understand it's been corrected on a go-forward basis.

>> Sean Kaldor: So then the two FLSA issues, so the pickup hours, and then the holiday in lieu earnings, what's the nature of those then? Those are things that we collected money from the members on?

>> There's one in each direction. So the first one which is the FLSA overpayment, this is where we collected contributions, and pensionable earnings, that shouldn't have been pensionable. And the holiday in lieu if I have that correctly is actually in the opposite direction. These are earnings that should have been included in the FLSA calculation and should have been pensionable. But weren't.

>> Sean Kaldor: So there's the city -- there's the employees then there's the city, and then there's the plan and then there's the beneficiaries. Between the city and the plan, do we know the numbers and have we sorted it out or do we think they owe us or we owe them?

>> That's what I'm summarizing here, is -- this is the point where I'm at. I'm aware of or the Department of Retirement services is aware that these files exist. We don't have them all in a usable form that we can go forward with. So by identifying them, and letting the board know this is where we're at, we've also communicated this same memo has gone over to finance. This is where we're at. This is our starting point, became of, you know this is where we need finance to provide some information as far as some deliverable dates as far as when we can get the information and then once it comes over to retirement services, what retirement services I.T. staff has done is worked with the pension administration provider and come up with an electronic method to go ahead and correct the records but again we need them in a specific format.

>> Sean Kaldor: The data.

>> In order to use them.

>> Sean Kaldor: And do we know if these are $5 million issues or $10 million issues or $100 million issues?

>> The FLSA correction, overpayment for number 1 I believe in the original documents that finance provided, the contribution impact, not the pension payment impact, but the contribution impact is approximately $1 million for both the city and members.

>> Sean Kaldor: Okay. And the FLSA underpayment?

>> The FLSA underpayment we received contributions from the city, in hundreds, low hundreds of thousands. I'm sorry, I don't know the exact number. I want to say somewhere close to $200,000 but I don't have the exact figure.

>> Sean Kaldor: Okay and then the higher class that's totally between us and retire -- there's some issue there but that's could -- that's gone on since the dawn of time, right?

>> (inaudible).

>> Donna Busse: That's the one that we're going to need to get correction records. Payroll will need to let us know how long that's gone on.

>> Sean Kaldor: And the longer that goes on, do we know if that's millions or 10 million a year? Or --

>> We don't know at all.

>> We don't know at this point what it's at.

>> Dan Kadamoto from finance. It is about $1 million and that includes both the employee and city contributions combined.

>> So again this is only the contribution dollar amount, is that correct, Dan? We're not talking about pensionable earnings, we're talking about the dollar of contributions that translates into?

>> The the million dollars is only the contributions, so it could be a couple.

>> Sean Kaldor: So we don't know how much we're paying out right now?

>> It depends on the percentage of pay that it's applicable against for the contribution rate that came in. You have to remember that from the pension plan standpoint we only receive summary of pensionable data. All of the underlying payroll codes that go into it, we don't have that information. So that's where we have to work with the City's finance department so that they can identify those pieces and then send them over to retirement services.

>> Sean Kaldor: So given that this is going to be a long process one thing I'd ask is could we give anybody considering retiring a disclaimer saying you know we're setting this but we know these issues to exist and until they're resolved, your final pension check may -- it may be a very minor adjustment but they can look at their last year and say was my last highest year between 99 and January 2009, and how much will this FLSA issue affect me? At least we said we know it's an issue and it might be $30 a paycheck but so they know.

>> Mollie Dent: I think that that's probably actually not a bad idea, that members could self-identify whether or not they had one of these issues in the year that is being used to calculate their pensions. They would be the best ones to know, actually.

>> Sean Kaldor: At least they know going into it that they won't be mad if they get something from us in a year saying your monthly benefit is going down by $50. It seems for us to fix the higher class is the greatest exposure right now is that right?

>> If you are talking about specific members or group I would say probably the fire members that have the FLSA portion would be your largest affected population. The higher class pay would only affect those that participated or had higher class pay, where FLSA I understand affects every firefighter.

>> Sean Kaldor: So what's costing us the most I guess would be the question? What's --

>> It just depends on where it fell into someone's final average salary. If you are talking about on a contribution dollar basis, that's not really where the cost of the plan is at. It's really in the overpayments for pension payments which again is about three steps into this process. I mean we would have to correct a record, get it into our system, reconcile it make sure we have all the dollars and then at that point I understand there's other legal pieces that we'd have to go back to, to figure out, recalcs and then go back to the attorneys to see legally you know how much can we correctly and when and how.

>> Sean Kaldor: And how far back in the statute.

>> Mollie Dent: Right, yeah, the correction of the go-forward pensions isn't the issue. The question is how much can you collect of the overpaid. Of course some of it will be uncollectible because you'll have some that have been paid to people who are not receiving a pension anymore.

>> Sean Kaldor: For the work available to us and the bandwidth and the time line and everything for some of these dollar amounts I'm okay at the board level about saying, hey don't worry about X. But I need to know, need to have a hard dollar amount to say, the higher class is only costing us $100,000 out of the plan. It's not worth spending three months and figuring that all out, given the greater picture of things. But we kind of need to know the dollar amount. The other side will be all the other employees and this isn't really our issue but we've taken

money out of their paycheck for a pension contribution that they deserve back. I know several have personally talked to me and feel they've been pretty patient and are at the point where they'll take other action but that's between the city and the employees and how they deal with that.

>> I guess the comment I have back to you Sean is you may have individuals that are affected by every single one of these items here. And so it may be a positive or a negative adjustment for them. So not until every adjustment is taken into account could we accurately answer someone based open the information we have as of that day. So once we do the FLSA correction I could tell what you the impact is for correction number 1 on person number X but I may come back to you in three months and say okay now the impact of two and three on this person move it the other way.

>> Sean Kaldor: Only taking $100 a month out of his paycheck but this will add ten and this will add 20 and they were minor but for that person it will be $70 a month.

>> You have to remember that the final average salary moves. You know so as a number moves this may have been the final average salary for this calculation but once we do this other adjustment it now is a different year that we're looking at to select as our final average.

>> Hope not.

>> Sean Kaldor: You've got a great job.

>> Conrad Taylor: Russ.

>> Russell Richeda: Conrad or Veronica, do you know if finance has had a chance to review this and do they agree? Particularly items 1, 2, and 5, where you're still requesting data from finance and is finance going to have any experience any difficulty in preparing that data to submit to you and do they have a prospective time frame

that they hope to meet to provide that data to you? Because otherwise it seems like this has been an issue, I could be totally wrong, an issue that has delayed things up till now.

>> I'll answer your first question, yes, finance was provided with the memorandum. We sent it over to finance and we also had some contact with finance to let them know that the memorandum is being prepared and to invite them to come and answer any questions that the board may have in regards to deliverables. As far as the timing of pieces, I understand that, well, finance, I'll let them speak for them cells, I guess.

>> I'm Pat Sulwicki, I'm the acting account manager. We're pretty well in agreement with all the five issues that have been pointed out in the memo. We have done work on it. We have for the most part on the bullets hit about 85, 90% done. We have, like Veronica indicated in her memo, we've been hit with staffing constraints trying to juggle that with all the workload and all that. Ideally, we'd like to be able to say we'd be done by the end of this calendar year. But with the constraints we have in terms of staffing, and also, going into the year end with both payroll and AP staff, it's a huge undertaking. We'd probably be more likely be looking at the first quarter of next year.

>> Russell Richeda: Does the board maybe want to invite them back at the March meeting just for an update?

>> Conrad Taylor: I would appreciate that or just some updates. Because it has been a long time on that. At least we know where we are in this process.

>> Sean Kaldor: It will be going on two years.

>> I guess my question would be for the board, I have recommended in this memorandum that we need additional staff to go through and reconcile these pieces. But to the extent that there is not the activity happening at the source, which is the city, then this additional staff will really do -- the extra resources on retirement side will not help move this process along. So I just want to make the board aware that we need the information in order to

move forward. If we're going to have the information in March are you saying we'll have portions of it before the first quarter or you'll send information over as it's available just for planning purposes?

>> We can send pieces over as they're done. And actually, if you can give us a priority list, we can -- we'll put our resources on those priorities first. I'm not -- I think it's the same thing Sean was talking about, which one is really the most important and costing you. If you can tell us it's really number 2 the FLSA piece about the missing, I think Sean and I worked open some of this, the missing holiday MU, we can get that to you probably pretty quick. The file was -- when did we complete testing on that I think probably mid summer. After that we just haven't had the resources because of -- we had to shuffle some resources and we've had resignations and for the accounting supervisor, that does most of this work. So --

>> I guess the response would be, from my experience, has been that Sean number 1 is definitely an item that the fire members are very interested in. 2, which is related to that, would probably be another one. And then I guess my next step would be from an audit point of view, you'd want to clear the ones that are easiest to clear. The items that are for one pay period, for lack of a better word, the low hanging fruit, the pieces that could be easiest to be corrected, that would probably be the next priority.

>> Sean Kaldor: Yes, sounds good. It seems to some degree an all or none thing. But if we can get big chunks of it done and realize what's left is little dollar amounts, just to get it done, we get it done. But if finance is able to finish their pieces and you come back to us saying I just need a contractor here for the next two weeks to do this, that and the other, if that's the type of staff resourcing you need I would be completely open to, whatever, however we can get this off the list of things to do.

>> Russell Crosby: And that's what we're talk ugh about, just temp, short term temp people not change the staffing complement or anything like that.

>> Sean Kaldor: I think in general anything on our list of things to do given our short staffing if you can say a contractor can come in and do it for X amount of time if we have the authority to approve that budget I'm happy to

have people focused on more significant issues. And I appreciate you coming and giving us the information and willing -- be willing to answer our questions. It's just an outstanding issue that especially for the members who are paid in, realizing they are owed $800, they want their $800 back. And for retirees, I don't want them going on too long, not realizing that they owe us some money back, and that just builds animosity the longer it goes.

>> Conrad Taylor: So just to get a clarification and direction, that finance will contact you Veronica, or -- and set the priorities. It looks like 1 and 2 are going to be the priorities.

>> So as far as an agenda item, looks like March like an update on it.

>> Sean Kaldor: I'd say if you can get an update in December, just to see where we stand, just so we're working towards our goal, maybe we've got a piece done by then, that would be grade. And then you know as it gets closer just to -- once you know you can have it in March, maybe to say I can have it resolved by this time, just to -- just updates. Every week.

>> Conrad Taylor: Thank you. 3.4. Donna, this is update on electronic board packets.

>> Donna Busse: We actually have the RFP posted. We sent it out to eight people. The response is going to be the beginning of December. I think we're scheduling demos for like, I don't know like December 11th or 12th, 12th or 13th. Whatever that Monday-Tuesday is, we haven't picked a date. I just wanted to let the trustees know, if anybody is interested in seeing the demo, let us know and we can invite you at that time. I think we're going to when the RFPs come in at the beginning of December we're going to try to whittle it down to 3 and then have them come in and then try turn around a recommendation to you guys for January. We're trying to go as fast as we can.

>> Sean Kaldor: Send that invite to all of us I would think and anyone who wants to go, can go.

>> Is in a limit on --

>> Mollie Dent: I think there will but I'm assuming that not everybody will want to go.

>> Get five of us I'd be impressed.

>> Conrad Taylor: 3.5, discussion and actions on revised actions, disability determination forms. We carried this fort from last year.

>> Sean Kaldor: We brought this on because in the disability subcommittee, one of the things we identified is we could provide additional layer of information to speed the review process. So the forms you're looking at right now, whatever the ultimate process is at least for right now, it helps improve the situation. One of the solutions we came one to take the work off the board, uses this summaries to be given to somebody else basically. I just wanted to check if there is any input or concerns or anything about the format for Dr. Das that could be enhanced or thinned down or anything. Summary section on the front.

>> Russell Richeda: Sean.

>> Sean Kaldor: Yes.

>> Russell Richeda: Restrictions per body part as opposed -- right now it's hard to relate restrictions to body parts.

>> Sean Kaldor: Anything else?

>> Vincent Sunzeri: I think it's a big upgrade from what we had when we started, so thank you very much.

>> Sean Kaldor: It certainly focuses my discovery process to be able to go through and that doesn't make sense and I'll go and read that exact document on that page and even here in the meetings be able to go through and have the individual pages all coordinated and chronological, very helpful.

>> Dr. Das: One of the things, not that I need additional things to do but one of the things I think for Federated I don't think if it helps or not is to put the specialty down of the physician. So if you're talking about an orthopedic surgeon versus a family practice doctor versus a cardiologist versus an internal medicine. I don't know if it makes a difference but if a doctor has an opinion it may mean more to you if it's a cardiologist saying it then.

>> Sean Kaldor: If it's not significant additional work I'd like to agree on that --

>> Conrad Taylor: I would like that Dr. Das. Because some of the stuff I was reading that you had a chiropractor making a decision on a neurological issue. I say how do they even do that you know in one of the packets that we read.

>> Dr. Das: Sure.

>> Conrad Taylor: So I would appreciate that.

>> Russell Richeda: Would it be reasonable to put if they're treating, AMEs accepted by both sides as opposed to --

>> Dr. Das: To me for retirement purposes AME is a meaningless because it's an evaluation done by the doctors.

>> Russell Richeda: Well then let's put treating versus nontreating. Because treating seems to be --

>> Dr. Das: Well, they're all treating, I mean, I'm not sure what you mean --

>> Russell Richeda: Well, not seeing them one time for workers comp purposes.

>> Dr. Das: Yeah, I think I can -- yeah, yeah,.

>> Mollie Dent: It's pretty obvious, they identify themselves on the report.

>> Dr. Das: I can make an effort. A lot of this is by omission, not by commission. So --

>> Conrad Taylor: Thank you, Dr. Das.

>> Sean Kaldor: Reel quick on that. Russ, you have been going through these separately, about how many have you done so far?

>> Russell Richeda: These, well it's this big slug of what I call the impossibles.

>> Sean Kaldor: Gotcha.

>> Russell Richeda: Almost none of those would have been on the consent calendar.

>> Sean Kaldor: Thank you.

>> Conrad Taylor: Thank you, Dr. Das. Number 4, adoption of resolution denying the application of a service connected disability retirement, 4.1, adoption of resolution 6760 denying the application of Jeff Thornley for a change of status from a service retirement to a nonservice connected disability. Mollie, is this the make a motion for the approval?

>> Mollie Dent: Just to approve. It's really in front of you to approve the form. It's not in front of you to revote on it. The ones that voted on it should vote again to accept the form. This is the person that just for the record you did grant a non-service to.

>> Conrad Taylor: So I'm make a motion for approval.

>> David Bacigalupi: Second.

>> Conrad Taylor: Okay I have a motion and second. I'll do it by roll call. Damon.

>> Damon Krytzer: Aye.

>> Conrad Taylor: Sean.

>> Sean Kaldor: Aye.

>> Conrad Taylor: Chairman Bacigalupi.

>> David Bacigalupi: Aye.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Yes.

>> Conrad Taylor: I'm yes.

>> Sean Bill: Yes.

>> Conrad Taylor: Motion passes.

>> I don't remember ever seeing one of these. Is this the first one we've ever denied since -- why are we seeing this one?

>> Vincent Sunzeri: Because we changed at that meeting I think.

>> Mollie Dent: No, if you deny them you see the resolution.

>> Russell Crosby: It comes a meeting later.

>> Damon Krytzer: Really?

>> Russell Crosby: This one was separate because it wasn't in the package. But you see them every time you do a denial.

>> Damon Krytzer: I don't remember.

>> Mollie Dent: Usually they're in the package earlier.

>> Conrad Taylor: Number 6, death notifications, 6.1, notification of the death of David P. Miller, fire captain, retired July 2, 1972, died September 20, 2011. Survivorship benefits to Rose Lee Miller, spouse. 6.2, notification of the death of Ivan J. Oswald, battalion chief, retired July 7th, 1992, died September 29th, 2011, survivorship benefits to Shirley M. Oswald. Moment of silence please for these individuals. [Moment of silence]

>> Conrad Taylor: Thank you. That could just be a note in the file. Number 7, committee minutes reports and recommendations, 7.1, investment committee, we'll hear A and B, we'll take it as one motion. Minutes of

September 28th, 2011 and 7.1B, minutes of September 30th, 2011. Unless we have anything make a motion for approval.

>> Vincent Sunzeri: Motion for approval.

>> Conrad Taylor: I'll second. Do a roll call. Damon.

>> Damon Krytzer: Yes.

>> Conrad Taylor: Sean.

>> Sean Kaldor: Yes.

>> Conrad Taylor: Chairman Bacigalupi.

>> David Bacigalupi: Aye.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Aye.

>> Conrad Taylor: Aye. And Sean.

>> Sean Bill: Aye.

>> Conrad Taylor: Motion passes. 7.2, ad hoc committee for disability determination process, next meeting to be determined. 7.3, ad hoc governance committee, next meeting, to be determined. 7 minutes of September 15, 2011.

>> Motion to approve.

>> Mollie Dent: You actually don't need to approve them, you can just note and file them.

>> Conrad Taylor: Okay, note and file them, we'll put that in note and file.

>> Sean Kaldor: We're trying to conceptual them, November 18th is the working date.

>> Conrad Taylor: Number 8 consent calendar we'll hear all in one motion unless someone wants to pull one. 8.1 through 8.5. Make a motion.

>> Sean Kaldor: Motion to approve.

>> Conrad Taylor: Second. damon.

>> Damon Krytzer: Aye.

>> Conrad Taylor: Sean.

>> Sean Kaldor: Aye.

>> Conrad Taylor: Chairman Bacigalupi.

>> David Bacigalupi: Aye.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: Aye.

>> Conrad Taylor: Aye. Sean.

>> Sean Bill: Aye.

>> Conrad Taylor: Motion passes. Education and training. We have 9.one, education programs and courses that came from Cortex. We have 9.2 conversations and seminars. We have that from Cortex and 9.3 research papers and articles which is from Cortex.

>> Russell and Vince can I -- I'll wait for the next one.

>> Conrad Taylor: Note there. Proposed agenda items. Sean I believe you had one. And Vince?

>> Sean Kaldor: I had a few it but the distinguished gentleman to my left go first.

>> Damon Krytzer: I thought we could agendize the structure of the investment staff for the investment committee meeting. Can we talk about that, can we get that on the agenda for the next investment committee meeting? Just to talk about structure and options. Thanks.

>> Conrad Taylor: Sean. Sean did you have a list?

>> Sean Kaldor: Yes, real quick. Disability subcommittee, Sean brought this up, as far as a hearing officer we looked at that. And almost every other organization has a subcommittee making recommendations. But not especially a hearing officer. So Cortex is coming back with their final stuff early December and that will be the last big set of inputs from them and then from that we figure out to do we also have Russell doing his stuff here on the side, subcommittee will come back on the agenda probably in December, might be so early in December it won't be until January. I would ask as far as new items if we could discuss or maybe I can ask the investment

committee to deal with this, some kind of monthly reporting on returns, if we could get some kind of standardized, I don't know if it is one month in arrears or something so we know what's going on out there. Understanding it can change and it's preliminary and all that.

>> Damon Krytzer: I think the monthly is going to be hard because we don't get the manager updates monthly.

>> Sean Kaldor: Quarterly?

>> Damon Krytzer: Quarterly would be way easier and more accurate for staff on a formal basis.

>> Sean Kaldor: Did we get those earlier --

>> Russell Crosby: You had a flash, here's the balance in the custodial accounts but there was no breakout by manager or anything else.

>> Sean Kaldor: But she was talking about the returns so far this year for the first -- for this fiscal year the first two months of the year, right? So she's getting some kind of monthly data.

>> Damon Krytzer: She has lying the P&L statement but it's not structured and it's not necessarily completely accurate.

>> Sean Kaldor: Okay.

>> Russell Crosby: There are no comparables. The comparables, other plans managers and et cetera, all that comes out quarterly.

>> Sean Kaldor: Well, maybe not more than a month in arrears and some kind of comparison, discussion, whatever makes sense just to get a feeling for it. Then the whole conflict of interest topic, I think we should bring

that up and have a discussion on that and maybe with the intent of asking for formal direction on it. Just I understand it's a gray area but like I said having at least to know what the rules are that apply, we can go from there. And the last thing was a topic that we got into that we said was off agenda item that do we need some sort of project tracking for the next six months, the priorities to give staff and all their limited resources, to understand where things are standing and what we could kick off the bottom of the list just to help them get their job done.

>> David Bacigalupi: I've got a suggestion for that. One of the things I was going to propose is we revive the pending actions list. We used to do the -- it was a monthly report, pending actions so things wouldn't drop through cracks. One of the things we'd hear back from them in a month or two or stuff. There was a monthly report and Russell maybe you could dig out some of the old ones from a couple of years ago. And it would keep things in the forefront so it was on every agenda so we could -- and then when that comes up you could say, look at something and say well this should actually have a higher priority than that, let's see if we can get that done.

>> Conrad Taylor: Could you put in the order of a appreciate basis so we could know?

>> Sean Kaldor: Color-coded by hours of work.

>> Russell Crosby: Don't get carried away guys. But we'll get something together yeah.

>> Conrad Taylor: Vince.

>> Vincent Sunzeri: On the investment side, and I don't know if this applies just to investments, but maybe it applies to other committees and ad hoc committees. We have it on the agenda under item 7, we've been here for six hours. We quickly note and file and approve the minutes and that's it. There's no discussion. We need to have a report. And we need to move it up in the agenda earlier on so that we're not just trying to finish and get out of here. Because there's a lot of content that's being discussed at these meetings that should be shared at the board level and it should also be discussed in the room when Carmen is here to be involved in that conversation. So today we talked about the global mandate and we made a motion to move forward without hedging, great, we

talked about the ALM study but we really didn't spend time talking about the investments. But that's what we're really what we're here for, managing those plan assets, among other things of course but we're just not dedicating the time to it. So I'd like to see that if we can moved higher up on the priority on the agenda and actually not just approval of the minutes but time allowed for reporting and discussion at the board level regarding that.

>> Damon Krytzer: I have a question on that. Aren't we -- so I think the reason we have the subcommittee is to take the onus to the investment committee to do that. And getting quarterly numbers with a little bit of commentary might cover I think the spirit of what you're trying to do instead of then spending another hour or two at a board meeting.

>> Vincent Sunzeri: I agree, it doesn't have to be an hour but I think that there's four, possibly soon to be five board members that are not a part of those meetings at all. And should understand what topics are being discussed. There's four, five things that came out of the last meeting that we aren't even touching on today and they're not on the minutes for September. They were discussed in the October meeting.

>> Sean Kaldor: Standing report from the investment committee or any other committee that makes sense to have a standing committee, kind of good idea. Ten minute block, you did couple of hours or three or four hours of work, I'm all for that.

>> Vincent Sunzeri: I'm in to the executive summary.

>> Damon Krytzer: I suggest someone amends it to say it's ten minutes.

>> Vincent Sunzeri: Give me 15.

>> Sean Kaldor: 12 and a half.

>> Conrad Taylor: Okay, no more proposed agenda items. Public comments, we have number one. Mr. Wendling.

>> For information, not that you don't get enough information, by the end of this business day the association of retired San José police officers and firefighters will submit a letter to chairman Bacigalupi and secretary Crosby requesting that the dues being withheld from our membership be raised from $15 a month to $43 a month. Like I said, that letter will be submitted 50 end of today's business. Thank you. That's it.

>> Conrad Taylor: Thank you. Any further items? I make a motion to adjourn.

>> Second.

>> Sean Kaldor: Third.

>> Conrad Taylor: Motion is to adjourn. Or does it have to be roll call?

>> Mollie Dent: I think you're okay. Thanks.

>> Russell Richeda: There's some limits.

>> Mollie Dent: You caught me in an off moment.