



**City of Cincinnati Retirement System
Restructuring Committee**

**January 29, 2009 10:00 AM
City Hall - Committee Room B**

AGENDA

Members: Brian Pickering – Chair
Michael Fehn
Don Beets
Jason Barron

Goal - The committee is charged with considering the recommendation in the restructuring resolution and bringing forward to the board specific actions for the Board to act upon.

Call to Order

Approval of Minutes

Pending Business

- Review Restructuring History
- 1) Chief Investment Officer
- 2) Deputy Director (#2 person)
- 3) Separate Retirement Staff from Finance

New Business:

Adjournment

Future/Next Meetings: ???

12-4-2008

Public Pension Fund Trustee Fiduciary Duties

Trustees have a fiduciary duty to put another persons' interest before their own or those of anyone else.

These duties can be divided into three categories:

1. Duty of Loyalty
2. Duty of Prudence
3. Duty of Care

These fiduciary Duties are ultimately legal responsibilities one of the strictest duties you will find anywhere in law. (Bussian v. RJR Nabisco, 223 F.3d 286,294 (5thCir.2000)) We as Trustees can not hide behind an Insurance Liability Policy---- just ask State of Florida Municipal Fund Trustees and San Diego County Employee Retirement Association Trustees who are being civilly and /or criminally charged for breaches of their fiduciary duties.

1. **Duty of Loyalty** – is the obligation to act for the exclusive benefit of the Plan participants. Fiduciaries owe “complete Loyalty “to plan participants (McMahon v. McDowell, 794 F. 2d 100,110 (3d Cir1986)). In short, we must put the participants' interest above our own interests and those of any third parties, such as employers, and other political bodies, or taxpayers. The Duty of Loyalty includes following the;
Anti-cutback Rules – The U.S. Constitution Article 1, Section 10 Limits States power to pass any law impairing the obligation of a contract . The right to a pension has been ruled to be a contractual right as such the terms of retirement and certain other benefits in effect as of the Date of hire – as well as any subsequent enhancements cannot be impaired (cutback) or otherwise significantly changed.
2. **Duty of Prudence** – the obligation to act prudently in exercising power or discretion over the interests that are the subject of the fiduciary relationship. We must exercise sound judgment, make common sense decisions and act with care. A Trustee cannot do this without availing themselves of Continuing Education and now required under our own New Governance Document. The suggestions that continuing education is some kind of perk is totally wrong. Continuing Education is Mandatory for a trustee to be able to fulfill their responsibility of Prudence. The Prudent Investor rule is a codified rule as set out in the Uniform State Laws (National Conference of Commissioners on Uniform State Laws- NCCUSL), The Uniform Prudent Investors Act of 1944 and The Uniform Management of Public Employee Retirement System Act of 1997, a Trustee needs to read and understand these to fulfill the Duty of Prudence.
3. **Duty of Care** – The responsibility to administer the Pension Plan efficiently and properly. Under this duty, the Board must in conjunction with Staff, develop,

adopt and implement policies and procedures for the administration of the Plan.
The New Governance Document is the Guide Book for this Care.

The proper exercise of these fiduciary duties requires that the Board of Trustees receive unbiased and independent information and opinions from both top pension fund employees, fund managers, advisors and attorneys. Then we must exercise sound judgment, make common sense informed decisions, and act in the sole interest of the plan participants and beneficiaries not those of any 3rd party. (Section 404(a)(1)(A) of ERISA) Fiduciaries must also act with “complete and undivided loyalty to the participant of the trust” and with an “eye single to the interests of the participants and beneficiaries. (“Reich v. Compton, 57 F.3d 270,291 (3rd Cir.1995))

Thank You

Michael P. Fehn Trustee

Re:

NCPERS---National Conference on Public Employee Retirement Systems

IF—International Foundation

Stuart W. Davidson, Esq.

ERISA

PPA---The Pension Protection Act 2006

with the Board of Trustees making recommendations regarding candidates for the positions of the Retirement Director, CFO/CIO, and Benefits/Plan Manager, in compliance with all Human Resources Department and Civil Service Commission requirements, with the final selections for such positions made by City Manager.

Resolved: That The Board of Trustees of the Cincinnati Retirement System shall commission a salary study for the following positions: Executive Director, Chief Financial Officer, Benefits Manager, Executive Assistant to Director and that said salaries be comparable to Pension Funds with assets of 2-5 billion dollars; and

Be it further resolved: That the Board of Trustees recommends that salaries for Retirement Staff be properly adjusted based on that study and that the Executive Director, Benefits Plan Manager and Executive Assistant to the Director retain their current positions and that the position of CFO/CIO be filled as soon as possible; and

Be it further resolved: Following the establishment of the necessary employment positions, the Board of Trustees recommends implementation of the following. A succession is now established: should the Executive Director be unable to fulfill his duties, the CFO/CIO shall assume those responsibilities, and that should both the Executive Director and CFO/CIO be unable to fulfill their duties, that the Benefits Manager/Plan Manager shall assume the duties of the Executive Director, until such time as The Board of Trustee selects a replacement.

Restructuring History Committee

December 4, 2008

RESOLUTION: CRS BOARD STAFF

D. Rager announced the development of the Restructuring Committee that will address the restructuring of the CRS staff and organization. Brian Pickering will Chair the Committee and members will include Mike Fehn, Don Beets, Gina Marsh, and Jason Barron. All Board members are welcome to attend the meetings. The committee is charged with considering the recommendation in the resolution and bringing forward to the board specific actions for the Board to act upon.

October 2, 2008

RESOLUTION: CRS BOARD STAFF

Following a conference call September 23, 2008 with D. Rager and J. Boudinot, Gary Hudepohl of Hudepohl & Associates, agreed to attend the Board of Trustees meeting to discuss the search for a Chief Investment Officer for the CRS. Mr. Hudepohl outlined the market patterns for successful searches for Chief Investment Officers. He also explained the heightened responsibilities of the Chief Investment Officer. The position requires a professional with exceptional education and experience. Considering the responsibilities of the Chief Investment Officer, market compensation is required. Members will continue to address aspects of the Resolution at the monthly Board meetings.

September 5, 2008

RESOLUTION: CRS BOARD STAFF

M. Fehn provided an update on the Resolution and the following was determined:

- D. Rager, Board Chair will meet with the City Manager to discuss the proposed Resolution.
- Hudepohl has been contracted to search for a Chief Investment Officer. J. Boudinot has scheduled a conference call for September 23, 2008 with Hudepohl and D. Rager.
- D. Rager will establish an ad hoc committee to address the steps for reorganization.
- Resolution Updates to be included on future Board Agendas.

August 7, 2008

CRS BOARD STAFF

Follow-up from the June 5th meeting of the Board of Trustees: M. Fehn submitted the Resolution with friendly amendments to the Board for approval. M. Fehn restated the rationale for the Resolution emphasizing the fundamental need for hiring and retaining highly skilled staff for the CRS. Optimum management of the CRS \$2.5 billion fund warrants expeditious hiring of a Chief Investment Officer. Obtaining a qualified successor to the Executive Director of the CRS is imperative to the continued financial health of the CRS pension fund.

Titles, job descriptions, and salaries to be assessed for compatibility with Civil Service syntax.

Members proposed the following actions:

- Hudepohl to conduct immediate search for Chief Investment Officer.
- Salary study to be presented.
- Board to be involved in interview process.

- Adhoc Committee(s) to be developed to address reorganization of the CRS. The Board Chair to coordinate.
- Senior Accountant- investment accounting and financial reporting position for the CRS office to be filled by September.
- 2009 Budget to be amended to accommodate salary changes.

Board Action

M. Fehn made motion to hire a Chief Investment Officer for the CRS. Motion seconded by M. Rachford. Motion passed by the Board.

Board Action

M. Fehn made motion to contract with Hudepohl to conduct search for Chief Investment Officer. Motion seconded by B. Pickering. Motion passed by the Board.

June 5, 2008

CRS BOARD STAFF

Follow-up from the May 1st meeting of the Board of Trustees: M. Fehn submitted the updated Resolution concerning CRS Board Staff. The Resolution recommends the CRS retain and compensate top employees of the fund as a separate department, at a fair market value, that proper staff levels be established and that a Management Succession Plan be implemented.

The Resolution addresses the four positions held in the Cincinnati Retirement System: Executive Director, Chief Financial Officer (CFO), Benefits / Plan Manager, and Executive Assistant to Director.

Recommendations:

Roshani Hardin, Chief Counsel, provided the legal perspective and appropriate modifications to the Resolution.

The Board discussed the Resolution and recommended the following amendments:

1. The “salary study” be conducted first. Results of the study to be submitted along with the Resolution to the City Manager. Human Resources to implement.
2. Regarding the first **resolved:** “The Board of Trustees of the Cincinnati Retirement System requests that *top employees* be removed as a Division of the Finance Department and have a separate Retirement Department created with a Director that reports directly to the City Manager.” Replace “*top employees*” with “*Employees of the Retirement Division.*”
3. Clarification regarding the Succession Plan: The CFO would replace the Executive Director until a new Executive Director is hired.
4. Strike the fourth **Whereas** and the last paragraph referencing the CRS submitting RFP’s for independent legal services.
5. Add the sentence to begin the first **Resolved:** “The following enactment of any required legislative changes to the Cincinnati Municipal Code.”

Motion made by M. Klug to approve the friendly amendments. Motion seconded by B. Pickering. The friendly amendments were unanimously approved by the Board.

Motion made by M. Fehn that the Board approve the Resolution as amended. Motion was seconded by B. Pickering and the motion was carried by the Board following a roll-call vote:

May 1, 2008

CRS BOARD STAFF

M. Fehn submitted the following recommendations to the Board of Trustees. The recommendations focus specifically on four positions held in the Cincinnati Retirement System: Executive Director, Chief Financial Officer (CFO), Benefits / Plan Manager, and Executive Assistant to Director.

The impetus for change was the Board's fulfillment of its fiduciary duty. M. Fehn identified the need for an orderly line of succession to the Director, unencumbered work load for top pension-fund staff, and the ability to retain and compensate staff at a fair market rate. The staff plays an integral role in fulfilling the Board of Trustees' fiduciary duties and therefore, the necessary steps must be taken to compensate fairly and assure the retention and replacement of such highly qualified staff.

1. Conduct a market search for salary compensation levels. Search Pension Funds of \$2-\$5 Billion.
2. Fill the CFO position as soon as possible
3. Separate all four positions from the Finance / Law Dept.
4. Succession plan, should the Executive Director be unable to fulfill his duties. The proposed succession:
 - a) Executive Director
 - b) Chief Financial Officer
 - c) Benefits / Plan Manager
5. Issue RFP for Independent Legal Council – one that specializes in Public Pension Funds. This Independent Council would serve the CRS and the Board of Trustees.

R. Hardin announced that the Charter identifies the City Solicitor as the council to the CRS and to the Board of Trustees.