



**COUNTY OF TULARE
BOARD OF RETIREMENT**

**Leanne Malison
Retirement Administrator**

136 N. AKERS STREET
VISALIA, CA 93291

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**AGENDA OF THE BOARD OF RETIREMENT
REGULAR RETIREMENT BOARD MEETING
Wednesday, January 8, 2020 @ 8:30 a.m.
TCERA Board Room, 136 N. Akers Street, Visalia, CA 93291**

**I. CALL TO ORDER
II. ROLL CALL**

1. As a courtesy to those in attendance, all individuals are requested to place cell phones and other electronic devices in the non-audible alert mode.
2. Pledge of Allegiance and Moment of Silence
3. Swearing-in of newly elected TCERA Trustees.
4. Nominations and elections for the positions of Chair and Vice Chair for the Board of Retirement for the 2020 calendar year.

III. PUBLIC COMMENT

1. At this time, members of the public may comment on any item not appearing on the agenda. Under state law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Board consideration. Any person addressing the Board will be limited to a maximum of five (5) minutes so that all interested parties have an opportunity to speak. Please state your name for the record.

IV. X-AGENDA ITEMS

V. CLOSED SESSION

1. It is the intention of the Board to meet in closed session concerning:
2. Conference with Legal Counsel – significant exposure to litigation (Gov. Code, § 54956.9, subd. (d) (2))
Number of potential cases: 1

VI. DISABILITIES – Time Certain: 8:30 a.m.

1. Closed session to be held regarding disability matters listed on this agenda.
2. In the matter of the disability application of William Brewster, consider and take action regarding the application for a disability retirement.
3. In the matter of the disability application of Susan Firestone, consider and take action regarding the application for a disability retirement.
4. In the matter of the disability application of Cheryl Holt, consider and take action regarding the application for a disability retirement.
5. In the matter of the disability application of Elizabeth Valenzuela, consider and take action regarding the application for a disability retirement.
6. Accept as filed the request from Lynnelle Fries to withdraw her request for hearing regarding her husband's disability retirement application (Active member death). The Board of Retirement's decision on November 6, 2019 to deny the application is final.
7. Accept as filed: Disability Status Report Overview.

VII. LEGAL REPORT

1. Accept as filed: County Counsel Case Status Report.

VIII. CONSENT CALENDAR

1. Approve Minutes of the following Meetings:
 - a. Retirement Board Minutes of December 11, 2019.
2. Approve payments to:
 - a. BNY Mellon – invoice for master trust custodial services for the quarter ended September 30, 2019, in the amount of \$88,858.58.
 - b. Nossaman – invoice for outside legal services for the period ending November 30, 2019, in the amount of \$8,472.60.

IX. INVESTMENTS

1. Discussion and possible action regarding TCERA's strategic investment allocation and investment managers, including performance, contracts, and fees.

X. NEW BUSINESS

1. Discussion and possible action regarding Amendment to Resolution Regarding Pay Codes Included as Pensionable Income.
2. Discussion and possible action regarding Memorandum of Understanding between Tulare County Superior Court and the Tulare County Employees' Retirement Association.

XI. EDUCATION ITEMS

1. Discussion and possible action regarding all listed educational events.

XII. UPCOMING MEETINGS

1. 01/15/2020 Investment Committee meeting @ 3:30 p.m. *(Tentative)*
2. 01/16/2020 Administrative Committee meeting @ 2:00 p.m. *(Tentative)*
3. 01/22/2020 Retirement Board meeting @ 8:30 a.m.

XIII. TRUSTEE / STAFF COMMENTS

1. Under state law, matters presented under this item cannot be discussed or acted upon by the Board at this time.

XIV. COMMUNICATIONS

1. For Your Information:
 - a. Memorandum from Tulare County Counsel dated December 17, 2019 regarding Litigation of Interest to TCERA.

XV. ADJOURN

1. *In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Secretary of the Board of Retirement at (559) 713-2900. Notification 48 hours prior to the meeting will help enable staff to make reasonable arrangements to ensure meaningful access. Documents related to the items on this Agenda submitted after distribution of the Agenda packet are available for public inspection at TCERA, 136 N. Akers Street, Visalia, CA. during normal business hours.*

Kehler David J
Name (Last) (First) (Middle)

Retirement Board
Name of Board or Commission

OATH OF OFFICE FOR BOARDS OR COMMISSIONS

STATE OF CALIFORNIA)
COUNTY OF TULARE)

For The Office of Trustee:

I, David J. Kehler do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Signature of Trustee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Tulare)

Subscribed and sworn to (or affirmed) before me on this 8th day of January, 2020, by Roland Hill, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Dated: January 8, 2020

Signature/Title

Finney George E
Name (Last) (First) (Middle)

Retirement Board
Name of Board or Commission

OATH OF OFFICE FOR BOARDS OR COMMISSIONS

STATE OF CALIFORNIA)
COUNTY OF TULARE)

For The Office of Trustee:

I, George E. Finney do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Signature of Trustee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Tulare)

Subscribed and sworn to (or affirmed) before me on this 8th day of January, 2020, by Roland Hill, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Dated: January 8, 2020

Signature/Title

Hernandez Laura
Name (Last) (First) (Middle)

Retirement Board
Name of Board or Commission

OATH OF OFFICE FOR BOARDS OR COMMISSIONS

STATE OF CALIFORNIA)
COUNTY OF TULARE)

For The Office of Trustee:

I, Laura Hernandez do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Signature of Trustee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Tulare)

Subscribed and sworn to (or affirmed) before me on this 8th day of January, 2020, by Roland Hill, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Dated: January 8, 2020

Signature/Title

PREPARE IN DUPLICATE

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

01 - Disability Case Application

9/16/19 Cabeje, Manny (Christene Brown) **RMA-TR-Terra Bella Rd Yd 5/General Member
Orthopedic/Service Connected Disability**

Active **Eligible for Service Retirement = No**

9/16/19 Disability Application Packet Received and Reviewed
9/16/19 Disability Interview/Application Packet Provided
9/16/19 Member Sent Authorization and Questionnaire
9/20/19 DMS Notified of Disability Application Filing
9/20/19 Disability Application Documents Scanned
9/20/19 Disability File Folder Created
9/20/19 Employment Records Requested
Additional Remarks : 11/14/19 pending medical records from member
9/20/19 Infolinx Setup
11/14/19 County Department Records Received
Additional Remarks : RMA Dept
11/14/19 HR & D Records Received

02 - Pending Receipt of Medical Records

4/3/19 Lujano, Rose (Jeanette Burks) **HHS-HS-Visalia District Off/General Member
Orthopedic/Service Connected Disability**

Active **Eligible for Service Retirement = Yes**

4/3/19 Disability Application Documents Scanned
4/3/19 Disability File Folder Created
4/3/19 Infolinx Setup
4/9/19 DMS Notified of Disability Application Filing
4/9/19 Employment Records Requested
7/10/19 County Department Records Received
Additional Remarks : HHS Dept
7/10/19 HR & D Records Received
7/10/19 Risk Management Records Received

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

**4/29/19 Hoogeveen, Sonja (Jeanette Burks) Library-Visalia/General Member Disease/
Service Connected Disability**

Retired

Eligible for Service Retirement = Yes

4/30/19 Disability Application Documents Scanned

4/30/19 Disability File Folder Created

4/30/19 Infolinx Setup

5/14/19 Disability Application Packet Received and Reviewed

5/15/19 DMS Notified of Disability Application Filing

5/15/19 Employment Records Requested

Additional Remarks : due 6/14/19; reminder sent to TCHC, records due 7/25/19; 7/12/19 All dept records received, pending medical records from appl; 7/24/19 mailed 1st reminder to appl for pending med recs

5/30/19 Risk Management Records Received

7/10/19 County Department Records Received

Additional Remarks : Library Dept

7/10/19 HR & D Records Received

**3/22/19 Spurlock, Jennifer (Adriana Gonzales- Library-Visalia/General Member Disease/Non-
Chang) Service Connected Disability**

Deferred Vested

Eligible for Service Retirement = No

3/25/19 Disability Application Documents Scanned

3/25/19 Disability File Folder Created

3/25/19 Infolinx Setup

4/1/19 DMS Notified of Disability Application Filing

4/1/19 Employment Records Requested

Additional Remarks : 7/11/19 - all dept recs received, Pending medical recs from appl; 7/24/19 sent 1st reminder to member for pending med recs; 12/4/19 sent 2nd reminder to member for pending med recs, due 1/3/20

7/10/19 HR & D Records Received

7/10/19 Risk Management Records Received

7/11/19 County Department Records Received

Additional Remarks : Library Dept

**12/30/19 Galvez, Chris (Adriana Gonzales-
Chang)**

Presumptive Indicator: N

**TCSO-HQ Patrol/Safety Member Orthopedic/
Service Connected Disability**

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

Active

Eligible for Service Retirement = Yes

12/30/19 Disability Application Packet Received and Reviewed

11/12/19 Milton, Sheryl (Adriana Gonzales-Chang)

**HHS-Admin Human Resources/General Member
Multiple/Service Connected Disability**

Active

Eligible for Service Retirement = No

11/13/19 Disability Application Packet Received and Reviewed
Additional Remarks : received by mail 11/12/19

11/14/19 Disability Application Documents Scanned

11/14/19 Disability File Folder Created

11/14/19 Infolinx Setup

11/15/19 DMS Notified of Disability Application Filing

11/15/19 Employment Records Requested
Additional Remarks : Due 12/16/19

04 - IME Scheduled/Pending Report

12/28/17 Lujan, Roberto (Jeanette Burks)

**Information Technology/General Member
Orthopedic/Non-Service Connected Disability**

Retired

Eligible for Service Retirement = Yes

1/17/18 Disability Application Documents Scanned

1/17/18 Disability Application Packet Received and Reviewed
Additional Remarks : 12/28/17 Member filed app. for NSCDR. Possible SCDR.

1/17/18 Disability File Folder Created

1/17/18 Infolinx Setup

1/17/18 Disability Findings Summary Prepared

1/17/18 DMS Notified of Disability Application Filing

1/17/18 Employment Records Requested

1/29/18 Tulare County Health Centers Records Received
Additional Remarks : No records for this member.

3/7/18 HR & D Records Received

3/7/18 Risk Management Records Received

3/7/18 County Department Records Received
Additional Remarks : TCiCT Dept. records received 2/6/18.

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

5/30/19 Rosales, Rosemarie (Christene Brown)
Presumptive Indicator: N
Retired

Sher-Dt-Correctional Center/Safety Member
Orthopedic/Service Connected Disability

Eligible for Service Retirement = Yes

6/4/19 Disability Application Documents Scanned
6/4/19 Disability File Folder Created
6/4/19 Infolinx Setup
6/5/19 Disability Application Packet Received and Reviewed
Additional Remarks : Packet submitted 5-30-19
6/5/19 Benefit Estimate Sent to DMS
6/5/19 DMS Notified of Disability Application Filing
6/7/19 Employment Records Requested
Additional Remarks : Sent records request on 6-5-19
8/8/19 Risk Management Records Received
8/8/19 HR & D Records Received
8/8/19 County Department Records Received
Additional Remarks : Sheriffs
8/13/19 IME Appointment Scheduled
Additional Remarks : 8/8/19 - IME appt requested; Ortho IME scheduled on 9/10/19 in Visalia;
9/10/19 - Dr cancelled IME appt, appt rescheduled to 9/20/19 in Bakersfield
8/13/19 IME Appointment Letter to Member Sent
10/25/19 IME Reports Received

6/7/19 Elizondo, Maria (Jeanette Burks)
Retired

HHS-HS-Visalia District Off/General Member
Multiple/Non-Service Connected Disability

Eligible for Service Retirement = Yes

6/7/19 Disability Application Packet Received and Reviewed
6/10/19 Disability Application Documents Scanned
6/10/19 Disability File Folder Created
6/10/19 Infolinx Setup
6/10/19 DMS Notified of Disability Application Filing
6/10/19 Employment Records Requested
Additional Remarks : due 7/10/19; 7/29/19 mailed notice to member re: pending records
7/10/19 County Department Records Received
Additional Remarks : HHSA Dept

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

7/10/19 HR & D Records Received
7/10/19 Risk Management Records Received
10/24/19 IME Appointment Scheduled
Additional Remarks : Ortho IME appt scheduled on 11/13/19 in Clovis
10/24/19 IME Appointment Letter to Member Sent

9/24/19 Ramos, Myrna (Adriana Gonzales-Chang) **HHS-HLTH-Hillman Hlth Ctr/General Member
Orthopedic/Service Connected Disability**

Active **Eligible for Service Retirement = No**

9/24/19 Disability Application Packet Received and Reviewed
9/25/19 Disability Application Documents Scanned
9/25/19 Disability File Folder Created
9/25/19 Infolinx Setup
9/27/19 DMS Notified of Disability Application Filing
9/27/19 Employment Records Requested
Additional Remarks : Due 10/28/19; 2nd request sent to HR and TCHHSA, new due date is 11/26/19
11/13/19 County Department Records Received
Additional Remarks : HHS
11/13/19 Risk Management Records Received
12/4/19 HR & D Records Received

9/18/19 Shade, Lupe (Adriana Gonzales-Chang) **Sher-CS-Porterville/Safety Member
Orthopedic/Service Connected Disability**

Presumptive Indicator: N
Active **Eligible for Service Retirement = Yes**

9/18/19 Disability Application Packet Received and Reviewed
9/18/19 DMS Notified of Disability Application Filing
9/18/19 Disability Application Documents Scanned
9/19/19 Disability File Folder Created
9/19/19 Infolinx Setup
9/20/19 Benefit Estimate Sent to DMS
9/20/19 Employment Records Requested
Additional Remarks : due 10/21/19; 10/30/19 second request for TCHC records sent, new due date is 11/13/19
9/30/19 Risk Management Records Received

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

Additional Remarks : 9/30/19: Workers Comp recs rcvd, pending recs from Risk dept

10/30/19 County Department Records Received

Additional Remarks : Sheriff's Dept

10/30/19 HR & D Records Received

12/3/19 IME Appointment Scheduled

Additional Remarks : Ortho IME appt scheduled on 1/22/19 in Clovis, CA

12/5/19 IME Appointment Letter to Member Sent

6/17/19 White, Winsell (Adriana Gonzales-Chang)

Presumptive Indicator: Y

Retired

**Sher-Op-Extra Help Retirees/Safety Member
Cardiac/Service Connected Disability**

Eligible for Service Retirement = Yes

6/18/19 Disability Application Packet Received and Reviewed

6/18/19 Disability Application Documents Scanned

6/18/19 Disability File Folder Created

6/18/19 Infolinx Setup

6/19/19 DMS Notified of Disability Application Filing

6/19/19 Employment Records Requested

Additional Remarks : due 7/19/19; 7/22/19 Risk contacted work comp carrier to submit recs, pending; 8/2/19 work comp requested add'l auth from member, sent to carrier today.

7/10/19 HR & D Records Received

7/18/19 County Department Records Received

Additional Remarks : Sheriff Dept

8/13/19 Risk Management Records Received

Additional Remarks : 8/14/19 - Question on records from past WC claims, pending response from Risk; 8/19/19 Pending additional workers comp records; add'l workers comp recs received

10/11/19 IME Appointment Scheduled

Additional Remarks : 9/23/19 cardiac IME requested; no local dr's, cardiac IME requested through second provider on 9/26/19; 10/8/19 Tentative appt scheduled, pending member response; IME appt scheduled on 12/13/19 in Bakersfield

10/11/19 IME Appointment Letter to Member Sent

7/31/19 Hays, Mark (Jeanette Burks)

Active

**TC Association of Governments/General
Member Orthopedic/Service Connected
Disability**

Eligible for Service Retirement = Yes

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

3/9/15 Disability Interview/Application Packet Provided
8/1/19 Disability Application Documents Scanned
8/1/19 Disability Application Packet Received and Reviewed
8/1/19 Disability File Folder Created
8/1/19 Infolinx Setup
8/7/19 DMS Notified of Disability Application Filing
8/7/19 Employment Records Requested
8/8/19 Tulare County Health Centers Records Received
Additional Remarks : No records for this member.
8/8/19 Disability Findings Summary Prepared
8/21/19 County Department Records Received
11/12/19 Employment Records Reviewed
11/12/19 IME Appointment Letter to Member Sent
11/12/19 IME Appointment Scheduled
Additional Remarks : NDE Dr. Klassen in Fresno.

6/26/19 Sanders, Angela (Adriana Gonzales-Chang) **HHS-HS-Lindsay District Off/General Member
Multiple/Service Connected Disability**

Deferred Vested

Eligible for Service Retirement = No

6/27/19 Disability Application Documents Scanned
6/27/19 Disability File Folder Created
6/27/19 Infolinx Setup
6/28/19 DMS Notified of Disability Application Filing
6/28/19 Disability Application Packet Received and Reviewed
6/28/19 Employment Records Requested
Additional Remarks : due 7/29/19
8/8/19 County Department Records Received
Additional Remarks : HHSA
8/8/19 HR & D Records Received
8/8/19 IME Appointment Letter to Member Sent
8/8/19 IME Appointment Scheduled
Additional Remarks : 8/8/19 - IME appt requested; IME Appt scheduled on 9/18/19 at 10am in Clovis
12/4/19 IME Reports Received
12/5/19 IRC Meeting Scheduled
Additional Remarks : Added to 12/17/19 IRC agenda

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

05 - Accommodation Request/Pending Response

**2/14/19 McElhaney, Dennis (Adriana
Gonzales-Chang)**
Presumptive Indicator: N
Retired

Sher-CS-Visalia Muni/Safety Member
Orthopedic/Service Connected Disability

Eligible for Service Retirement = Yes

2/14/19 Disability Application Packet Received and Reviewed
Additional Remarks : 2/14/19 NSCDR app filed today, member will submit amended TPS asap for SCDR.
Amended last page of TPS received 3/5/19. Updated to SCDR application.

2/15/19 Disability Application Documents Scanned

2/15/19 Disability File Folder Created

2/15/19 Infolinx Setup

2/15/19 DMS Notified of Disability Application Filing

2/15/19 Employment Records Requested
Additional Remarks : due by 3/18/19; 5/17/19 all records received, pending medical record summarization

5/17/19 County Department Records Received
Additional Remarks : Sheriff Dept

5/17/19 HR & D Records Received

5/17/19 Risk Management Records Received

6/24/19 IME Appointment Scheduled
Additional Remarks : 6/10/19 Ortho IME requested; Appt scheduled on 7/23/19 in Visalia; 8/2/19 - IME appointment missed, cancellation fee due from applicant by 9/3/19 before we will reschedule; 8/12/19 - payment received in full, request for IME to be rescheduled submitted; IME rescheduled on 9/10/19 in Visalia; 9/10 appt cancelled because of doctor's personal emergency, IME rescheduled on 11/14/19 in Visalia

8/13/19 IME Appointment Letter to Member Sent

12/3/19 IME Reports Received
Additional Remarks : 12/5/19 Supplemental IME requested, due 1/6/19; 12/6/19 Supplemental IME Report received

12/27/19 Accommodation Memo Sent
Additional Remarks : due 1/17/20

06 - Additional Information Pending

5/3/19 Garcia, Robert (Jeanette Burks)
Presumptive Indicator: N
Retired

Sher-CS-Visalia Superior/Safety Member
Orthopedic/Service Connected Disability

Eligible for Service Retirement = Yes

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

11/13/19 Disability Application Packet Received and Reviewed
11/13/19 DMS Notified of Disability Application Filing
11/13/19 Disability Application Documents Scanned
11/13/19 Disability File Folder Created
11/13/19 Infolinx Setup
11/13/19 Employment Records Requested
11/13/19 County Department Records Received
Additional Remarks : Sheriff Dept
11/13/19 HR & D Records Received
11/13/19 Risk Management Records Received
11/13/19 IME Appointment Letter to Member Sent
11/13/19 IME Appointment Scheduled
Additional Remarks : Ortho IME appt scheduled on 8/27/19
11/13/19 IME Reports Received
11/13/19 Accommodation Response Received
11/13/19 IRC Meeting Scheduled
Additional Remarks : Case added to 11/21/19 agenda

08 - Board Agenda/Pending Decision

4/30/19 Brewster, William (Jeanette Burks) Presumptive Indicator: Y Active	Prob-Juvenile Detention/Safety Member Cardiac/Service Connected Disability Eligible for Service Retirement = Yes
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5/1/19 Disability Application Documents Scanned
5/1/19 Disability File Folder Created
5/1/19 Infolinx Setup
5/14/19 Disability Application Packet Received and Reviewed
5/15/19 DMS Notified of Disability Application Filing
5/15/19 Employment Records Requested
Additional Remarks : due 6/14/19; Reminder sent to TCHC, due 7/25/19; 7/12/19 All dept records received, pending medical records from appl
5/17/19 Benefit Estimate Sent to DMS
7/10/19 County Department Records Received
Additional Remarks : Probation Dept
7/10/19 HR & D Records Received
7/10/19 Risk Management Records Received
8/6/19 Employment Records Reviewed

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

8/8/19 IME Appointment Letter to Member Sent
8/8/19 IME Appointment Scheduled
10/25/19 IME Reports Received
Additional Remarks : Received 10/24/2019.
11/13/19 IRC Meeting Scheduled
Additional Remarks : Case added to 11/21/19 agenda
12/20/19 Added to Board Meeting Agenda
Additional Remarks : On Board Agenda for 1/8/2020.
12/20/19 Board Meeting Notification Letter Sent

10/20/17 Holt, Cheryl (Jeanette Burks)

HHS-HS-PDO/General Member Multiple/Non-Service Connected Disability

Retired

Eligible for Service Retirement = Yes

7/6/17 Disability Interview/Application Packet Provided
10/23/17 Disability Application Packet Received and Reviewed
Additional Remarks : Mbr. filed app for NSCDR 10/20/17 - JB
1/4/18 County Department Records Received
Additional Remarks : Received 12/18/17
1/4/18 DMS Notified of Disability Application Filing
1/4/18 Disability Application Documents Scanned
1/4/18 Disability File Folder Created
1/4/18 Disability Findings Summary Prepared
1/4/18 Employment Records Requested
Additional Remarks : Sent member 2nd Request for Medical Records 5/21/18; 2/6/19 notice re pending med recs sent to member, due by 3/8/19
1/4/18 HR & D Records Received
Additional Remarks : Received 11/30/17
1/4/18 Infolinx Setup
1/4/18 Tulare County Health Centers Records Received
Additional Remarks : No records
1/23/18 Risk Management Records Received
Additional Remarks : Sent 2nd Request 1/18/18. 1/23/18 No records.
1/24/18 Employment Records Reviewed
12/30/19 Added to Board Meeting Agenda
Additional Remarks : On Board Agenda 01/06/2020.
12/30/19 Board Meeting Notification Letter Sent
12/30/19 Disability Packet Sent to Board Members

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

**5/14/18 Firestone, Susan (Jeanette Burks) HHS-HLTH-Pville Public Health/General Member
Orthopedic/Service Connected Disability**

Retired Eligible for Service Retirement = Yes

5/17/18 Disability Application Documents Scanned
5/17/18 Disability Application Packet Received and Reviewed
Additional Remarks : Member filed SCDR application on 5/14/18.
5/17/18 Disability File Folder Created
5/17/18 Infolinx Setup
5/21/18 DMS Notified of Disability Application Filing
5/21/18 Disability Findings Summary Prepared
5/21/18 Employment Records Requested
6/1/18 Tulare County Health Centers Records Received
Additional Remarks : No records available for this member.
7/12/18 County Department Records Received
Additional Remarks : HHSA
7/12/18 HR & D Records Received
7/12/18 Risk Management Records Received
10/31/18 IME Appointment Scheduled
Additional Remarks : 12/5/18 (NDE)
12/14/18 IME Appointment Letter to Member Sent
2/11/19 IME Reports Received
2/15/19 IRC Meeting Scheduled
Additional Remarks : added to 2/27/19 IRC agenda; Add'l evidence received, case added to
11/21/19 IRC agenda
12/20/19 Accommodation Response Received
12/20/19 Accommodation Response Reviewed
12/20/19 Added to Board Meeting Agenda
Additional Remarks : On Board Agenda for 01/08/2020.
12/20/19 Board Meeting Notification Letter Sent
12/20/19 Employment Records Reviewed

**4/12/18 Valenzuela, Elizabeth (Adriana Gonzales-Chang) HHS-HS-MCal Proc Center/General Member
Orthopedic/Service Connected Disability**

Deferred Non-Vested Eligible for Service Retirement = No

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

9/7/17 Disability Interview/Application Packet Provided
4/12/18 Disability Application Packet Received and Reviewed
4/12/18 Disability Application Documents Scanned
4/12/18 Disability File Folder Created
4/12/18 Infolinx Setup
4/12/18 DMS Notified of Disability Application Filing
4/12/18 Employment Records Requested
Additional Remarks : 5/15/18 sent second request to Risk and HR
5/14/18 County Department Records Received
Additional Remarks : HHS
5/23/18 HR & D Records Received
5/24/18 Risk Management Records Received
5/24/18 Medical Records Sent for Review
6/22/18 IME Appointment Scheduled
Additional Remarks : IME scheduled 8/15/18 at 3:45 pm in Fresno
9/14/18 IME Reports Received
9/19/18 Accommodation Memo Sent
10/17/18 Accommodation Response Received
10/17/18 IRC Meeting Scheduled
Additional Remarks : added to 10/24/18 IRC agenda; 11/14/18 submitted req for Supplemental IME Report; 1/8/19 another response on accommodations requested, due by 1/29/19
3/18/19 Added to Board Meeting Agenda
Additional Remarks : On 3/27/19 Board agenda; SCDR denied
3/18/19 Board Meeting Notification Letter Sent
3/18/19 Disability Packet Sent to Board Members
4/26/19 County Counsel Client Request Form Sent
Additional Remarks : Notice of party assignments sent on 5/7/19
4/26/19 Hearing Request Form Received
Additional Remarks : Formal Hearing
5/29/19 Exhibits Prepared and Sent
Additional Remarks : 5/29/19 addl recs need to be designated by 6/28/19, Notice sent to all parties re hearing rescheduled to 11/7/19; No augmented exhibits designated, notice sent to all parties 7/3/19; HEARING CANCELED. CASE REFERRED BACK TO BOR FOR REVIEW; Added to 11/21/19 IRC agenda; Case added to 1/8/20 Board agenda, notice sent to all parties

09 - Referred to Hearing/Pending HO Recommendation

11/15/18 Iftimie, Mara (Jeanette Burks)

HHS-HLTH-Visalia Hlth Ctr/General Member
Orthopedic/Service Connected Disability

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

Active

Eligible for Service Retirement = No

12/3/18 Disability Application Documents Scanned
12/3/18 Disability Application Packet Received and Reviewed
Additional Remarks : Filed application for SCDR 11/15/18
12/3/18 Disability File Folder Created
12/3/18 Disability Findings Summary Prepared
12/3/18 Employment Records Requested
Additional Remarks : due 1/2/19; Only pending Risk records, to be submitted asap (per Risk 2/12/19)
12/3/18 Infolinx Setup
12/3/18 DMS Notified of Disability Application Filing
2/12/19 County Department Records Received
Additional Remarks : HHSA Dept
2/12/19 HR & D Records Received
2/12/19 Tulare County Health Centers Records Received
4/9/19 IME Appointment Letter to Member Sent
Additional Remarks : Scheduled through NDE on 4/18/19.
4/9/19 IME Appointment Scheduled
5/14/19 IME Reports Received
5/14/19 IRC Meeting Scheduled
Additional Remarks : Added to 5/22/19 IRC agenda
8/30/19 Accommodation Response Received
8/30/19 Accommodation Response Reviewed
8/30/19 Added to Board Meeting Agenda
8/30/19 Board Meeting Notification Letter Sent
Additional Remarks : On 9/25/19 Board Agenda.
8/30/19 Employment Records Reviewed
8/30/19 Risk Management Records Received
10/16/19 County Counsel Client Request Form Sent
10/16/19 Hearing Request Form Received

8/30/18 Zuniga, Lisa (Adriana Gonzales-Chang)

**HHS-HS-Visalia District Off/General Member
Psychiatric/Psychological/Service Connected
Disability**

Retired

Eligible for Service Retirement = Yes

8/30/18 Disability Application Packet Received and Reviewed

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

8/31/18 Disability Application Documents Scanned
8/31/18 Disability File Folder Created
8/31/18 Infolinx Setup
8/31/18 DMS Notified of Disability Application Filing
8/31/18 Employment Records Requested
Additional Remarks : Due 10/1/18; 11/16/2018 Sent second request for records to HR (due 11/30/18), also pending records from one more doctor (to arrive in December)
10/17/18 Risk Management Records Received
10/17/18 County Department Records Received
12/19/18 Medical Records Sent for Review
Additional Remarks : Summarization requested 12/19/18
1/14/19 HR & D Records Received
Additional Remarks : 2nd request sent 11/16/2018
1/15/19 IME Appointment Scheduled
Additional Remarks : Psych IME Appt scheduled on 2/28/19
1/17/19 IME Appointment Letter to Member Sent
4/2/19 IME Reports Received
Additional Remarks : Received 3/29/19.
5/17/19 IRC Meeting Scheduled
Additional Remarks : Added to 4/24/19 IRC Agenda; 5/17/19 supplemental IME report requested; Added to 6/26/19 IRC agenda
6/28/19 Added to Board Meeting Agenda
Additional Remarks : On 7/10/19 BOR agenda
7/2/19 Board Meeting Notification Letter Sent
7/10/19 Board Decision Letter Sent to Applicant
Additional Remarks : 7/10/19 Board denied SCDR, hearing request due by 7/22/19
7/22/19 Hearing Request Form Received
Additional Remarks : Formal Hearing requested by applicant
7/22/19 County Counsel Client Request Form Sent
Additional Remarks : 7/23/19 Formal hearing acknowledgement and notice of party assignments delivered to all parties.
8/7/19 Exhibits Prepared and Sent
Additional Remarks : Deadline for designation of additional records is 9/6/19; 8/9/19 Notice of Hearing sent to all parties (scheduled 1/30/20); 8/29/19 - County Counsel designated records, records must be submitted by 11/5/19; 9/30/19 Hearing officer approved extension for member to designate recs (recs designation by 10/7/19, recs still need to be submitted by 11/5/19); 10/7/19 appl designated records
11/8/19 Augmented Exhibits Prepared and Sent, if applicable
Additional Remarks : 1st set of augmented records delivered 11/8/19, still pending add'l designated recs. 2nd set of augmented records will be prepared and delivered upon receipt.

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

1/4/18 Davis, Rhonda (Jeanette Burks)

**HHS-HS-PDO/General Member Psychiatric/
Psychological/Service Connected Disability**

Retired

Eligible for Service Retirement = Yes

1/5/18 Disability Application Documents Scanned
1/5/18 Disability Application Packet Received and Reviewed
1/5/18 Disability File Folder Created
1/5/18 Disability Interview/Application Packet Provided
1/5/18 Infolinx Setup
1/5/18 Member Sent Authorization and Questionnaire
1/18/18 DMS Notified of Disability Application Filing
1/18/18 Disability Findings Summary Prepared
1/18/18 Employment Records Requested
1/18/18 County Department Records Received
Additional Remarks : HHS
1/18/18 HR & D Records Received
1/18/18 Risk Management Records Received
7/24/18 IME Appointment Letter to Member Sent
7/24/18 IME Appointment Scheduled
8/15/18 IME Reports Received
10/17/18 IRC Meeting Scheduled
Additional Remarks : Added to 10/24/18 IRC Agenda; Added to 1/9/19 IRC agenda
3/18/19 Added to Board Meeting Agenda
Additional Remarks : On Board Agenda for 3/27/19.
3/18/19 Board Meeting Notification Letter Sent
3/18/19 Disability Packet Sent to Board Members
3/28/19 Board Decision Letter Sent to Applicant
Additional Remarks : Board denied SCDR on 3/27/19.
4/26/19 County Counsel Client Request Form Sent
Additional Remarks : 5/24/19 - All parties assigned, notice sent to parties. Initial exhibits due by 7/8/19; 6/13/19 new parties assigned, new notice sent to parties; Hearing scheduled on 12/18/19. Notice sent to all parties.
4/26/19 Hearing Request Form Received
Additional Remarks : Formal Hearing Request received 4/2/19.
9/20/19 Exhibits Prepared and Sent
Additional Remarks : delivered to hearing officer and County Counsel on 6/17/19, delivered to applicant's attorney on 6/19/19. Add'l recs to be designated by 7/19/19; 7/18/19 - County Counsel designated records, deadline to submit records is 9/17/19
9/20/19 Augmented Exhibits Prepared and Sent, if applicable
Additional Remarks : 9/20/19 - Augmented Exhibits delivered to all parties. Still pending designated records to be submitted to our office (were timely requested, Retirement Administrator

DISABILITY STATUS REPORT
Status as of December 30, 2019
(24 Active Disability Applications)

approves including them as Augmented Exhibits upon receipt. All parties notified).

12 - Board Agenda/Request to Withdraw Application

3/30/18 Fries, Todd (Adriana Gonzales-Chang) Presumptive Indicator: Y Beneficiary	Sher-Dt-Transport/Safety Member Disease/Service Connected Disability Eligible for Service Retirement = Yes
--	---

4/2/18 Disability Application Packet Received and Reviewed

Additional Remarks : Member passed away on 8/16/16. Spouse (continuance) applied for SCDR on 3/30/18 (submitted app docs through mail). Attorney assigned to case.

4/4/18 DMS Notified of Disability Application Filing

4/4/18 Disability Application Documents Scanned

4/4/18 Disability File Folder Created

4/4/18 Infolinx Setup

4/6/18 Employment Records Requested

Additional Remarks : Pending medical records; Sent reminder to appl & atty

4/17/18 Risk Management Records Received

7/3/18 County Department Records Received

Additional Remarks : Sheriff's Dept

7/3/18 HR & D Records Received

1/15/19 Tulare County Health Centers Records Received

Additional Remarks : none on file; records from members private primary physician to arrive by February 2019; all medical records received

5/17/19 IRC Meeting Scheduled

Additional Remarks : Added to 6/3/19 IRC agenda; 6/28/19 requested add'l info from Sheriff Dept; Added to 8/28/19 IRC agenda; 8/28/19 - Record review by IME to be requested

10/24/19 Added to Board Meeting Agenda

Additional Remarks : On 11/6/19 Board agenda

10/30/19 Board Meeting Notification Letter Sent

11/8/19 Board Decision Letter Sent to Applicant

Additional Remarks : Board denied SCD on 11/6/19; Hearing request due 11/18/19

11/13/19 Hearing Request Form Received

Additional Remarks : Formal Hearing

11/14/19 County Counsel Client Request Form Sent

Additional Remarks : 11/14/19 - Hearing officer assigned, pending county counsel assignment; 11/27/19 - Notice of withdraw received from applicant's attorney; Case added to 1/8/20 Board agenda

OFFICE MEMORANDUM * TULARE COUNTY * COUNTY COUNSEL

(559) 636-4950
Fax # (559) 737-4319

To: Leanne Malison, Administrator
Retirement Board

Date: December 30, 2019

From: Barbara Booth Grunwald 
Deputy County Counsel

Subject: Cases Pending in Court and Pending Appeal to Court
RETBD-20191

DISABILITY CASES

DISABILITY CASES PENDING APPEAL TO COURT

Attorneys: Barbara Booth Grunwald or Marit Erickson
Paralegal: Michelle Marquez

Appeal Period Running

None

Appeal Period Expired

Adam Davison

9/25/2019	Board adopted Hearing Officer's recommendation to deny application for NSCDR
9/26/2019	Notice of decision mailed to member.
12/26/19	Deadline to file appeal in court expired. No appeal filed. FINAL.

DISABILITY CASES PENDING IN COURT

None.

NON-DISABILITY CASES

None.



COUNTY OF TULARE
BOARD OF RETIREMENT

Leanne Malison
Retirement Administrator

136 N. AKERS STREET
VISALIA, CA 93291

TELEPHONE (559) 713-2900
FAX (559) 730-2631
WEBSITE: www.tcera.org

MINUTES OF THE BOARD OF RETIREMENT
REGULAR RETIREMENT BOARD MEETING
Wednesday, December 11, 2019 @ 8:30 a.m.
TCERA Board Room, 136 N. Akers Street, Visalia, CA 93291

I. CALL TO ORDER

Called to Order by Roland Hill, Chair.

II. ROLL CALL

Members Present: Cook, Hill, Mauro, Ross, Reed, Young, Watson, Crawford, Vander Poel
Alternates Present: Taylor, Sampietro
Alternates Absent: Vasquez
Others Present: Leanne Malison, Retirement Administrator; Mary Warner, Assistant Administrator; Barbara Grunwald, Marit Erickson and Jennifer Shiffert, Deputy County Counsel; Rosalva Flores, Brown Armstrong Accountancy; Scott Whalen, Verus Investments; and Paul Guerrero, CAO-Administrative Analyst
Clerk: Rebecca Pendleton

Let the record show that Ms. Crawford arrived at 8:53 a.m.

1. As a courtesy to those in attendance, all individuals are requested to place cell phones and other electronic devices in the non-audible alert mode.
2. Pledge of Allegiance and Moment of Silence

III. PUBLIC COMMENT

1. At this time, members of the public may comment on any item not appearing on the agenda. Under state law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Board consideration. Any person addressing the Board will be limited to a maximum of five (5) minutes so that all interested parties have an opportunity to speak. Please state your name for the record.

None.

IV. X-AGENDA ITEMS

None.

V. LEGAL REPORT

1. Accepted as filed: County Counsel Case Status Report.

VI. CONSENT CALENDAR

1. Approve Minutes of the following Meetings:
 - a. Retirement Board Minutes of November 20, 2019.
2. Approve payments to:
 - a. Brown Armstrong – invoice for work in progress on the audit of June 30, 2019, in the amount of \$10,157.91.

2. Update by Jim Young regarding the Investment Committee meeting of November 18, 2019. Discussion and possible action regarding the following items:
 - a. Asset Allocation Status

The Committee reviewed the Asset Allocation Status report.

- b. 2019/2020 Investment Committee Goals and Objectives Timeline and 2019/2020 Education Calendar

The Committee reviewed the timeline. It has been updated to include the first quarter of 2020, which will include the due diligence on site visits for the real estate debt allocation. A draft 2020 Education Calendar has also been included. The calendar will be finalized when decisions are made regarding the domestic equity active/passive allocation.

- c. Investment Manager Fee Report

This report is provided annually to give fee detail not available in the monthly financial reports. A new column has been added this year at the request of the Committee. Information regarding the fees as a percent of assets as of fiscal year end is provided. This calculation may not provide a completely accurate picture because it does not account for partial year activity nor does it account for cash flows occurring during the year. In spite of the shortcomings of the information, the Committee requested that the information remain on the report to provide a broad picture of TCERA's investment management fees.

- d. AB2833 Annual Report

This report is provided to meet the legal requirement under AB2833. The Committee reviewed the report and noted that fee information was already provided in the Investment Manager Fee Report discussed earlier.

- e. Active/Passive Equity Management Analysis – Domestic Equity Portfolio

Scott Whalen reviewed the Verus presentation materials regarding the analysis of TCERA's active and passive management allocation in its domestic equity portfolio. Mr. Whalen noted that active managers tend to have a better track record during downturns in the market, exhibiting more difficulty with outperformance during strong equity markets. He also noted that small and mid-cap equity portfolios may provide greater opportunities for active management than large cap portfolios. He then reviewed TCERA's managers in detail. At the conclusion of his review, Mr. Whalen recommended that the Board of Retirement consider transitioning to 100% passive management for its domestic large cap equity portfolio. He also recommended that TCERA retain active management in the small and mid-cap domestic equity portfolio, but consider conducting a search for a replacement for LMCG, TCERA's small cap value domestic equity manager, due to underperformance. Ms. Malison reminded the Board that the Investment Policy outlines a process for manager termination, including inviting managers to make a presentation to the Board of Retirement prior to a final decision. The policy provides for exceptions to that process and any action that represents a policy exception should be so noted. Discussion was held regarding an incremental change of individual managers.

MOTION to recommend TCERA transition the domestic large cap equity portfolio to 100% passive management, terminating QMA, Boston Partners, and Ivy, and initiate a small cap value domestic equity search to select a replacement for LMCG.

Young/ Failed due to lack of Second

MOTION to consider termination of QMA inviting them to make a presentation for the Board's discussion and possible action at a later date. Conduct an annual review of the active/passive mix in TCERA's portfolio for the Board's consideration.

Reed/Watson	Approved	
Ayes:		Cook, Mauro, Ross, Reed, Young, Watson, Vander Poel
Noes:		Hill, Crawford

MOTION to consider termination of LMCG inviting them to make a presentation for the Board's discussion and possible action at a later date.

Young/Mauro Approved
Ayes: Cook, Mauro, Ross, Reed, Young, Watson, Vander Poel
Noes: Hill, Crawford

It was noted that LMCG was scheduled to make presentations to the Board on February 5, 2020. Staff was directed to move LMCG's presentation to Feb 26, 2020 and invite QMA to make a presentation on that day also. This will allow Mr. Whalen to participate in the discussion at that meeting.

- f. Investment Managers
 - 1) Verus Flash Report -- All Managers

Mr. Reed asked that the Investment Committee monitor the performance of Franklin Templeton.

The Committee reviewed the report.

- 2) Managers of Interest
 - a) Boston Partners -- Organizational Change Notification

The change will have a slightly positive impact, allowing more focus on portfolio management -- no action required.

IX. INVESTMENTS

- 1. Presentation from Verus regarding TCERA's Third Quarter 2019 Investment Performance Report. Discussion and possible action.

The presentation was made by Scott Whalen on Verus Investment's behalf.

- 2. Discussion and possible action regarding TCERA's strategic investment allocation and investment managers, including performance, contracts, and fees.

No discussion was held.

X. EDUCATION ITEMS

- 1. Discussion and possible action regarding Summary Education Reports as filed: Leanne Malison, Roland Hill, Jim Young, Mike Watson, John Mauro, Barbara Grunwald, and Marit Erickson, SACRS Fall Conference, November 12-15, 2019, Monterey, CA.

MOTION to approve the Summary Education Reports as filed.

Vander Poel/Ross Approved Unanimously

- 2. Discussion and possible action regarding all listed educational events.

No action taken.

XI. UPCOMING MEETINGS

- 1. 12/18/2019 Investment Committee meeting @ 3:30 p.m.
- 2. 12/19/2019 Administrative Committee meeting @ 2:00 p.m.
- 3. 01/08/2020 Retirement Board meeting @ 8:30 a.m.

The December 18, 2019 Investment Committee meeting is cancelled.

XII. TRUSTEE / STAFF COMMENTS

1. Under state law, matters presented under this item cannot be discussed or acted upon by the Board at this time.

Ms. Crawford invited the Board to attend the December 19, 2019 Retiree Luncheon at noon.

Mr. Hill presented Ms. Crawford, Ms. Taylor and Mr. Mauro with plaques of appreciation for their service on the Board of Retirement.

Ms. Malison introduced Melody Manning as TCERA's newest staff member. She is the Administrative Service Officer.

Ms. Malison mentioned that Jim Young is available for the due diligence visits the week of January 13, 2020 if anyone else is available.

XIII. COMMUNICATIONS

1. For Your Information:

- a. PowerPoint presentation by Barbara Grunwald dated October 25, 2019 regarding Splitting a Public Pension in a Divorce: Different Approaches by Different Plans.
- b. Presentation by Barbara Grunwald dated October 25, 2019 regarding Splitting a Public Pension in a Divorce: Different Approaches by Different Plans.

XIV. ADJOURNED: 10:36 a.m.

Roland Hill, Chair



BNY MELLON

240 Greenwich Street
New York, NY 10286

TULARE COUNTY EMPLOYEES RETIREMENT ASSOC
136 N. AKERS ST
VISALIA, CA 93291
UNITED STATES

Invoice Number: 111-2019-0042061
Date: December 11, 2019
Billing Period: July 1, 2019 to September 30, 2019
Invoice Group: TULF000000A

Invoice Summary
Remittance Instruction

Total Balance Due: 88,858.58 USD *(Balance does not reflect payments processed after 10-Dec-19)*

Please Remit 88,858.58 USD

Mail Payments To:
BNY Mellon
PO Box 392006
Pittsburgh, PA 15251-9006

Wire Payments To:
BNY Mellon
IRVTUS3N
ABA Transit Number: 021000018
Account Number: 8900653469
Attn: Advantage Receivables
Ref: Invoice #
**** Please note the updated remittance instructions above.****

For either option, please indicate your Invoice Group or Invoice Number and period(s) to which you are making payment.

APPROVED FOR PAYMENT

Please include below portion with your check payment.

Cut Here: -----

Invoice Number: 111-2019-0042061
Date: December 11, 2019
Billing Period: July 1, 2019 to September 30, 2019
Invoice Group: TULF000000A

Balance Due: 88,858.58 USD

Payment Enclosed: _____ Date: _____



Auditor-Controller/ Treasurer-Tax Collector

Cass Cook, CFIP County of Tulare

221 South Mooney Blvd., Room 101-E Visalia, CA 93291

TARA FREITAS, CPA
Assistant Auditor-Controller
(559) 636-5200
FAX (559) 730-2547

CASS COOK, CFIP
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PAUL SAMPIETRO, CPA
Chief Deputy Treasurer-Tax Collector
(559) 636-5250
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TCERA Pensionable Approval

New Earnings Code: 18A

Description (Name): 18A – FLSA Non Payable

Bargaining Unit(s) impacted: 23

Pay Group: LNG

Effective Date of Action: PP 25/2019, Pay date 12/17/2019

Request: Determine if new earnings codes 18A is pensionable

Comments: Employees in BU 23 are on a 24-day work period, which has an overtime threshold of 182 hours. These employees are regularly scheduled to work 192 hours during the 24-day work period and thus, are scheduled to work 10 hours of overtime. Half of the base rate portion of the overtime rate for these 10 scheduled overtime hours is already being captured using pay code 182 Fire FLSA pay, which is currently pensionable. However, if the employee actually works less than 192 hours in the 24-day work period, they will not receive the full 10 hours of pay code 182 Fire FLSA pay. Although they may not have earned the full 10 hours, these 10 hours are still pensionable since they are regularly scheduled. Therefore, this new pay code will be used to make up for any instances in which the employee receives anything less than 10 hours of pay code 182 Fire FLSA pay. For example, if the employee only actually works 190 hours in the 24-day work period and thus, receives 8 hours of pay code 182 Fire FLSA pay, this new pay code would be used to capture the remaining 2 hours at half of the employee's base rate. It will be a non-payable pay code and is solely needed so that the full 10 hours at half of the employee's base rate is captured as pensionable earnings.

Authorized Signature: _____

TCERA Approval for pay code to be pensionable: Yes ____ No ____

TCERA Authorized Signature: _____

Date approved by TCERA Board: _____



**Auditor-Controller/
Treasurer-Tax Collector**

**Cass Cook, CFIP
County of Tulare**

221 South Mooney Blvd., Room 101-E Visalia, CA 93291

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Chief Deputy Treasurer-Tax Collector
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TCERA Pensionable Approval

New Earnings Code: 18B

Description (Name): 18B – FLSA Additional Pays

Bargaining Unit(s) impacted: 23

Pay Group: LNG

Effective Date of Action: PP 25/2019, Pay date 12/17/2019

Request: Determine if new earnings codes 18B is pensionable

Comments: Employees in BU 23 are on a 24-day work period, which has an overtime threshold of 182 hours. These employees are regularly scheduled to work 192 hours during the 24-day work period and thus, are scheduled to work 10 hours of overtime. Half of the base rate portion of the overtime rate for these 10 scheduled overtime hours is already being captured using pay code 182 Fire FLSA pay, which is currently pensionable. However, half of the eligible additional pays portion of the overtime rate for these 10 scheduled overtime hours is currently not being captured as pensionable. Therefore, this new pay code is needed so that the additional pays portion of the overtime rate is captured as pensionable earnings.

Authorized Signature: *Miall Samy*

TCERA Approval for pay code to be pensionable: Yes ___ No ___

TCERA Authorized Signature: _____

Date approved by TCERA Board: _____



COUNTY OF TULARE
BOARD OF RETIREMENT

Leanne Malison
Retirement Administrator

136 N. AKERS STREET
VISALIA, CA 93291

TELEPHONE (559) 713-2900
FAX (559) 730-2631
WEBSITE: www.tcera.org

MEMORANDUM

DATE: January 8, 2020
TO: Board of Retirement
FROM: Leanne Malison
SUBJECT: Memorandum of Understanding between Tulare County Superior Court and Tulare County Employees' Retirement Association

History:

During the review of documentation for the Internal Revenue Service Determination Letter regarding TCERA's tax qualification status it was discovered that a formal Memorandum of Understanding (MOU) was never prepared and executed at the time the Tulare County Superior Court (the Court) separated from the county and became an independent employer under the Trial Court Employment Protections and Governance Act effective January 1, 2001. While the Court has been participating in the plan by operation of law rather than by formal agreement, the Court is not a legislative body and the statutes applicable to the governing body of a participating district need to be adapted for use by the Court. The Court agrees that entering into an MOU is advisable. TCERA staff has worked with legal counsel from both entities to prepare an acceptable MOU for the Board's consideration.

Requested Action:

Staff requests that the Board of Retirement adopt the MOU as presented to memorialize the understanding between TCERA and the Court.

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
TULARE COUNTY SUPERIOR COURT
AND
TULARE COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

This Memorandum of Understanding is entered into by and between the Tulare County Superior Court (hereafter "Court") and the Tulare County Employees' Retirement Association (hereafter "TCERA"). Although the parties are signing this MOU on the dates reflected in their signatures below, the parties understand that the effective date of their new relationship was actually January 1, 2001, when the responsibility for Court employees was transferred from the County of Tulare (hereafter "the County") to the Court as a separate employer.

Recitals

WHEREAS, TCERA is qualified as a tax-exempt retirement plan pursuant to the requirements of the Internal Revenue Code, and wishes to continue that status by ensuring that all appropriate documentation is available for purposes of a tax determination letter from the Internal Revenue Service, and

WHEREAS, in developing its "plan documents" for this purpose, TCERA needs appropriate documents regarding each participating employer's choice to participate in the plan, and

WHEREAS, the Court began participating in the plan by operation of law rather than by formal agreement, when the courts separated from the counties and became independent employers under the Trial Court Employment Protection and Governance Act (Gov. Code, § 71600 et seq.) effective January 1, 2001, and therefore the parties did not prepare participation documents at that time; and

WHEREAS, the Court is not a legislative body, and thus the statutes applicable to the governing body of a participating district need to be adapted for use by the Court.

NOW, THEREFORE, the parties wish to memorialize their understanding in a written document.

1
2 **1. Participation in TCERA pursuant to Gov. Code, § 71624**

3 a. A Court employee who was a member of TCERA on the effective date of transfer from
4 County to Court employment shall continue to be a member of TCERA and shall continue to be
5 eligible to receive the same level of benefits that the member was eligible to receive prior to the
6 transfer.

7 b. On and after January 1, 2001, new Court employees have been, and shall continue to
8 be, eligible to participate as members of TCERA on the same terms and conditions as new County
9 employees.
10

11 c. If a Court employee participates as a member of TCERA, his or her participation shall
12 be subject to the same statutes, rules, regulations, policies, and terms of TCERA as any other member
13 of the system.

14 d. Court employees shall receive the same TCERA benefits as County employees, but
15 shall not be entitled to meet and confer with the County as to those benefits.
16

17 e. If an appropriate mechanism is provided by statute, nothing in this MOU precludes the
18 Court from offering a different defined-benefit retirement plan for Court employees that is separate
19 from TCERA, subject to the terms of a memorandum of understanding or agreement for represented
20 employees, or the terms of Court policies, procedures, or plans, for unrepresented employees.
21

22 **2. Court to Be Treated Like District**

23 The County Employees Retirement Law of 1937 (Gov. Code, § 31450 et seq., hereafter "1937
24 Act") defines the term "district" for purposes of participation in a 1937 Act plan. (Gov. Code,
25 § 31468.) While acknowledging that a trial court is not included in this definition, this MOU uses the
26 provisions applicable to districts as participating employers in TCERA to describe actions which the
27 Court may take as a participating employer in TCERA.
28

1 **3. Employer Contributions to TCERA**

2 a. As required by Government Code section 71624, the Court shall pay TCERA at the
3 same rate of contribution for Court employees as is required of the County for County employees for
4 the same benefit level.

5 b. Pursuant to Government Code section 31582, in any fiscal year the Court may authorize
6 an advance payment of all or part of the Court's estimated annual contribution to the retirement fund,
7 provided that the payment is made no later than 30 days after the commencement of the Court's fiscal
8 year. If the advance is only a partial payment of the Court's estimated annual contribution, payments
9 to the retirement fund shall be made at the end of each month or at the end of each pay period until the
10 total amount required for the year is contributed. This amount shall be adjusted at the end of the fiscal
11 year to reflect the actual contribution required for that year.

12 **4. "Governing Body" of Court and Public Meeting Requirements**

13 a. Where the 1937 Act requires the "governing body" of a district to take an action, the
14 Court shall take action through the Presiding Judge or Judges' Executive Committee.

15 b. Where the 1937 Act or any other law contains a provision which requires some
16 procedure prior to action which would only occur at a public meeting of a legislative body, such as a
17 public hearing, the Board of Retirement of TCERA shall provide an appropriate opportunity for public
18 participation at a Retirement Board meeting.

19 **5. Optional Provisions Adopted By Board of Supervisors for All Participating**
20 **Employers**

21 The 1937 Act authorizes the county board of supervisors to adopt certain optional provisions
22 of the 1937 Act, which thereafter apply to all participating employers. The Court is bound to these
23 provisions in the same manner as any other participating employer in TCERA.

24 These provisions include, for example, the opportunity to "unretire," as provided in
25 Government Code section 31680.4 et seq., and the potential opportunity for retirees in Tiers 1-3 to
26 receive non-vested benefits paid from a Supplemental Retiree Benefit Reserve under Article 5.5
27

1 (commencing with Gov. Code, § 31610) of the 1937 Act. (The actual benefits, if any, under the SRBR
2 are determined solely by the Retirement Board, but the election to have such a program was made by
3 the Board of Supervisors. Tier 4 members do not have this benefit.)

4 **6. Optional Provisions of 1937 Act Adopted for County Employees**

5 The 1937 Act authorizes individual participating employers to adopt certain provisions which
6 do not apply to other employers, unless the individual employer also adopts the provision. One of
7 these provisions currently applies to the Court, and a second has in the past been used by the Court:
8

9 **a. Additional service credit for unused sick leave after retirement**

10 Under the 1937 Act, an individual employer may adopt an ordinance (county) or resolution
11 (district) providing that members specified in the ordinance or resolution “shall be credited ... for up
12 to 100 percent of sick leave accumulated as of the date of their retirement [as additional] service
13 credit.” (Gov. Code, § 31641.03.)
14

15 This provision was adopted by the County for County employees prior to January 1, 2001
16 (former Tulare Co. Ord. Code, § 1-09-1020), and the Court has carried over this provision. The Court
17 shall keep TCERA informed of the then-current credit, if any, to be provided to new retirees.

18 **b. “Golden handshake” (if offered)**

19 Under the 1937 Act, an employer may determine that specified categories of employees will
20 receive up to two years of additional retirement credit, if they retire within a certain window period.
21 This type of “golden handshake” program may be adopted and readopted as desired over the years.
22 The Court may offer this program at any time, and shall consult with TCERA regarding planning and
23 implementation to ensure that the program complies with the 1937 Act.
24
25
26
27
28

1 **7. Audit**

2 a. TCERA must allow the Court or its designees to review and audit TCERA's (and any
3 subcontractors') documents and records relating to this MOU, and TCERA (and its subcontractors)
4 will retain such documents and records for a period of four (4) years following the last contribution
5 the Court makes under this MOU. If an audit determines that TCERA (or any subcontractor) is not in
6 compliance with this MOU, TCERA will correct errors and deficiencies by the twentieth (20th) day
7 of the month following the review or audit. If an audit determines that TCERA has overcharged the
8 Court five percent (5%) or more during the time period subject to audit, Contractor must reimburse
9 the Court in an amount equal to the cost of such audit. This MOU is subject to examinations and audit
10 by the State Auditor for a period three (3) years following the last contribution the Court makes under
11 this MOU.

12 b. TCERA may audit the Court to determine the correctness of retirement benefits,
13 reportable compensation, and other relevant matters. The Court shall make available appropriate
14 records as reasonably deemed necessary by TCERA in relation to TCERA's audit to determine the
15 correctness of retirement benefits, reportable compensation, and other relevant matters. TCERA will
16 secure and protect any records the Court provides TCERA relating to its audit from any third party,
17 and agrees to treat as confidential those records provided to TCERA by the Court. Should TCERA
18 receive a Public Records Act (hereafter "PRA") request (see Gov. Code, § 6520 et seq.) for such
19 records, TCERA will promptly notify the Court of the request and assert all possible exemptions to
20 disclosure under the PRA.

21 **8. Governing Law**

22 This contract is governed by and will be interpreted in accordance with the laws of the State
23 of California.

24 **9. Miscellaneous**

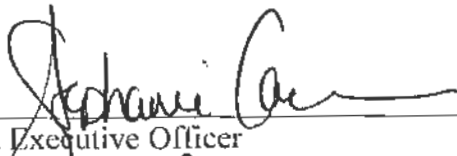
25 The parties waive the per capita risk allocation set forth in Government Code section 895.6.
26 Instead, they agree if one of them is held liable upon any judgment for damages caused by a negligent
27 or wrongful act or omission occurring in the performance of this Agreement, the parties' respective
28

1 pro-rata shares in satisfaction of the judgment will be determined by applying principles of
2 comparative fault.

3 THE PARTIES, having read and considered the above provisions, indicate their agreement by
4 their authorized signatures below.

5
6 **TULARE COUNTY SUPERIOR COURT**

7
8 Date: November 25, 2019

9 By: 
10 Court Executive Officer

11 Stephanie Cameron
12 Print Name

13 **TULARE COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

14 Date: _____

15 By _____
16 Chairman, Board of Retirement

17 _____
18 Print Name

19 Approved by the Retirement Board on: _____
20 Date

21 Approved as to Form
22 County Counsel

23 By: _____
24 Deputy

25 Matter No. _____

26 BBG/11/22/2019/20111495/1403533.docx

EDUCATIONAL EVENTS

Board of Retirement

2020


1. Institutional Investor, **9th Annual Risk & Liquidity Forum**, January 28-29, 2020. Ritz-Carlton, San Francisco, CA. Topics: The intersection of leverage and liquidity, How would private credit behave in a crisis? Is there really a lack of liquidity lurking in the bond market? And investors' options for a true portfolio hedge.
2. PIMCO, **Educational Institute**, February 24-27, 2020, PIMCO Office, Newport Beach, CA. Topics: Portfolio management, Global financial policy and capital markets, Credit markets and capital structure, Evolution of derivative instruments, Equity portfolio construction, Critical issues in asset allocation and other topics.
3. CALAPRS, **General Assembly**, March 7–10, 2020, Omni Rancho Las Palmas Resort, Rancho Mirage, CA. No Agenda at this time.
4. CALAPRS, **Advanced Principles of Pension Mgmt for Trustees**, March 30–April 1, 2020. UCLA Meyer & Renee Luskin Conf Center, Los Angeles, CA. Topics: Policy based Boards – Theory to Implementation, Economics update and forecast, Investments & Board/CIO relationships, Legal side of governance, Advanced actuarial principles.
5. Pension Bridge, **Annual Conference**, April 14 & 15, 2020. Westin St Francis Hotel, San Francisco, CA. Topics: Macroeconomics, Artificial Intelligence in asset management, Best strategies and approaches for downside protection, Managing drawdown risk, Unconstrained fixed income and many others.
6. BlackRock, **Institutional Investor Conference**, May 18-19, 2020. Metropolitan Pavilion, New York City. Topics: Investment themes that will drive market outcomes, challenges and opportunities facing institutions, and how investors are positioning portfolios against a backdrop of late-cycle dynamics, inflation and recession risks.
7. PIMCO, **Educational Institute**, June 8-11, 2020, PIMCO Office, Newport Beach, CA. Topics: Portfolio management, Global financial policy and capital markets, Credit markets and capital structure, Evolution of derivative instruments, Equity portfolio construction, Critical issues in asset allocation and other topics.
8. CALAPRS, **Principles of Pension Governance for Trustees**, August 25–28, 2020. Pepperdine University, Malibu CA. Topic: The Principles course is designed for new trustees. Fiduciary Duty & sound decision making, Required ethics training for Public Fund Trustees, Disability retirements, pension liabilities and more.
9. PIMCO, **Educational Institute**, October 19-22, 2020, PIMCO Office, Newport Beach, CA. Topics: Portfolio management, Global financial policy and capital markets, Credit markets and capital structure, Evolution of derivative instruments, Equity portfolio construction, Critical issues in asset allocation and other topics.

OFFICE MEMORANDUM * TULARE COUNTY * COUNTY COUNSEL

(559) 636-4950
Fax # (559) 737-4319

To: Leanne Malison, Administrator
Retirement Board

Date: December 17, 2019

From: Barbara Booth Grunwald 
Deputy County Counsel

Subject: Litigation of Interest to TCERA
RETBD-General

FYI

Pursuant to your request, this non-confidential memorandum provides a quarterly update of cases of interest to TCERA. These are cases to which TCERA is not a party. As this is the first memo of this type, we include cases decided to date throughout 2019 as well as pending cases.

PENDING STATE CASES

Vested Rights/PEPRA

Pending at California Supreme Court:

Lead case:

Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn. (Jan. 8, 2018) 19 Cal.App.5th 61 (review granted March 28, 2018, No. S247095).

(This consolidated case involves three 1937 Act counties: Alameda, Contra Costa, and Merced. The trial court proceedings were held in Contra Costa County, so the case was referred to as the "Contra Costa case" prior to the issuance of the Court of Appeal decision. Apparently the court prefers alphabetical order.)

California Court of Appeal held that changes to definition of "compensation earnable" in section 31461 made by PEPRA do potentially affect vested rights, and that the *Ventura II* settlement agreements in these three counties may estop the plans from enforcing the new limitations in section 31461 against "classic" members.

Note: TCERA and Tulare County did not enter into a *Ventura II* settlement agreement. Both stayed in the litigation until the end, with the published decision in *In re Retirement Cases* (2003) 110 Cal.App.4th 426. Part of the dispute in the *Alameda* case is due to the fact that some of the pay items included as compensable under the *Ventura II* settlement agreements in at least one of these three counties are excluded under *In re Retirement Cases* (such as payoff of vacation after termination of employment).

Case being held by California Supreme Court pending decision in *Alameda* case:

***Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (Aug. 17, 2016) 2 Cal.App.5th 674 (review granted November 22, 2016, No. S237460).**

California Court of Appeal held that application of PEPRA amendments to section 31461 limiting pension "spiking" did not violate vested rights of "classic" members.

Felony Forfeiture

Two cases, both being held at California Supreme Court pending decision in *Alameda* case:

***Wilmot v. Contra Costa County Employees' Retirement Association* (Nov. 1, 2018) 29 Cal.App.5th 846 (review granted February 13, 2019, No. S252988).**

California Court of Appeal held that employee who applied for service retirement in 2012 and chose a 2012 effective date of retirement was still subject to felony forfeiture under PEPRA, since the retirement board did not formally approve his retirement until after PEPRA became effective on January 1, 2013.

(This is the case where the firefighter stole everything at the firehouse that wasn't nailed down.)

***Hipsher v. Los Angeles County Employees Retirement Association* (Jun. 19, 2018) 24 Cal.App.5th 740 (review granted September 12, 2018, No. S250244).**

California Court of Appeal held that:

1. Felony forfeiture under PEPRA does not violate either the contracts clause or the ex post facto clause of either the state or federal constitutions.
2. However, someone needed to provide due process to the member before concluding that he had committed a work-related felony and should forfeit the appropriate share of his pension.
3. That someone should be the retirement plan, not the employer.

(This is the case where the firefighter was running a gambling ring out of the firehouse.)

Mandatory Membership in PEPRA Tier

Being held at California Supreme Court pending decision in *Alameda* case:

***McGlynn v. State of California* (Mar. 20, 2018) 21 Cal.App.5th 548 (review granted June 27, 2018, No. S248513).**

California Court of Appeal held that judges elected in 2012 who did not take office until 2013 were subject to PEPRA. The judges are arguing that reducing their compensation between the time of election and the time of taking office violates the California Constitution.

Disability Retirement

Pending at California Court of Appeal:

***McCormick v. Public Employees' Retirement System [Lake County]* (Oct. 25, 2019) 41 Cal.App.5th 428.**

California Court of Appeal held that County employee (appraiser in assessor's office) with certain symptoms that seemed to be caused by her office environment was entitled to disability retirement when employer was not willing to accommodate her request to work in a different building.

(Apparently no petition to have California Supreme Court take up case has been filed, but case is not yet officially final; court website indicates remittitur is scheduled to be issued on Dec. 26.)

Disability Retirement/Age Discrimination

***Carroll v. City and County of San Francisco* (Oct. 31, 2019) 41 Cal.App.5th 805, *opinion modified on denial of rehearing* Nov. 27, 2019 [2019 WL 6337838].**

California Court of Appeal held that age discrimination complaint regarding disability retirement benefits was timely.

Plaintiff took non-service connected disability retirement in 2000. She did not realize until 2017 that she was paid less than other similarly situated retirees because the formula added

more “bonus years” for younger disability retirees. She filed claim with DFEH in 2017 regarding this alleged age discrimination. Appellate court held that disparate treatment claim was timely under continuous accrual doctrine (where statute of limitations starts over as each payment is made – see discussion under *Blaser* below), and that disparate impact claim was not barred by governmental immunity for how city interpreted city charter provision.

(Case will be final as to Ct. App. in late Dec. 2019.)

Procedures for Plan Sponsor When Increasing Benefits

Pending at California Court of Appeal:

***Luke v. Sonoma County* (Dec. 12, 2019) ___ Cal.App.5th ___ [No. A155286, 2019 WL 6768890].**

California Court of Appeal held that statute of limitations barred taxpayer’s claim that board of supervisors had not followed required procedures in early 2000’s in authorizing increased pension benefits for county employees, by failing to obtain a public actuarial statement before approving the new formula. Suit was not filed until 2017, and court held that continuous accrual theory (see *Blaser* discussion below) did not apply to actions by plan sponsor to change benefit formula.

(Case will be final as to Ct. App. in Jan. 2020.)

Redevelopment Obligations

***City of Anaheim v. Bosler* (Nov. 25, 2019) ___ Cal.App.5th ___ [No. C087417, 2019 WL 6270841].**

California Court of Appeal held that state Department of Finance properly disallowed city’s claim that city could keep redevelopment tax funds to pay pension costs of city employees who had been shared with the former redevelopment agency.

(Case will be final as to Ct. App. in late Dec. 2019.)

FINAL STATE CASES

Recovery of Overpayments to Retirees

***Blaser v. State Teachers' Retirement System* (Jul. 10, 2019) 37 Cal.App.5th 349.**

California Court of Appeal held that continuous accrual rule applies to pension payments, so that plan may recover prior overpayments going back three years, and may adjust all future payments to the correct amount.

Facts: In 1999, the local teachers' union entered into a collective bargaining agreement with a high school district which provided for extra pay for teachers who agreed to teach an additional period. Both parties assumed the extra pay would be included in the teachers' compensation for pension purposes. A STRS audit in 2008 determined that the extra pay should have been excluded. The STRS board upheld this determination in 2010.

A group of teachers who had retired between 1999 and 2010 sued to invalidate the exclusion of the extra pay. The trial court held that the extra pay should be included, but the Court of Appeal reversed and upheld the exclusion.

Discussion: The main dispute on appeal was how far back STRS could go to collect the overpayments, and what should happen regarding future payments. The court held that pension payments are subject to the continuous accrual rule, because each payment triggers a new statute of limitations. The court concluded that under the facts presented, STRS could recover overpayments as far back as three years before the teachers filed suit (since filing suit suspends any statute of limitations which would benefit the plaintiff), and that STRS was entitled to reduce the pensions going forward to the correct amount.

The court did send the case back to the trial court to see if the teachers could succeed in arguments regarding estoppel and laches (reasons why a person with a legal right should not be allowed to exercise it).

Note: Pending legislation (SB 266) would provide that when PERS (but not STRS) changes a pension amount after retirement due to information regarding pensionable compensation submitted by the employer which is later determined by PERS to not be pensionable, the former employer would have to make up the difference to the retiree, for life. This bill was actually passed and was on the way to being sent to the Governor when it was withdrawn from that process – apparently the Governor had signaled that he would veto the bill.

Employment Settlement Agreement Not within Plan Rules

Byrd v. State Personnel Bd. (Jun. 6, 2019) 36 Cal.App.5th 899.

California Court of Appeal held that PERS was prohibited by applicable statute from complying with employment settlement agreement which provided for employee to be “reinstated” after retirement to job classification she had never served in.

Note: 1937 Act does not have a parallel provision regarding reinstatement after retirement.

Election to Retirement Board

Amalgamated Transit Union, Local 276 v. San Joaquin Regional Transit Dist. (May 8, 2019) 36 Cal.App.5th 1.

California Court of Appeal held that, under special statutes for transit districts, union entitled to appoint to vacancy on district’s retirement board. District could not require plan to hold election in which all employees, not just union members, were entitled to vote.

Pay Codes Included in/Excluded from Compensation/Pension

Paxton v. Board of Administration, Public Employees’ Retirement System (2019) 35 Cal.App.5th 553.

California Court of Appeal held that psychiatrists employed by state were not entitled to include in pensionable salary their bonuses for extra work to reduce backlog of case reviews; bonuses were for work outside regular duties, and thus did not count as pensionable pay even though performed during regular working hours.

Retired Oakland Police Officers Assn. v. Oakland Police & Fire Retirement System (Feb. 25, 2019) 33 Cal.App.5th 158.

California Court of Appeal held that under pension plan providing for benefits based on pay of current employees rather than pay received by retirees when working, pay code for master police officer-terrorism pay (MPO) should be excluded from pension, because it was not “attached to rank” as required under the plan. Instead, only officers assigned to patrol were eligible for the pay code.

Effect of Collective Bargaining Violation Due to City Involvement in Pension Reform Initiative

***Boling v. Public Employment Relations Bd.* (Mar. 25, 2019) 33 Cal.App.5th 376.**

On remand from the California Supreme Court decision in *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898, California Court of Appeal held that the appropriate remedy when a city's actions violate collective bargaining statutes in regard to a pension reform initiative is not to invalidate the initiative.

Instead, the city must bargain regarding the effects of the initiative, and, until completion of the bargaining process, must pay the affected current and former employees represented by the unions the difference, plus interest, between the compensation, including retirement benefits, the employees would have received before the initiative became effective, and the compensation the employees received after the initiative became effective. The city must also bargain before placing any future measure on the ballot which would affect employee pension benefits and/or other negotiable subjects.

Resignation with Disciplinary Charges Pending as Reason to Reject Disability Retirement Application

***Martinez v. Public Employees' Retirement System* (Apr. 4, 2019) 33 Cal.App.5th 1156.**

California Court of Appeal held that where employee settled a pending termination for cause by agreeing to resign and not seek reemployment, this is the same as being fired for cause, and thus precludes the employee from applying for disability retirement, with limited exceptions.

Facts: A state employee was facing termination charges. She agreed to resign and not reapply for employment with the agency she was leaving. She then applied for disability retirement. PERS refused to process the application because she would not be able to return to work if her disability ended.

The former employee sued to force PERS to process her application. The trial court denied the petition, and the Court of Appeal affirmed.

Discussion: Prior cases had held that since disability retirement laws contemplate the potential reinstatement of the employee if the employee recovers, where an employee is fired and thus there is no potential reinstatement, there is no right to disability retirement. The prior cases noted there might be exceptions to this result, such as where the termination was due to behavior caused by a physical or mental condition, or where the eligibility for disability retirement arose before the disciplinary action was taken.

The court saw no reason not to extend this line of cases to a situation where an employee was not actually fired. Where the settlement agreement provides for not reapplying to the agency, this is “tantamount to a dismissal” for purposes of applying the line of cases. The former employee had not argued that any exception to the rule applied, so the court concluded that PERS was correct in not processing her application.

Vested Rights

Cal Fire Local 2881 v. California Public Employees’ Retirement System (Mar. 4, 2019) 6 Cal.5th 965.

California Supreme Court held that PEPRA’s elimination of the opportunity to purchase “air time” did not impair a vested right.

Facts: PEPRA (enacted in Sept. 2012, but not effective until Jan. 2013) eliminated the statutes which authorized PERS employers to adopt a program allowing members to purchase additional retirement service (ARS) time. The ARS program involved time when employees had not actually worked for the agency, and thus was nicknamed “air time,” due to the fact that the service credit came “out of thin air.” The repeal did not affect anyone who had previously purchased or was in the process of purchasing ARS time, so any “classic” members who had not yet started an ARS purchase had the opportunity to do so between September 2012, when PEPRA was approved, and January 2013, when it went into effect.

Several local unions whose employees worked for PERS employers that had offered ARS programs sued to keep the programs available after 2012. They argued that the opportunity to purchase ARS time was a vested right (i.e., protected by the constitutional contract clause, which generally prohibits new laws from affecting existing contracts), and that as a result the repeal by PEPRA was an impairment of this vested right.

Discussion: The California Supreme Court rejected the unions’ argument. The statute authorizing individual employers to adopt ARS programs did not indicate that the Legislature intended to create a contractual right. In addition, unlike the usual pension benefit, nothing in the ARS program could be considered deferred compensation for work, as it was based on nothing but “air time.” Accordingly, the opportunity to have such a program could properly be eliminated at the discretion of the Legislature.

Since there was no vested right, the court did not have to discuss whether elimination of the program improperly interfered with the plaintiffs’ vested rights.

Employer Contributions

***Mijares v. Orange County Employees' Retirement System* (Jan. 23, 2019) 32
Cal.App.5th 316.**

California Court of Appeal held that employer which no longer has any active employees participating in the plan must still make contributions to cover retirees; plan not limited to payroll in calculating needed contributions.

Facts: When county offices of education became fiscally independent from counties in mid-1970's, then-current employees could decide whether to stay in 1937 Act system or change to PERS. The last employee at the Orange County Office of Education participating in OCERS retired in 2013. The employer thereafter claimed it no longer had to make contributions to the system, since it had no active employees by whose salaries the contributions could be measured.

OCERS later adopted a Declining Employer Payroll Policy, describing how it would handle employers in this situation. The policy generally provided for payments in a fixed dollar amount with a true-up process at a later date. The employer sued to enjoin enforcement of the policy against it. The trial court granted a judgment on the pleadings in favor of OCERS.

Discussion: The Court of Appeal affirmed. A percentage of payroll may be the normal method of calculating required employer contributions, but it is not the sole method. The effect of one employer not contributing for its retirees would be to place the burden on the other employers, so a 1937 Act plan is entitled to use another method to obtain contributions from a participating employer with no current employees in the plan. The required contributions were not improperly retroactive because they were needed to fund future benefits for the employer's retirees. Statutes describing how to handle an employer who was withdrawing from the plan did not apply, since the employer was still participating through its retirees.

PENDING FEDERAL CASE

Interest Crediting

Pending in federal district court in Washington:

***Fowler v. Guerin*, No. C15-5367 BHS (W.D. Washington).**

On remand from 9th Cir. decision in *Fowler v. Guerin* (9th Cir. 2018) 899 F.3d 1112, petition for rehearing by panel and petition for rehearing en banc denied (9th Cir., Mar. 13, 2019) 918 F.3d 644.

Facts: Plan only credited interest on contributions if accounts had a balance at the end of a quarter. Plaintiffs transferred their contributions into plan in middle of quarter, so did not receive interest earned during the prior quarter. The daily interest earned was used by the plan for other purposes. In this litigation, they sued in federal court, arguing that not crediting daily interest to plaintiffs constituted an unconstitutional taking under the Fifth and Fourteenth Amendments. The trial court denied the teachers' motion to certify a class and granted summary judgment to the plan.

In the 9th Circuit decision in 2018, the federal Court of Appeals reversed this denial, holding that the teachers might be able to certify a class, and that the teachers' claims were not foreclosed under applicable constitutional law. The March 2019 decision denied the petition to have the three-judge appellate panel reconsider its decision, and also denied the petition to have the case reheard by an 11-judge appellate panel.

Current status:

Trial court has granted class certification. (*Fowler v. Guerin* (W.D. Wash., NO. C15-5367, Jul. 25, 2019) [2019 WL 3337964].)

PUBLISHED FEDERAL CASES¹

Federal Garnishment

***United States v. Drapeau* (W.D. Wash., May 22, 2019) 388 F.Supp.3d 1289.**

Federal trial court held that federal Mandatory Victims Restitution Act authorized garnishment against retirement account of defendant's wife.

¹ This general memo does not attempt to describe the many unpublished trial court rulings available online.

Facts: Husband was convicted of wire fraud and mail fraud, and ordered to pay over \$500,000 in restitution. The federal government served a writ of garnishment on the wife's state retirement account. The plan objected on several grounds.

The federal trial court rejected the argument that a spouse's retirement benefits are not subject to garnishment under the MVRA, because (1) the list of exemptions in the MVRA does not include state pensions, (2) the MVRA's "notwithstanding" clause overcomes other anti-alienation provisions in other federal statutes, (3) state law exemptions do not defeat the enforcement of a federal garnishment, and (4) while there are no 9th Circuit decision on point, there are appellate decisions from other circuits holding that the MRVA allows the federal government to enforce a criminal restitution debt against the defendant's community property interest in his wife's wages.

However, the federal trial court also held that the writ was not immediately enforceable, because the wife was an active member of the plan. The garnishment would attach immediately, but would result in actual restitution only when the wife took funds out of the plan in a refund or as benefits.

County Overhead and POB's

***County of Fresno v. Azar* (E.D. Cal., Apr. 30, 2019) 384 F.Supp.3d 1164.**

Federal trial court held that federal government properly excluded interest on pension obligation bonds (POB's) from county overhead claims in federal grants. Although employee compensation, including the cost of fringe benefits such as pensions, is generally an allowable cost, interest on POB's is authorized only if certain criteria are met. The court held that refinancing an existing POB does not fit within these criteria.

Tax-Exempt Benefits

***Dawson v. Steager* (Feb. 20, 2019) ___ U.S. ___ [139 S.Ct. 698, 203 L.Ed.2d 29].**

United States Supreme Court unanimously held that federal marshal is entitled to same exemption from state income taxes for his pension as provided under state law to state and local law enforcement officers performing parallel duties, under federal tax statute requiring intergovernmental tax immunity.

The West Virginia law in question did not limit the exemption to disability retirement.