

CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM

BOARD AGENDA

Retirement Board Regular Meeting - Thursday, June 19, 2014 - 2:00 p.m.

City Hall - Second Floor Conference Room, 100 North U.S. #1, Fort Pierce, Florida

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **COMMENTS FROM THE PUBLIC** (limited to 4 minute duration)
4. **CONSIDERATION OF MINUTES**
 - a. Approval of summarized minutes of May 22, 2014
5. **REPORT FROM BOARD ATTORNEY**
 - A. Rules Amendment Regarding Continuances
 - b. Jurisdiction of Board to Consider Credit for Sick Pay
6. **PUBLIC HEARINGS ON BENEFIT APPLICATIONS**
 - a. Request for Retirement from Terry Keck with 26 years and 3 months of service with Fort Pierce Utilities Authority (DROP)
 - b. Request for Retirement from Roland Ruppert with 8 years and 1 month of service with Fort Pierce Utilities Authority
7. **OLD BUSINESS**
8. **NEW BUSINESS**
9. **CONSENT AGENDA**
 - a. Approve refund of member contributions
10. **CONSIDERATION OF ABSENCES**
11. **ADJOURNMENT**

- a. Next Meeting is July 17, 2014 at 2:00 p.m. and will be held in the Second Floor Conference Room, City Hall

12. Miscellaneous Information

In accordance with the Americans With Disabilities Act of 1990, persons needing a special accommodation to participate in this proceeding should contact the Recording Secretary of the Retirement and Benefit System at the Finance Department of the City of Fort Pierce no later than three business days prior to the proceeding. Telephone (772) 467-3000 for assistance.

Any person seeking to appeal any decision by the Retirement Board with respect to any matter considered at this meeting is advised that a record of proceedings is required in any such appeal and that such person may need to insure that a verbatim record of the proceedings is made including the testimony and evidence upon which the appeal is to be based.

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Approval of summarized minutes of May 22, 2014

Form Review

Form Started By: Johnna Morris
Final Approval Date: 06/18/2014

Started On: 06/18/2014 08:45 AM

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Rules Amendment Regarding Continuances

Attachments

Rules Amendment

Form Review

Form Started By: Johnna Morris

Final Approval Date: 06/18/2014

Started On: 06/18/2014 08:27 AM

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Gloria Johnson, Finance Director
FROM: James T. Walker, Assistant City Attorney
SUBJECT: Rules Amendment Regarding Continuances
DATE: May 28, 2014

This memo serves to enclose the copy of a Memorandum addressed formally to Tom Perona as Chair of the Retirement Board. Please see that a copy is duly placed in each member's agenda packet for the next meeting.

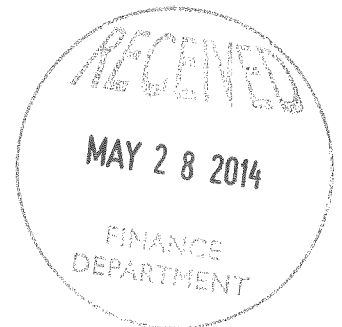
Please let me know of any questions. Thanks.

for James T. Walker

James T. Walker, Esq.
Assistant City Attorney

JTW/cf

cc: Robert V. Schwerer, City Attorney



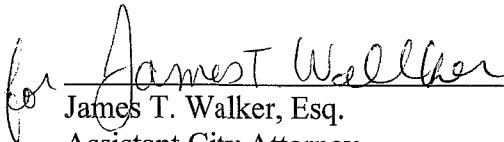
CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Tom Perona, Chair, Fort Pierce Retirement Board
FROM: James T. Walker, Assistant City Attorney
SUBJECT: Rules Amendment Regarding Continuances
DATE: May 28, 2014

It is recently seen that the Board's rules provide no procedure whereby a party may request postponement of a scheduled hearing. This was undoubtedly not noticed heretofore since the Retirement Board, unlike other boards, does not commonly hold contested hearings where the need for such a provision may come up. We probably ought to go ahead and add something on this and the language suggested here tracks with equivalent provisions found in the rules of procedure for the Code Enforcement Board and the Construction Board of Adjustments and Appeals:

Rule 9(d). Continuance. Any party may request continuance of a scheduled hearing, prior to the hearing, in the event circumstances arise so as to constitute good cause for postponement of a hearing. Such party shall file a written request for continuance or postponement with the Secretary/Treasurer. The request must be made within a reasonable time following the date the party became aware of the circumstances which form the basis of the request. The request must specify the justifying circumstances with particularity. In the event the Secretary/Treasurer agrees with the request, the Secretary/Treasurer shall reschedule the hearing. In the event the Secretary/Treasurer disagrees with the request, there shall be immediately scheduled a hearing before the Board Chair or the Chair's designee, with notice to all parties. Present at the hearing shall be the Secretary/Treasurer, and counsel for the Board. After hearing both sides, the Chair or the Chair's designee shall determine whether there is good cause for the postponement. The request will then be either granted or denied.


James T. Walker, Esq.
Assistant City Attorney

JTW/cf

cc: Robert V. Schwerer, City Attorney

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

REPORT FROM BOARD ATTORNEY

Form Review

Form Started By: Johnna Morris

Final Approval Date: 06/18/2014

Started On: 06/18/2014 08:25 AM

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Jurisdiction of Board to Consider Credit for Sick Pay

Attachments

Jurisdiction of Board

Form Review

Form Started By: Johnna Morris

Final Approval Date: 06/18/2014

Started On: 06/18/2014 08:29 AM

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Gloria Johnson, Finance Director

FROM: James T. Walker, Assistant City Attorney

SUBJECT: Jurisdiction of Board Consider Credit for Sick Pay in Approval of Retirement for Mazella Smith

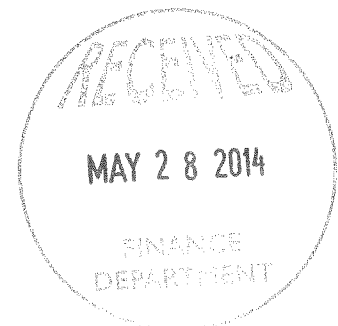
DATE: May 28, 2014

This memo responds to request by the Retirement Board for a memorandum on the subject of its jurisdiction to reconsider approval of Mazella Smith's Application for Retirement by including accumulated sick time in her credited **compensation**. Such memorandum was prepared and addressed formally to Tom Perona as Chair. It is enclosed herewith. Please see that a copy is included in each board member's agenda packet. Thank you for your consideration.

per James T. Walker
James T. Walker, Esq.
Assistant City Attorney

JTW/cf

cc: Robert V. Schwerer, City Attorney



CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

MEMORANDUM

TO: Tom Perona, Chair, Fort Pierce Retirement Board

FROM: James T. Walker, Assistant City Attorney

SUBJECT: Jurisdiction of Board Consider Credit for Sick Pay in Approval of Retirement for Mazella Smith

DATE: May 28, 2014

This memorandum serves as response to request by the Board for a memorandum on the parameters of jurisdiction governing the Board's ability to reconsider approval of Mazella Smith's Application for Retirement by including accumulated sick time in her credited **compensation**. She is seen to contend that approval heretofore of her retirement application should have included credit for 688 hours of sick time accumulated at the time of her involuntary separation from employment. The City, for its part, is understood to contend that there is no such entitlement to inclusion of sick time. The City's position is that no such sick time was ever paid, because she was involuntarily separated upon a finding that she was not then in "good standing".

The Board is of course reminded that it will be sitting in a quasi-judicial capacity when it hears the Application. This means that the Petitioner has the right to be heard on this, in a setting wherein she is provided with fundamental due process. That is, she is to receive notice of the proceeding, she may be represented by counsel, may offer evidence through witnesses or exhibits, and may cross-examine any contrary witnesses offered by the City. Correlative rights are enjoyed by the City in its oppositional capacity. The Board shall render a decision on her request for Reconsideration only after considering all evidence and argument. The decision should be based solely upon the evidence and applicable law, in a manner consistent with its Rules of Procedure.

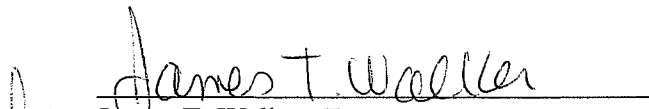
The Board's jurisdiction is defined by Code Section 13-71, which states that: "There is hereby created a retirement board in which is vested the power and authority to administer, manage and operate the retirement and benefit system, and to **construe and make effective the provisions of this article.**" (e.s.) The power of the board is thus circumscribed by the provisions of Chapter 22. It cannot act outside the boundaries of Chapter 22. cf. *City of Miami Beach v. Cleary*, 75 So.2d 792 (Fla 1954)("It perfectly obvious that if this accumulated leave has no relation to either the right to retire or the amount to be received in the event of retirement, it should not be burdened for the purpose of supporting the retirement system.", pg. 795); see also *City of Miami Beach Police v. Board of Trustees*, 581 So.2d 229 (Fla 3rd DCA 1991).

Inclusion of sick time in the computation of *compensation* as determined for retirement purposes is covered by Code section 13-16, which sets out the following definition: “*Compensation* means the salary or wages **paid** an employee for personal services rendered a participating employer. ‘*Compensation*’ includes: ... (6) **Payments** in consideration of unused sick and vacation time... .” (e.s.) **IF** the City made payments of sick time to the Applicant, then she is entitled to their inclusion, to the allowable extent. The Board may readily hear the question of whether or not such payments were made by the City and, if they were, the extent thereof. That directly relates to the question of the “compensation” received by the employee for purposes of her retirement. But **IF** payments were **NOT** made, and the City’s failure to make such payments of sick time did not relate directly to the Applicant’s right of retirement under Chapter 13, **THEN** the Board does not possess jurisdiction to address the propriety of the City’s refusal to make payment. Instead, the forum to contest the City’s nonpayment of sick time lies elsewhere. The Retirement Board does not itself act as a Super Civil Service Board to hear disputes between employees and the City about their entitlement to various fringe benefits or to adjudicate contract rights. Nor is it charged with the task of second-guessing personnel decisions of the City. It’s portfolio is limited to application of Chapter 13.

In other words, it is recommended that the Board may determine whether the City paid wages to the employee and made payments in consideration of unused sick time. If the payments were made, the Board may credit them for retirement purposes to the extent allowable. But if the City did not make payment of wages or unused sick time, the Board should not interject itself in the middle of any dispute between the City and Ms. Smith over whether such nonpayment was proper or not.

It is hoped that the foregoing fairly addresses the Board’s request for an opinion in this matter. I am of course available for such further questions or clarifications as may be deemed helpful and thanking you for your attention, I am and continue to remain, as always,

Most Cordially and Respectfully Yours,


for James T. Walker, Esq.
Assistant City Attorney

JTW/cf

cc: Robert V. Schwerer, City Attorney
Robert J. Bradshaw, City Manager
Tony Barnes, Director of Human Resources

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Request for Retirement from Terry Keck with 26 years and 3 months of service with Fort Pierce Utilities Authority (DROP)

Attachments

Form Review

Form Started By: Johnna Morris

Final Approval Date: 06/17/2014

Started On: 06/17/2014 04:54 PM

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Request for Retirement from Roland Ruppert with 8 years and 1 month of service with Fort Pierce Utilities Authority

Attachments

Form Review

Form Started By: Johnna Morris

Started On: 06/17/2014 05:00 PM

Final Approval Date: 06/17/2014

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Approve refund of member contributions

Attachments

Consent Agenda

Form Review

Form Started By: Johnna Morris

Final Approval Date: 06/18/2014

Started On: 06/18/2014 08:33 AM

CONSENT AGENDA
REFUND OF MEMBER CONTRIBUTIONS
JUNE 19th
MEETING

GENERAL MEMBERS:	AGENCY	PERIOD	DATE OF TERMINATION	DATE OF REFUND	TOTAL AMOUNT OF REFUND	TAX DEBIT	REPAY CITY OR U.A.	NET AMOUNT	CHECK NUMBER
Edward Seissiger	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	975.32	195.06	-	780.26	248032
Devoshay Johnson	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	275.05	55.01	-	220.04	248023
Erin Greiner	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	58.85	11.77	-	47.08	248036
ANTONIO SMITH	CITY	7	N/A	05/16/14	9,762.34	1,952.47		7,809.87	248361
MICHAEL L. GORDON	CITY	7	N/A	05/02/14	24,886.80	4,977.36		19,909.44	248286
						-		-	
					35,958.36	7,191.67	-	28,766.69	

U.A. MEMBERS

						-		-	
						-		-	
					-	-	-	-	

POLICE

Micahel Azevedo	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	440.15	88.03	-	352.12	248103
Tyrone Campbell	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	544.18	108.84	-	435.34	248155
Donald Christman	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	360.29	72.06	-	288.23	248027
Paul Cunzo	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	11.22	2.24	-	8.98	248115
James Grecco	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	227.72	45.54	-	182.18	248076
Christopher Guadagno	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	246.07	49.21	-	196.86	248000
William Hall	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	402.53	80.51	-	322.02	248165
Ralph Holmes	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	490.49	98.10	-	392.39	248121
David Jones	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	269.52	53.90	-	215.62	248020
Jeffrey Lashorne	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	484.38	96.88	-	387.50	248078
Guy Montgomery	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	14.06	2.81	-	11.25	248060
Ryan Moore	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	129.13	25.83	-	103.30	248131
Katheeleen Murphy	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	123.50	24.70	-	98.80	248085
Emmanuel Perez	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	80.65	16.13	-	64.52	248034
Justin Rahn	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	68.36	13.67	-	54.69	248084
Roberto Sarmiento	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	349.37	69.87	-	279.50	248129

**CONSENT AGENDA
REFUND OF MEMBER CONTRIBUTIONS
JUNE 19th
MEETING**

GENERAL MEMBERS:	AGENCY	PERIOD	DATE OF TERMINATION	DATE OF REFUND	TOTAL AMOUNT OF REFUND	TAX DEBIT	REPAY CITY OR U.A.	NET AMOUNT	CHECK NUMBER
Heather Scarborough	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	347.46	69.49	-	277.97	248063
Steven Sobon	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	209.41	41.88	-	167.53	248143
Benjamin thayer	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	753.07	150.61	-	602.46	247988
Oscar Trinidad	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	136.93	27.39	-	109.54	248112
Mark Woodruff	S/B 1128 (O/T Hrs.)	7	N/A	04/18/14	125.92	25.18	-	100.74	248101
						-		-	

<u>5,814.41</u>	<u>1,162.88</u>	-	<u>4,651.53</u>
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TOTAL: \$ 41,772.77 \$ 8,354.55 \$ - \$ 33,418.22

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Next Meeting is July 17, 2014 at 2:00 p.m. and will be held in the Second Floor Conference Room, City Hall

Form Review

Form Started By: Johnna Morris

Final Approval Date: 06/18/2014

Started On: 06/18/2014 08:43 AM

Retirement Board

Meeting Date: 06/19/2014

Re:

Information

SUBJECT:

Miscellaneous Information

Attachments

Retirement Orders

Cypen Newsletter 5-29-14

Cypen Newsletter 6-5-14

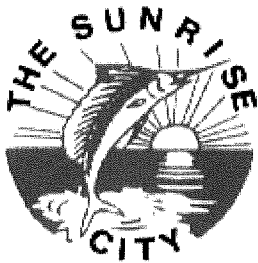
Cypen Newsletter 6-12-14

Form Review

Form Started By: Johnna Morris

Final Approval Date: 06/18/2014

Started On: 06/18/2014 08:35 AM



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM

CITY OF FORT PIERCE
OFFICE OF DIRECTOR OF FINANCE
P.O. BOX 1480
FORT PIERCE, FL 34954
(772) 467-3000 ~ Fax (772) 489-2594

May 22, 2014

Diane Daniels
1007 Nebraska Avenue
Fort Pierce, FL 34950

Re: *Application for Retirement*

Dear Ms. Daniels:

At the meeting on May 15, 2014, the Board of Trustees of the City of Fort Pierce Retirement and Benefits System unanimously approved your request for Retirement effective May 24, 2014, entering into the DROP Program.

Should you have any questions concerning your benefits, please contact Christine Paz at 467-3080.

On behalf of the Board and the City of Fort Pierce, I would like to thank you for your six years and two months of service with the City of Fort Pierce.

Sincerely,

By: 
Gloria J. Johnson, Secretary/Treasurer

cc: Christine Paz, Retirement Clerk
Gena Spivey, HR Manager
Atty. James Walker, Asst. City Attorney

**BOARD OF TRUSTEES FOR
THE CITY OF FORT PIERCE
RETIREMENT & BENEFITS SYSTEM**

CASE NO.:

In Re:

The Petition for Retirement of
Diane Daniels,

ORDER GRANTING NORMAL RETIREMENT

THIS CAUSE having come before the Board on Thursday, May 15, 2014 at a regular meeting of the Board, upon the petition for normal retirement dated April 16, 2014 of Diane Daniels, to be followed by subsequent enrollment in the DROP program as provided by Code Section 13-40.1, and having considered such petition and the supporting documentation, and it appearing that the employee is entitled to normal retirement benefits as provided by Section 13-29 of the Code of Ordinances, subject to Ms. Daniels' enrollment in the DROP program as provide by Code Section 13-40.1, and being otherwise advised in the premises and a motion having been duly made and adopted that the petition be approved, **it is accordingly,**

ORDERED that the petition for normal retirement of Diane Daniels, subject to her enrollment in the DROP program is and the same shall be granted.

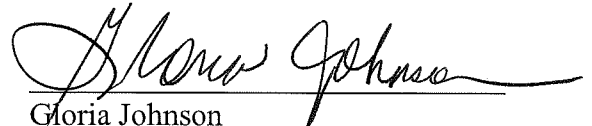
DONE AND ORDERED this 15th day of May 2014.



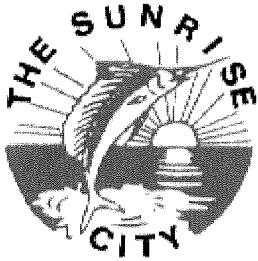
Thomas K. Perona, Board Chair

CERTIFICATE OF SERVICE

The undersigned certifies that a copy hereof has been furnished to all interested parties of record, including Diane Daniels, 1007 Nebraska Avenue, Fort Pierce, FL 34950 by US Mail on this 28th day of May 2014.



Gloria Johnson
Board Secretary/Treasurer



CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM

CITY OF FORT PIERCE
OFFICE OF DIRECTOR OF FINANCE
P.O. BOX 1480
FORT PIERCE, FL 34954
(772) 467-3000 ~ Fax (772) 489-2594

May 22, 2014

Mazella Smith
1811 E. Sanderling Lane
Port Saint Lucie, FL 32982

Re: *Application for Retirement*

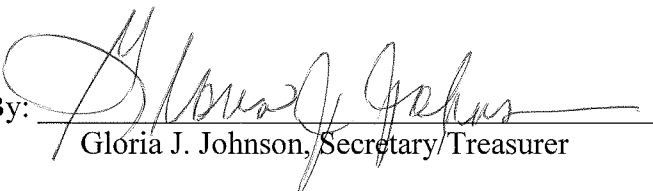
Dear Ms. Smith:

At the meeting on May 15, 2014, the Board of Trustees of the City of Fort Pierce Retirement and Benefits System unanimously approved your request for Retirement effective May 19, 2014.

Should you have any questions concerning your benefits, please contact Christine Paz at (772) 467-3080.

On behalf of the Board and the City of Fort Pierce, I would like to thank you for your twenty years and eight months of service with the City of Fort Pierce.

Sincerely,

By: 
Gloria J. Johnson, Secretary/Treasurer

cc: Christine Paz, Retirement Clerk
Gena Spivey, HR Manager
Jim Walker, Assistant City Attorney

**BOARD OF TRUSTEES FOR
THE CITY OF FORT PIERCE
RETIREMENT & BENEFITS SYSTEM**

CASE NO.:

In Re:

The Petition for Retirement of
Mazella Smith

ORDER GRANTING NORMAL RETIREMENT

THIS CAUSE having come before the Board on Thursday, May 15, 2014, at a regular meeting of the Board, upon the petition for normal retirement dated April 18, 2014 of Mazella Smith, and having considered such petition and the supporting documents, and it appearing that the employee is entitled to normal retirement benefits as provided by Section 13-29 of the Code of Ordinances, and being otherwise advised in the premises and a motion having been duly made and adopted that the petition be approved, **it is accordingly,**

ORDERED that the petition for normal retirement of Mazella Smith is and the same shall be granted.

DONE AND ORDERED this 28th day of May 2014.



Thomas K. Perona, Board Chair

CERTIFICATE OF SERVICE

The undersigned certifies that a copy hereof has been furnished to all interested parties of record, including Mazella Smith, 1811 E. Sanderling Lane, Fort Pierce, FL 34982 by US Mail on this 28th day of May 2014.



Gloria Johnson, Board Secretary

City of Fort Pierce Retirement & Benefit System



Certificate of Retirement

This is to certify that

Margella D. Smith

is hereby retired effective May 19, 2014
upon completion of
Twenty Years and Eight Months of Service
with the City of Fort Pierce

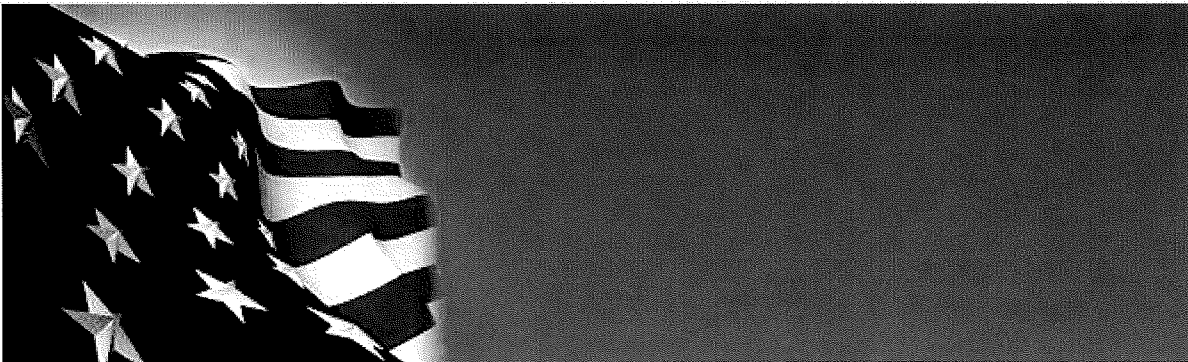
Approved on the 15th day of May, 2014

A handwritten signature in black ink, appearing to read "Thomas K. Perona".

Thomas K. Perona, Chairman

A handwritten signature in black ink, appearing to read "Gloria J. Johnson".

Gloria J. Johnson, Secretary/Treasurer

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CYPEN & CYPEN NEWSLETTER

for

MAY 29, 2014

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. ONE-IN-FOUR AMERICANS' NEST EGG BALANCE IS EXACTLY ZERO!: COUNTRY Financial Security Blog reports that one-in-four Americans, across all age groups, admit they are not saving at all for retirement. Americans ages 18-to-29 are the biggest offenders. Thirty-two percent in that age bracket are not saving at all for retirement. Perhaps they are buried in college loans or feel like retirement is too far away to worry about. Fast forward to the people 40 years and older, and you will find nearly 40% say they regret decisions they have made with their retirement savings. What is the biggest reason they point out? Nearly half say that they regret not starting to save early enough. Hopefully, these results will be an eye opener for today's 18-to-29 year olds, college loans or not, to save early and to save often. Circling back to the Americans who are not saving at all, nearly half (46%) say it is not possible for a typical middle income family to save for a secure retirement. Is it possible

they are not saving because they do not think it is possible to have a secure retirement? We will never really know, but, what we do know is making retirement a priority is an important step in achieving long term financial security and avoiding what appears to be the coming retirement crisis. On the bright side, forty-three percent of Americans say they check the health of their retirement savings every few months. It is important to make sure you doing more than just looking, however. Knowing where your money is going and how to diversify your savings so you are set up well for your golden years is crucial.

2. TRENDS IN HEALTH COVERAGE FOR PART-TIME WORKERS:

Are concerns about requirements of the new federal health insurance law causing more employers to shift to part-time workers? A new report by the nonpartisan Employee Benefit Research Institute finds there is no definitive answer to that question yet -- but notes that a shift in part-time employment was underway before the law was passed, that future trends are likely to depend more on factors such as the economy and unemployment rates. As written, the Patient Protection and Affordable Care Act of 2010 requires that employers with 50 or more full-time workers pay a penalty if they fail to provide health coverage to full-time workers in 2014, which has raised concern that employers may respond by cutting back on health coverage for part-time workers or by increasing the proportion of part-time workers employed. The Obama administration has subsequently indicated that it would delay enforcement of the terms of this employer mandate. The new analysis shows that the recent recession had already resulted in an increased use of part-time workers before PPACA was enacted: between 2006 and 2010, the percentage of workers employed fewer than 30 hours per week increased from 11.9% to 14.1%, and the percentage of workers employed 30-39 hours per week increased from 11.4% to 13.2%. Meanwhile, the unemployment rate dropped, from 9.9% in March 2010 (the month PPACA was signed into law) to 7.9% by the end of 2012. Since the end of 2012, the unemployment rate has fallen to 6.6%. As the report notes, part-time workers have a far lower rate of health coverage than full-time workers. Overall, there were 20 million workers employed under 30 hours per week, 18.8 million employed 30-39 hours per week in 2012. Among those employed fewer than 30 hours per week, 2.6 million (12.8%) had employment-based coverage from their own job, and among those employed between 30-39 hours per week, 6.3 million (33.6%) had employment-based coverage from their own job. In contrast, 60.5% of workers employed at least 40 hours per week

had employment-based coverage from their own job. A key related issue is dependent health coverage for children or spouses of part-time workers, which has been sharply declining. The likelihood that a worker employed fewer than 30 hours per week had employment-based coverage as a dependent fell substantially between 2000 and 2009: in 2009, 35% of these workers had dependent coverage, down from 46.8% in 2000. During this time, the percentage of workers employed 30-39 hours with coverage as a dependent fell from 26% to 20.5%, while the percentage of workers employed 40 or more hours per week with coverage as a dependent was mostly constant, except for a slight drop from 2003 to 2004.

3. GOING BROKE IN RETIREMENT TOP WORRY: Running out of money in retirement trumps other stress-inducing pressures, such as public speaking and gaining weight for affluent Americans. But, according to Employee Benefit News, the prospect of not having enough money to live on later in life, many are unwilling to cut spending on indulgences now in order to invest for retirement -- increasing pressures on resources such as Social Security -- rather than utilizing employer-based savings tools. Many mass affluent investors are taking a bit more of a live for today financial approach than one might expect, given their fear of running out of money in retirement. That kind of disconnect might have a significant impact on the long-term financial well-being of these investors. Millennials, on the other hand, are getting a jump on the retirement game, with many workers still in their teens taking part in employer-sponsored plans. Some of the more common reasons richer, older workers say they are not regularly saving for retirement include unexpected expenses, paying off debts and paying for a child's college education. Other indulgences that attribute to today's spending include entertainment, eating out and vacationing. As well, more women than men are worried about not having enough money in the golden years. However, it is women that are more reluctant than men to cut back present-day spending. Most mass affluent people with any retirement savings began saving at 33 years old, but millennials are planning at a younger age, between 18 and 24, with 80% of millennials noting they already have retirement savings.

4. FLORIDA STATUTE MANDATING THAT DEFENDANT SHOW AN IQ SCORE OF 70 OR BELOW BEFORE BEING PERMITTED TO PRESENT ANY ADDITIONAL INTELLECTUAL DISABILITY EVIDENCE IS UNCONSTITUTIONAL: After the United States

Supreme Court held that the Eighth and Fourteenth Amendments forbade the execution of persons with intellectual disability, Hall asked a Florida state court to vacate his sentence, presenting evidence that included an IQ test score of 71. The court denied his motion, determining that a Florida statute mandated that he show an IQ score of 70 or below before being permitted to present any additional intellectual disability evidence. The Florida Supreme Court rejected Hall's appeal, finding the State's 70-point threshold constitutional. On certiorari to the Supreme Court of Florida, the United States Supreme Court reversed, holding the state's threshold requirement unconstitutional. The Eighth Amendment, which reaffirms the duty of government to respect the dignity of all persons, prohibits execution of persons with intellectual disability. No legitimate penological purpose is served by executing the intellectually disabled. Prohibiting such executions also protects the integrity of the trial process for individuals who face a special risk of wrongful execution because they are more likely to give false confessions, are often poor witnesses and are less able to give meaningful assistance to their counsel. In determining whether Florida's intellectual disability definition implements these principles, it is proper to consider the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores. Florida's rule disregards established medical practice. The rejection of a strict 70-point cutoff in the vast majority of states provides strong evidence of consensus that society does not regard this strict cutoff as proper or humane. Every state legislature, except one, has considered the issue and has taken the position, contrary to Florida's. When a defendant's IQ test score falls within the test's acknowledged and inherent margin of error, the defendant must be able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. This legal determination of intellectual disability is distinct from a medical diagnosis, but is informed by the medical community's diagnostic framework, which is of particular help here, where no alternative intellectual disability definition is presented, and where the U.S. Supreme Court and the states have placed substantial reliance on the medical profession's expertise. *Hall v. State of Florida*, Case No. 12-10882 (US May 27, 2014).

5. NEW ORLEANS LOSES FIREFIGHTER RETIREMENT BATTLE:

The *Washington Times* reports that the U.S. Supreme Court refused to block state court rulings requiring New Orleans to pay \$17.5 million for its share of the fire department's retirement fund for 2010 through 2012. The Landrieu administration stopped making full monthly

payments to the fund in July 2010. The city said it could not afford the payments, and argued that ambiguities in the law give the mayor discretion over the amount of the city contribution. The city also says poor investments by the Firefighters Pension Board have driven up the city's contribution amount. The city had asked the U.S. Supreme Court to stay implementation of the state ruling pending an appeal. Deputy Mayor Andy Kopplin said the city was reviewing its legal options.

6. FPPTA 30TH ANNUAL CONFERENCE: The Florida Public Pension Trustees Association's 30th Annual Conference will take place on June 29 – July 2, 2014 at the Hilton Bonnet Creek, Orlando. A link on FPPTA's web site, www.fppta.org, will take you to the Hilton Bonnet Creek site to make your room reservations. You may access information and updates about the Conference at FPPTA's website. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this Conference.

7. WHY TEACHERS DRINK: Q. How is dew formed? A. The sun shines down on the leaves and makes them perspire.

8. TODAY IN HISTORY: In 1944, your editor was born.

9. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

10. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

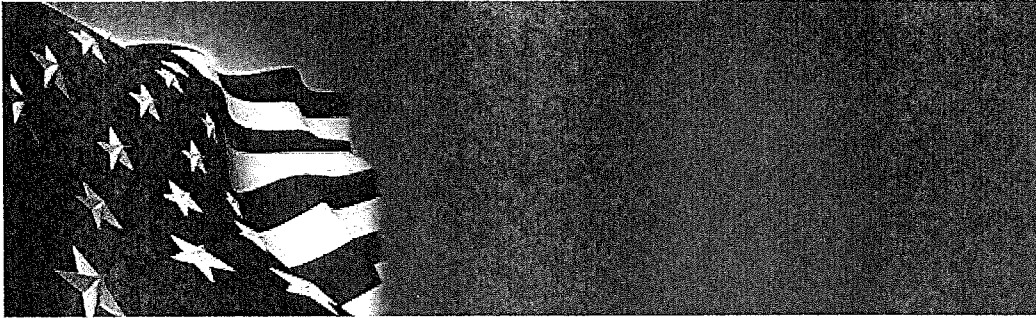
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CYPEN & CYPEN NEWSLETTER

for

JUNE 5, 2014

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. QUANTITATIVE MEASURES FOR EVALUATING SOCIAL SECURITY REFORM PROPOSALS: A new issue brief from the American Academy of Actuaries addresses recent reports of the Social Security Board of Trustees' estimate that the program's trust funds will be exhausted in approximately 25 years unless changes are made to the program. Various reforms have been proposed, including combinations that increase payroll taxes, raise retirement age, lower benefits or allocate payroll taxes to individually owned accounts. Advocates of various reforms all claim that their proposals would solve Social Security's financial problems, while continuing to meet participants' financial needs in retirement. In face of these competing claims, a set of guidelines of quantitative measures is needed for evaluating Social Security reform proposals. The issue brief describes a number of measures that can provide useful quantitative analysis of reform proposals. The issue brief explains how these measures can be used together to obtain a clearer picture of the relative advantages and disadvantages of proposals for bringing long-term financial soundness to Social Security. Because Social Security is such a large system, changes in the program are likely to have macroeconomic effects, causing considerable debate among diverse stakeholders. The goal of establishing a quantitative framework is to promote consistent analysis of such proposals and to ensure proper comparability of proposals over the broad timeframes and range of provisions covered. Based on the analyses done for past Social Security legislative proposals, the issue brief recommends the use of a standard set of measurement tools that would clearly and objectively present financial effects of Social Security reform proposals. While some of

these measurement tools may not be appropriate for every reform alternative and may need to be adapted to a specific proposal, a balanced and clear analysis is important. In general, two types of measurement standards can be applied to Social Security reform proposals. Measures of actuarial viability show whether income to the Social Security system would be sufficient to support payment of projected benefits and other expenses. Measures of distributional impact show how well the system would meet the financial needs and expectations of participants. An example of the quantitative measurements considered and potential format for comparing potential proposals is included at the end of the brief. The following are some key points:

- Many have offered Social Security reform proposals to keep the program financially sound before its trust fund becomes exhausted in approximately 25 years.
- Consistent quantitative measures allow for a better comparison of Social Security reform proposals. These measures fall in two broad categories: actuarial viability and distributional impact.
- Actuarial viability measures show whether a proposal could provide sufficient income to the Social Security system to support projected benefits and expenses. These measures include Social Security's Long-Term Adequacy, Long-Term Solvency, Sustainable Solvency, and Need for Large Scale General Revenue Participation.
- Distributional impact measures show well how a proposal could meet the financial needs and expectations of participants; these measures include Replacement Ratios, Purchasing Power at Older Ages, and Money's Worth Comparisons.
- Quantitative measures do not "favor" one proposal over another; rather, these measures provide an objective platform for assessing Social Security reform proposals.

2. FREEZING DEFINED BENEFIT PLANS: Groom Law Group has authored a *Practical Law Practice Note* that provides a basic overview of implications of freezing a defined benefit plan under the Employee Retirement Income Security Act of 1974 and Internal Revenue Code, and explains some of the issues that can arise after the plan is frozen. In the current economic climate more companies are freezing their defined benefit plans. Such a step used to be a rare event that usually involved only financially-strapped companies. However, even profitable companies have joined the chorus of those announcing freezes. The general cause seems to be that U.S. companies are reacting to stiff competition overseas and at home from companies that do not sponsor defined benefit plans. Many pension plan freezes are also in response to companies' growing concern that defined benefit plans have become more costly. Freezing a defined benefit plan may help to reduce a plan sponsor's long-term cost and volatility of its financial obligations. However, once a pension plan is frozen, the plan sponsor and the frozen pension plan's fiduciaries retain important ongoing obligations and duties under both ERISA and the Internal Revenue Code. Failure to comply with these obligations and duties could have significant adverse consequences on the plan sponsor, plan fiduciaries, plan participants and their beneficiaries. Therefore, when considering a plan freeze, a plan sponsor should carefully analyze its long-term strategies for management and disposition of the frozen plan to avoid significant liability exposure in the future. The note explains six categories:

- Some common reasons for choosing to freeze a defined benefit plan;
- The difference between freezing and terminating a defined benefit plan;
- Types of plan freezes;
- The various implications of a plan freeze;
- The process of freezing a defined benefit plan; and
- Long-term strategies for frozen defined benefit plans.

Because of space limitations, we will deal with only one of the listed subjects – types of plan freezes:

- A plan can be closed to new entrants while those participants already in the plan continue to accrue benefits (commonly called a “soft freeze”).
- A plan can stop benefit accruals for all participants, but allow benefits to increase with growth in participants' wages (also sometimes called a “soft freeze”).
- A plan can stop benefit accruals for some, but not all, participants based on age, tenure or job classification (commonly called a “partial freeze”).
- A plan can stop service accruals for all participants and all participants stop earning benefits. Assets remain in the plan and are paid out when participants retire or leave, but participants' benefits do not grow with additional years of service (commonly called a “hard freeze”).
- A plan can also be frozen using a combination of the foregoing methods.

Certain restrictions apply when an employer freezes its defined benefit plan including anti-cutback rules in prohibition against certain retroactive changes. Read the entire excellent piece [at http://www.groom.com/media/publication/733 Freezing Defined Benefit Plans 2014.pdf](http://www.groom.com/media/publication/733_Freezing_Defined_Benefit_Plans_2014.pdf).

3. TENNESSEE LAW WILL REQUIRE FULL PENSION CONTRIBUTIONS BY LOCAL GOVERNMENTS: The Governor of Tennessee has signed legislation that will require some local governments in the state to increase contributions to their pension funds. Effective immediately for contributions beginning after July 1, 2014, the Public Employee Defined Benefit Financial Security Act of 2014 requires local governments to contribute 100% of the actuarially determined annual required contribution that incorporates both the normal cost of benefits and the amortization of the pension plan's unfunded accrued liability. The act affects local government pension funds that do not participate in the \$40 billion Tennessee Consolidated Retirement System, which already requires such funding. Local governments can work toward the 100% contribution requirement over six years, but local governments that would experience financial hardship can work with the State Treasury Department if they cannot reach 100% in that time frame. Among local government pension funds that do not belong to TCRS is the \$1.9 billion Memphis City Retirement System. The new law is cited as a primary reason for the Memphis mayor's recommendation to close the defined benefit plan, which last contributed just 20.4% of the annual required contribution. With over \$2.5 billion in liabilities, the fund has a 72.6% funding ratio. This story appeared in *Pensions & Investments*.

4. MARDEN REFOCUSSES THE LENS: Susan Marden, Florida Public Pension Trustees

Association Public Relations Consultant, writes there is something inherently ugly about claims by private sector workers that government employees should not “get more” than they, themselves, receive in retirement benefits. At the core of the matter, taxpayers seem to have been led to feel especially resentful of the lifetime guarantee that public employees receive. They have been encouraged to feel angry their hard earned dollars might finance a more secure retirement for public employees who work for them. But is there not something fundamentally wrong with that attitude? Such a view presumes that public workers should be somehow less valued and at the same time more grateful for their compensation. It presumes their salaries, benefits, their very jobs are a gift given at the beneficence of public whim, and which can be taken away as easily as bestowed. In reality, public workers are a highly skilled, highly educated workforce, saddled with the prodigious responsibilities of maintaining and operating our civic functions and government services -- from public schools, to judicial courts, from maintaining roads and infrastructure, to public safety. They are no more or less worthy of their paycheck or their benefits than those in the private sector. In fact, there are some very practical reasons why private sector workers have been losing their (guaranteed) defined benefit pensions over the past 40 years, and those reasons have nothing whatsoever to do with comparisons between public and private sector workers, their skill set, what services they perform, or what they are compensated. It is not about the value of the workers, it is about the viability of pension plans as they now are governed. Beginning with passage of Employee Retirement Income Security Act of 1974, and through the Pension Protection Act of 2006, Congress passed a series of laws intended to be consumer protections, but which had the unintended consequence of making pension funding very unattractive to private sector employers. The reason for this series of laws and regulations is that too many corporations had been failing adequately to fund their pension plans, were using the funds for other expenses and were lacking in transparency about where the funds were invested. (It was not all that long ago that General Motors was being basically kept afloat by the over funding of its pension plans. Some may remember the-then chairman’s famous quote that “GM is a pension plan running an automobile company.”) But the laws intended to protect these workers were enacted through complex regulations that are difficult to adhere to (not to mention expensive). American businesses have been pulling back from the old school pension system ever since. Pension plan coverage among all private industry workers was down to 35% in the early 1990s; by 2011, that coverage stood at only 18%. But the new rules were at very least a challenge, especially to small businesses with limited financial resources. Today, private sector pension plans are required to be 100% funded, funding shortfalls must be amortized over just 7 years (down from 30), and employers must average over just 2 years the interest rates used to calculate assets and liabilities (down from 4-5 years). The public sector has had unparalleled stability in terms of staffing, projected costs, contributions. Its larger and more diverse labor force enables public systems to better pool risk and average returns over a very long investment horizon. Recent statistics showed among **private sector** establishments with fewer than 50 workers, just 8% offered a defined benefit pension plan. In contrast, among establishments with 500 or more workers, 48% offered such a plan. This statistic reinforces the notion that a large and diverse labor pool makes financing a DB plan vastly more supportable. Cost efficiencies are significantly more achievable for larger businesses and especially for public sector systems.

5. SOCIAL SECURITY GOVERNMENT PENSION OFFSET: Social Security spousal benefits were established in the 1930s to help support wives who are financially dependent on their husbands. It has since become more common for both spouses in a couple to work, with the result that, in more cases, both members of a couple are entitled to Social Security or other government pensions based on their own work records. Social Security does not provide both a full retired worker and a full spousal benefit to the same individual. Two provisions are designed to reduce Social Security spousal benefits of individuals who are not financially dependent on their spouses because they receive benefits based on their own work records. These are

- the “dual entitlement” rule, which applies to spouses who qualify for both (a) Social Security spousal benefits based on their spouses’ work histories in Social Security-covered employment and (b) their own Social Security retired-or disabled-worker benefits, based on their own work histories in Social Security covered employment; and
- the Government Pension Offset, which applies to spouses who qualify for both (a) Social Security spousal benefits based on their spouses’ work histories in Social Security-covered employment and (b) their own government pensions, based on their own work in government employment that was not covered by Social Security.

The GPO reduces Social Security spousal or widow’s benefits by two-thirds of the pension from non-covered government employment. The GPO does not reduce the benefits of the spouse who was covered by Social Security. Opponents contend that the GPO is imprecise and can be unfair. Defenders argue it is the best method currently available for preserving the spousal benefit’s original intent of supporting financially dependent spouses and also for eliminating an unfair advantage for spouses working in non-Social Security-covered employment compared with spouses working in Social Security covered jobs (who are subject to the dual entitlement rule). (The GPO should not be confused with the Windfall Elimination Provision, which reduces Social Security benefits that a person receives as a worker if he also has a government pension based on work that was not covered by Social Security. (See C & C Newsletter for March 13, 2014, Item 2). Congressional Research Service 7-5700 RI32453 (April 23, 2014).

6. IMPROVING RETIREMENT READINESS FOR STATE AND LOCAL GOVERNMENT EMPLOYEES: The International Foundation for Retirement Education has prepared a white paper for The National Association of Government Defined Contribution Administrators. Here are a few of the many survey statistics that provide evidence that American workers are on the verge of a retirement crisis:

- 57% of workers report that the total value of their households’ savings and investments, excluding the value of their primary homes and any defined benefit plans, is less than \$25,000.
- Only 13% of workers indicate they are very confident they will have enough money to live comfortably in retirement.
- A typical working-age household has only \$3,000 in retirement account assets; a

typical near-retirement household has only \$12,000.

- Among elderly Social Security beneficiaries, 23% of married couples and about 46% of unmarried persons rely on Social Security for 90% or more of their income.
- More than three-quarters of plan sponsors agree the days of not working in retirement are gone for their participants, with 55% saying they are not confident their participants are saving enough.

Public sector employers have started to adjust their retirement plan benefits offerings, and shift more of the risk of saving and investing for retirement to their employees. The combination of changing benefits, retirees living longer and increases in medical expenses mean that public sector employers are facing a significant challenge to ensure employees recognize their new retirement readiness responsibilities. Lessons from the same shift within the private sector over the past several decades tell us that, without help, most public sector employees will not be able clearly to understand their new personal risks and make informed retirement planning decisions. Therefore, public sector employees retiring in the future will be in jeopardy of not having adequate resources, and many may ultimately become somewhat dependent on their former employers in the form of social assistance. While public sector employers need to continue to use benefit packages as a way to attract and retain skilled workers, they must also find a balance in their communications to inform employees that without personal savings or other income sources, these benefits will likely not be sufficient to meet all of their future retirement income needs. Public employers and retirement plan providers can help plan participants accept their new retirement planning risks and responsibilities by:

- Offering personal retirement assessment tools that measure retirement readiness on a holistic basis – meaning looking not only at an employee's wealth and financial needs component, but also the employees' health and happiness preparedness.
- Expanding education programs to address various retirement planning needs (not just investing decisions) related to public plan differences, gender, ethnicity and generation.
- Encouraging participation in voluntary savings plans by using best practices plan features that simplify decision making, reduce costs and offer outcome-based income projections.

Although there is not a one-size-fits all solution, a commitment to a retirement readiness evaluation program combined with ongoing education programs and enhanced savings plan design features will create a strong foundation for positively impacting needed changes in public sector plan participant behavior. Amen.

7. JUDGE AND PUBLIC DEFENDER REALLY DUKE IT OUT: Mynews13.com reports that chaos in a Brevard County courtroom, between a judge and a public defender, got so heated they came to blows. The public defender's office likens what happened to an episode of *Jerry Springer*. Tension was building in Judge John Murphy's courtroom between him and public defender Andrew Weinstock. After the judge challenged Weinstock to a fight, both men went into the hallway, where a ruckus could be heard. According to the lawyer, the judge grabbed him by the collar and began punching him in

his head. Apparently Weinstock never threw any punches of his own, and was just trying to defend himself. (Apparently, he also a private defender.) Seconds after the brouhaha was over, the courtroom crowd (naturally) broke into applause. The lawyer was not seriously hurt, does not want to pursue criminal charges and is currently taking a couple days off. However, he has been reassigned, and will not be in the same courtroom as Judge Murphy again. (How about the same ring?) The Florida Judicial Qualifications Commission, which oversees judges, will no doubt conduct a full investigation. Meanwhile, Judge Murphy will be taking a leave of absence, and will be undergoing anger management classes. (Grrrrr.)

8. FIVE WAYS PRIVATIZATION IS FLEECING AMERICAN TAXPAYERS: *Salon* says that government outsourcing goes horribly wrong more often than not. The following are a few representative horror stories. For decades, we have been subjected to constant propaganda that government is inefficient, bureaucratic and expensive. We are told that the answer is to privatize or outsource government functions to private businesses, and they will do things more efficiently, and everyone comes out ahead. As a result, we have experienced years of privatization of government functions. So, how has this wave of privatization worked out? Has privatization saved taxpayers money and improved services to citizens? The simple answer: of course not. If a company can make a profit doing something the government had been doing, it means that we are losing out one way or another. It is simple math. And the result of falling for the privatization scam is that taxpayers have been fleeced, services to citizens have been cut way back and communities have been made poorer. But the companies that convinced governments to hand over public functions have gotten rich off of the deal. Surprised? Consider the following:

- **Chicago Parking Meters.** The mother of all privatization horror stories concerns Chicago's parking meters. In 2008 the city financialized its parking meter revenue stream, leasing rights for 75 years to collect from parking meters to a consortium led by Morgan Stanley. Right away parking meter rates went up fourfold and meters stopped working. The city's residents were unhappy, but there was nothing they could do about it. Obviously, Morgan Stanley was more interested in making money than giving Chicago the best deal it could. An investigation showed that the city was shortchanged by at least \$974 million. Later, it turns out the consortium may realize a profit of almost \$10 billion, after paying Chicago only \$1.15 billion.
- **Toll Roads.** Some states are considering privatizing their roads with public-private partnerships. The deal is that private companies maintain the roads, and in exchange can charge a toll and make a profit. How is this one going? In 2006, Indiana privatized I-80 for \$3.8 billion, giving a 75-year lease. (Sideline: Goldman Sachs earned \$20 million just for brokering the deal.) Since then, tolls have doubled, and it is going to get worse. The leaseholders can raise the toll annually. Colorado's 99-year lease of its Northwest Highway has met a similar fate.
- **Prisons for Profit.** Imagine a system where someone makes a profit if more and more people are put in prison: a perverse incentive. What could be worse than getting a profit to get people put in jail? Since the private companies want profits, rehabilitation becomes a cost. Thus, companies push for government policies that

put more people into prison for more crimes and for longer sentences. But the worst part of prison privatization is companies saving on costs by cutting back on staff, food quality and everything else. Investigations in 21 states unveil a startling pattern of murder, riots and sexual assault at private prisons nationwide. Nine major riots have erupted since 2000. At least 25 inmates died amid claims of mistreatment, inadequate medical care or in riots. At Florida's state run prisons in the same 12-year period: no major damage or injuries from riots; no closures over squalor; and no Justice Department investigations over human rights.

- **Cost Overruns.** Cost overruns are a common scam when governments outsource to private companies. In 2008, New York City decided to save money by contracting out its payroll system. The original estimate to develop the system was \$68 million. Somehow, the cost ballooned to \$700 million, and the system still did not work! The "good news" -- the contractor has agreed to pay the city \$500 million under a deferred prosecution agreement to resolve claims that it conspired to defraud the city. Three company employees were sentenced to 20 years each for their roles in the theft and fraud. (Are they in a private prison?)
- **Any Government Outsourcing Anything.** If you examine the claim that private companies are always more efficient than government, the argument starts to fall apart. Just how are companies more efficient? The first way is supposed to be cost-savings. But how do companies save money. There are two ways: reduce what they pay employees/suppliers and cut back on the amount or quality of service. People who are employed by the city to perform tasks are laid off, and things are turned over to the company. Typically, the company will hire people at as close to minimum wage as possible, and likely with no benefits. It will employ fewer managers, and pay them less. It will cut back on maintenance of the fleet, and it will try to cut back on the service. Does this situation actually save government money? If people with okay public employee jobs are replaced by lower paid workers, the community is poorer in the aggregate. More people will need public safety net services. There will be foreclosures, tax revenues will drop because of lower pay, but also because poorer people cannot spend as much in stores. Sales taxes drop as stores face fewer customers able to get by. The next time someone tells you private companies are always more efficient than government, tell them that the facts are against them, it has been tried and just has not worked. (Or just give them the Bronx cheer.)

9. SIX WAYS TO INSURE EMPLOYEES TAKE VACATION THIS SUMMER:

Ebn.benefitnews.com says that despite time away from work being a key ingredient to work-life balance, many Americans do not take full advantage of their paid vacation benefits. Fifty-nine percent of respondents to a recent survey said they left at least one paid time off day unused at the end of last year, while 35% of them left five days or more. Here are ways benefits professionals say can help end America's vacation deprivation:

- **Let Gandhi be your guide.** Like Gandhi inspires, be the change you want to see. Set a good example and take all of your own vacation.
- **Reward with vacation days.** Offer additional vacation days as a reward for outstanding performance, innovation and solutions to challenges.
- **Make it mandatory.** If feasible, stipulate that all employees must take their allotted

vacation every year.

- **Use it or lose it.** If you are uncomfortable with mandatory policies or it is not feasible for your workplace, use-it-or-lose-it is another approach. Or, eliminate or limit the ability for employees to cash out vacation days.
- **Make the business case.** Make the business case for adopting a more liberal vacation policy. It is no coincidence that most of the companies on Fortune's 100 Best Companies to Work for list not only have generous perks, but also post impressive business results.
- **Offer voluntary options.** Offer vacation options (excluding airfare), such as hotels, cruises, destination packages and all-inclusive resorts as a payroll-deducted voluntary benefit.

10. FPPTA 30TH ANNUAL CONFERENCE: The Florida Public Pension Trustees Association's 30th Annual Conference will take place on June 29 – July 2, 2014 at the Hilton Bonnet Creek, Orlando. A link on FPPTA's web site, www.fppta.org, will take you to the Hilton Bonnet Creek site to make your room reservations. You may access information and updates about the Conference at FPPTA's website. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this Conference.

11. WHY TEACHERS DRINK: Q. Name the four seasons? A. Salt, pepper, mustard and vinegar.

12. TODAY IN HISTORY: In 1988, 1st Children's Miracle Network Telethon raises \$590,000.

13. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

14. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

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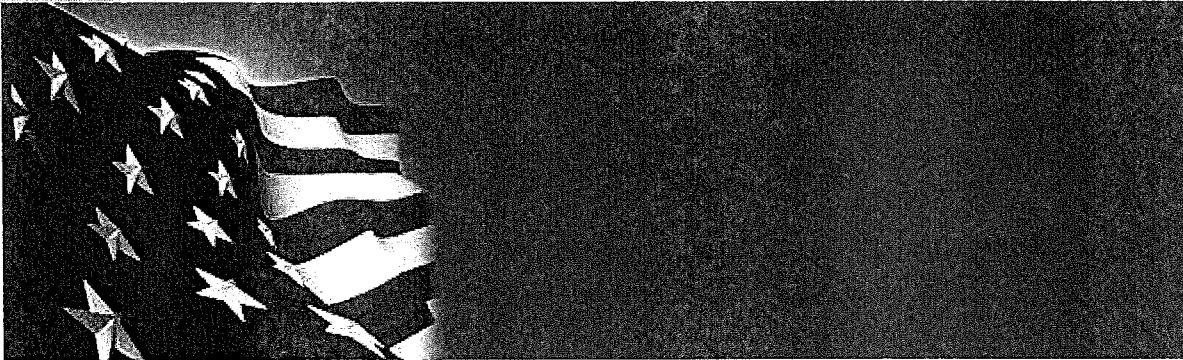
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NEWSLETTER

for

JUNE 12, 2014

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. CALSTRS IS SHAREHOLDER ACTIVIST: California State Teachers' Retirement System has a robust corporate governance function -- voting proxies, assisting in securities litigation, writing comment letters to the Securities and Exchange Commission, handling environmental/social responsibility programs, and implementing state divestment laws (mainly around Iran and Sudan). As reported by marketsmedia.com, CalSTRS also has a 21 Risk Factor Policy, which are risks that it expects all of its managers to consider when making investments. An investment officer identifies problematic companies or issues, meets with the companies to try to determine their involvement or exposure, then brings that information back to the 21 Risk Factor Review Committee to determine whether further actions need to be taken. The importance of corporate governance to CalSTRS is evidenced by the Corporate Governance team's status as a distinct asset class, an organizational structure not

often found in investment institutions. In addition, CalSTRS Corporate Governance unit is responsible for managing a public equity portfolio that features external managers that employ an activist investment philosophy. These managers work with undervalued public equity companies to improve governance profiles and business practices. Over 400 "campaigns" took place in each of 2012 and 2013, with 90 proxy fights last year alone. Although 60% of CalSTRS equity investments are indexed, CalSTRS is a long-term holder, so its concern is that companies are well-run. This year CalSTRS sent out letters to 100 companies on majority voting, and followed up with proposals, most of which ended up as negotiated settlements, and only five or so actually going to a vote.

2. NO ALTERNATIVE IF JERSEY PENSION PLAN STRUCK DOWN: More than a dozen unions representing New Jersey teachers, police officers, firefighters and state workers have now filed lawsuits seeking to stop Gov. Chris Christie from taking \$2.4 billion meant for the pension system. As reported by governing.com, the governor said that if he loses the looming court battle, there is nowhere else to find the money needed to balance the state's ailing budget. "There is no Plan B. This is the plan." Eleven unions joined the fray, led by the New Jersey Education Association teachers union and the Communications Workers of America, the state's largest workers union. Both filed lawsuits arguing the plan violates the state constitution and the contract rights of hundreds of thousands of New Jersey's public workers. Besides, grabbing the \$2.4 billion would show a flagrant disregard for pension-reform laws Christie himself signed in his first term. Workers began to pay more for their retirement and medical benefits in 2011, and in exchange, won stronger contracts with the right to bigger payments every year by the state into their troubled retirement fund. Does the term "bait-and-switch" ring a bell?

3. WHY PRIVATE EQUITY IS BECOMING A PUBLIC PROBLEM: A few weeks ago, a top official at the Securities and Exchange Commission reported on what he called a remarkable amount of potentially illegal behavior in the private equity industry (that is, the industry that buys up, changes and sells off smaller companies). According to a *Salon* report, the SEC official declared that half of all the reviews discovered violations of law or material weaknesses in

controls. The announcement followed an earlier report on how the agency now believes a majority of private equity firms inflate fees and expenses charged to companies in which they hold stakes. At first glance, many probably dismiss this news as just an example of plutocrats bilking plutocrats. But that interpretation ignores how such malfeasance affects the wider economy. One way to understand it is through the simmering debate over pension obligations in states and cities across the country. Data from the National Association of State Retirement Administrators show that the average amount of pension dollars devoted to private equity and other so-called alternative investments has more than tripled over the last 12 years, growing from 7% to around 22% today. With public pensions now reporting \$3 trillion in total assets that is up to \$660 billion of public money subject to the rapacious fees being exposed by the SEC. Those fees are paid through a combination of tax increases and pension benefit cuts. Private equity shenanigans can also hurt the middle class by encouraging looting. For example, in the last decade, private equity firms have collected \$2 billion in so-called transaction fees, which are bonuses firms take for conducting their business of buying, managing and selling companies. This scheme has been called the crack cocaine of the private equity industry. *Salon* gives just one example of how it works: the *New York Times* recently examined a merger of two orthopedic implant manufacturers and how that merger resulted in a Wall Street jackpot. Indeed, the financial firms involved in the deal ended up extracting a 20% share of gains from the sale, as well as management fees of 1.5% to 2% charged to investors and a share in an estimated \$30 million in monitoring fees. This deal will be a gift that keeps on giving to the private equity firms involved because they will be paid millions more in fees for work that they are never going to do. Looks like the time to hang on to your athletic supporter.

4. NEW YORK CITY CUTS OUT PENSION BROKERS: Middlemen known as "placement agents" will no longer get a piece of the pie for brokering business with New York City's \$150 billion retirement system, according to the *New York Post*. The boards of trustees of all five city pension funds have passed a resolution barring intermediaries from helping arrange investments by the funds. The use of placement agents erupted in scandal in 2009, when two top aides to then-state Comptroller Alan Hevesi were busted for running a massive pay-to-play scheme involving state pension fund

investments. In 2011, Hevesi was sent to jail for accepting nearly \$1 million in cash, gifts and campaign contributions for steering \$250 million in state pension money. The new rule, which expands a ban on placement agents that previously applied only to stock market investments, sets a new tone and a new day for the New York City pension system. Supposedly, only two of about 250 investment firms currently doing business with the city's pension boards got their deals after hiring placement agents.

5. TAXPAYER BILL OF RIGHTS: All taxpayers have a set of fundamental rights they should be aware of when dealing with the Internal Revenue Service. Explore your rights and our obligations to protect them:

- **The Right to Be Informed.** Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.
- **The Right to Quality Service.** Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS; to be spoken to in a way they can easily understand; to receive clear and easily understandable communications from the IRS; and to speak to a supervisor about inadequate service.
- **The Right to Pay No More than the Correct Amount of Tax.** Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.
- **The Right to Challenge the IRS's Position and Be Heard.** Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions; to expect that the IRS will consider their timely objections and documentation promptly and fairly; and to receive a response if IRS does not agree with their position.

- **The Right to Appeal an IRS Decision in an Independent Forum.** Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.
- **The Right to Finality.** Taxpayers have the right to know the maximum amount of time they have to challenge IRS's position, as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.
- **The Right to Privacy.** Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary; will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.
- **The Right to Confidentiality.** Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.
- **The Right to Retain Representation.** Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.
- **The Right to a Fair and Just Tax System.** Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty, or if the IRS has not resolved their tax issues properly and timely through its normal channels.

IRS Publication 1, <http://www.irs.gov/Taxpayer-Bill-of-Rights#informed>.

6. FPPTA 30TH ANNUAL CONFERENCE: The Florida Public Pension Trustees Association's 30th Annual Conference will take place on June 29 – July 2, 2014 at the Hilton Bonnet Creek, Orlando. A link on FPPTA's web site, www.fppta.org, will take you to the Hilton Bonnet Creek site to make your room reservations. You may access information and updates about the Conference at FPPTA's website. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this Conference.

7. WHY TEACHERS DRINK: Q. What is the fibula? A. A small lie.

8. TODAY IN HISTORY: In 1939, Baseball Hall of Fame opens in Cooperstown, New York.

9. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

10. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

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