

AGENDA

A REGULAR MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., WEDNESDAY, APRIL 5, 2017

*The Board may take action on any item on the agenda,
and agenda items may be taken out of order.*

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. APPROVAL OF MINUTES
 - A. Approval of the Minutes of the Special Meeting of March 3, 2017
- IV. REPORT ON CLOSED SESSION ITEMS
- V. PUBLIC COMMENT
- VI. CONSENT AGENDA
 - A. Ratification of Service Retirement and Survivor Benefit Application Approvals.
 - B. Ratification of Reciprocal Disability Retirements.
(Memo dated March 23, 2017) (Legal Supplemental Memo dated March 28, 2017)
 - C. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice the appeal for a service-connected disability retirement in the case of **Max D. Hartwell**. (Memo dated March 23, 2017)

April 5, 2017

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VI. CONSENT AGENDA (Continued)

- D. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice the appeal for a service-connected disability retirement in the case of **Ramona Salas**. (Memo dated March 23, 2017)

VII. NON - CONSENT AGENDA

- A. Presentation by Chris Waddell from Olsen Hagel & Fishburn LLP regarding recent vested rights case law. (Memo dated March 27, 2017)

VIII. FOR INFORMATION ONLY

- A. For information only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated March 23, 2017)

IX. REPORT ON STAFF ACTION ITEMS

- X. GOOD OF THE ORDER
(For information purposes only)

XI. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

XII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

- A. Applications for Disability
- B. Referee Reports

XIII. ADJOURNMENT

Documents subject to public disclosure that relate to an agenda item for an open session of the Board of Retirement that are distributed to members of the Board of Retirement less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Board of Retirement Members at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

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MINUTES OF THE SPECIAL MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., FRIDAY, MARCH 3, 2017

PRESENT: Vivian H. Gray, Vice Chair
William de la Garza, Secretary
Marvin Adams
Alan Bernstein
Anthony Bravo
Yves Chery
Joseph Kelly
David L. Muir (Alternate Retired)
Ronald A. Okum
William Pryor (Alternate Member)

ABSENT: Shawn R. Kehoe, Chair

STAFF ADVISORS AND PARTICIPANTS

Gregg Rademacher, Chief Executive Officer
Robert Hill, Assistant Executive Officer
Steven P. Rice, Chief Counsel
Dr. Vito Campese, Medical Advisor
Fern M. Billingsy, Senior Staff Counsel

STAFF ADVISORS AND PARTICIPANTS (Continued)

Jill P. Rawal, Staff Counsel

Jason E. Waller, Senior Staff Counsel

Ricki Contreras, Division Manager
Disability Retirement Services

Tamara Caldwell, Specialist Supervisor
Disability Retirement Services

Francis J. Boyd, Senior Staff Counsel
Legal Division

I. CALL TO ORDER

The meeting was called to order by Vice Chair Gray at 9:01 a.m., in the Board Room of Gateway Plaza.

II. PLEDGE OF ALLEGIANCE

Mr. de la Garza led the Board Members and staff in reciting the Pledge of Allegiance.

III. APPROVAL OF MINUTES

A. Approval of the Minutes of the Regular Meeting of February 1, 2017

Mr. Chery made a motion, Mr. Muir seconded, to approve the revised minutes of the regular meeting of February 1, 2017. The motion passed with Ms. Gray and Mr. de la Garza abstaining.

B. Approval of the Minutes of the Regular Meeting of February 9, 2017

Mr. Chery made a motion, Mr. Bernstein seconded, to approve the minutes of the regular meeting of February 9, 2017. The motion passed with Mr. de la Garza abstaining.

IV. REPORT ON CLOSED SESSION ITEMS

No items were reported.

V. OTHER COMMUNICATIONS

A. For Information

1. January 2017 All Stars

Mr. Hill announced the eight winners for the month of January: Paola Villegas, Dmitriy Khaytovich, Cynthia LeShay, Darla Davis, Norma Minjarez, Amit Aggarwal, Katy O'Brien, and Debra Rendon for the Employee Recognition Program and Indee Brooke for the Webwatcher Program. Elda Villarroel, Rachel Sacramento, Ted Granger, and Rosalind White were the winners of LACERA's RideShare Program.

2. Chief Executive Officer's Report (Memo dated February 22, 2017)

Mr. Rademacher recognized and congratulated LACERA staff member, David Redman on his retirement.

In addition, Mr. Rademacher recognized Allison Barrett for co-hosting an upcoming Disability Retirement Roundtable and also thanked Theodore King for co-hosting the Reciprocity Roundtable. Mr. Rademacher also recognized James Pu for his assistance in preparing staff for a LACERA wide software and email program migration. Furthermore, Mr. Rademacher thanked the Benefits and support teams for their work during the annual retirement processing workload increase known as March Madness.

Lastly, Mr. Rademacher highlighted the recent California Supreme Court decision

V. OTHER COMMUNICATIONS

A. For Information

2. Chief Executive Officer's Report (Continued)

making communications regarding the conduct of public business made from personal accounts subject to possible disclosure under the California Public Records Act. Staff will be looking into LACERA's practices and provide guidance in light of this new ruling.

VI. PUBLIC COMMENT

LACERA member, Alba Zazueta, addressed the Board regarding her disability application.

VII. CONSENT AGENDA

Mr. Okum made a motion, Mr. Adams seconded, to approve agenda items A-B, and D. The motion passed unanimously.

- A. Ratification of Service Retirement and Survivor Benefit Application Approvals.
- B. Requests for an administrative hearing before a referee. (Memo dated February 16, 2017)
- C. Recommendation as submitted by Marvin Adams, Chair, Travel Policy Committee: That the Board adopt the proposed revised Education and Travel Policy. (Memo dated February 17, 2017)

Mr. Rice was present to answer questions from the Board.

Mr. Kelly made a motion, Mr. Bernstein seconded, to approve the recommendation. The motion passed with Mr. Pryor voting no and Mr. Chery abstaining.

VII. CONSENT AGENDA (Continued)

- D. Recommendation as submitted by Gregg Rademacher, Chief Executive Officer: That the Board approve attendance of Board members at the Pension Bridge Annual Conference on April 18-19, 2017 in San Francisco, California and approve reimbursement of all travel costs incurred in accordance with LACERA's Education and Travel Policy. (Placed on the agenda at the request of Ms. Gray) (Memo dated January 27, 2017)

VIII. NON-CONSENT AGENDA

- A. Recommendation as submitted by Vivian H. Gray, Chair, Disability Procedures and Services Committee: That the Board approve the expansion of the Priority-One Case Processing Criteria to classify cases with applicants in a Class 4 Arduous position, who have met specific age, service, medical history and legal review requirements as a Priority One. (Memo dated February 16, 2017)

Ms. Contreras was present to answer questions from the Board.

Mr. Bernstein made a motion, Mr. Chery seconded, to approve the recommendation. The motion passed unanimously.

- B. Recommendation as submitted by Fern M. Billingsy, Senior Staff Counsel: That the Board 1) Adopt the Resolutions specifying pay items as "compensation earnable" and "pensionable compensation;" and 2) Instruct staff to coordinate with the County of Los Angeles to establish necessary reporting mechanism and procedures to permit LACERA to include the qualifying items in the calculation of final compensation. (Memo dated February 14, 2017)

Ms. Billingsy was present to answer questions from the Board.

Mr. Adams made a motion, Mr. Chery seconded, to approve the recommendation. The motion passed unanimously.

VIII. NON-CONSENT AGENDA (Continued)

- C. Recommendation as submitted by Gregg Rademacher, Chief Executive Officer: That the Board 1) Approve amending the current Management Appraisal and Performance Plan Tier I Salary Structure Table – LR Schedule to include salary ranges LR26 through LR28; 2) Direct staff to submit to the Board of Supervisors the necessary salary ordinance language to implement the revised Salary Structure Table and the Chief Investment Officer salary range at LR28; and 3) Delegate authority to the Chief Executive Officer to set the Chief Investment Officer initial salary in the fourth quartile of the salary range LR28. (Memo dated February 23, 2017)

Mr. Rademacher was present to answer questions from the Board.

Mr. de la Garza made a motion, Mr. Chery seconded, to approve the recommendation. The motion passed unanimously.

- D. Recommendation as submitted by Gregg Rademacher, Chief Executive Officer: That the Board receive and file the SACRS Nominating Committee's recommended officer slate notice and consider providing direction to SACRS on additional officer nominations. (Memo dated February 23, 2017)

Mr. Rademacher was present to answer questions from the Board.

Mr. Chery made a motion, Mr. de la Garza seconded, to approve the voting delegate to support the SACRS Nominating Committee's ballot at the SACRS Business Meeting.

Mr. Chery amended his motion, Mr. Pryor seconded, to approve staff's recommendation. The motion passed with Mr. Kelly abstaining.

IX. FOR INFORMATION ONLY

- A. For information only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated February 13, 2017)

This item was received and filed.

X. REPORT ON STAFF ACTION ITEMS

The Board requested additional information regarding the recent Supreme Court decision on using personal devices for business related matters. In addition, the Board requested staff to inquire on using the word “university” when it relates to educational topics provided on the LACERA website.

XI. GOOD OF THE ORDER
(For information purposes only)

Mr. Kelly shared that he will be participating in a gender diversity event in Los Angeles which focuses on gender diversity in the workplace.

Mr. Rice stated that the California Supreme Court has made a decision regarding *Flethez vs. San Bernardino County Employees Retirement Association (SBCERA)*, which addresses prejudgment interest in disability litigation matters. Frank Boyd will be bringing this topic for a full report at the next Disability Procedures and Services Committee meeting.

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement
Service-Connected Disability Applications

On a motion by Mr. Bernstein, seconded by Mr. Chery, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement (Continued)
Service-Connected Disability Applications

<u>APPLICATION NO.</u>	<u>NAME</u>
601C	BARDO C. ORTIZ
602C*	ISMAEL LOYA (DECEASED)
603C	HILBRAND W. GOEDHART
604C	STEVEN R. FREIWIRTH
605C**	STEVEN E. BIAGINI
606C***	KEVIN J. LIEBERMAN
607C***	IRENE J. HAMPTON
608C	RALPH J. GAMA
609C**	CATALINA I. PRITCHARD

*Granted SCD – Survivor Benefit

**Granted SCD – Employer Cannot Accommodate

***Granted SCD – Retroactive

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety-Fire, Lifeguard
Service-Connected Disability Applications

On a motion by Mr. Okum, seconded by Mr. Bernstein, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
1834A	PARI T. MOORE
1835A	DIRK A. WEGNER
1836A	DON A. JOHNSON
1837A	RONALD W. SHARP
1838A	DONALD A. CURTIS
1839A	DAVID B. SCHAEFER
1840A	STEVEN P. KREAGER
1841A	RICHARD R. SOLOMON
1842A	BRIAN T. HOGUE
1843A*	STEVEN M. CASLAVKA
1844A	BRYAN J. MCILREVEY

*Granted SCD – Retroactive

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

General Members

Service-Connected Disability Applications

On a motion by Mr. Chery, seconded by Mr. Adams, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
2695B*/**	AMANDA A. TREJO
2696B***	ERNESTINE P. ALLEN
2697B**	CYNTHIA S. CRUZ
2698B*****	CAMALA D. JOHNSON
2699B*****	LA TONYA M. GARDNER
2700B*****	LETICIA C. SMITH

* Applicant Present

** Granted SCD – Retroactive Since Employer Cannot Accommodate

*** Granted SCD – Retroactive

**** Granted SCD – Salary Supplemental

***** Granted SCD – Employer Cannot Accommodate

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

A. Applications for Disability

APPLICATION NO. & NAME

BOARD ACTION

6934A – KATHLEEN D. KOSKY

Mr. Kelly made a motion, Mr. Okum, seconded, to grant a non-service connected disability retirement pursuant to Government Code Sections 31720 and 31724.

Ms. Gray made a substitute motion, Mr. Adams seconded, to return to staff for additional information. The motion passed with Mr. de la Garza voting no.

6935A – TOMAS H. CROUCIER

Mr. Bernstein made a motion, Mr. Pryor seconded, to deny a service connected disability retirement and find the applicant not permanently incapacitated.

Ms. Gray made a substitute motion, Mr. Chery seconded, to return to staff for additional information. The motion passed (roll call) with Messrs. Adams, Bravo, Chery, Kelly, Okum, and Ms. Gray voting yes; and Messrs. Bernstein, de la Garza and Pryor voting no.

6936A – ANA UEHARA

Mr. Chery made a motion, Mr. de la Garza seconded, to deny a service connected disability retirement and find the applicant not permanently incapacitated. The motion passed unanimously.

6937A – JESSIE M. HACKETT

Mr. Pryor made a motion, Mr. de la Garza seconded, to deny a service connected disability retirement and find the applicant not permanently incapacitated since the employer can accommodate. The motion passed unanimously.

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

A. Applications for Disability (Continued)

<u>APPLICATION NO. & NAME</u>	<u>BOARD ACTION</u>
6938A – DIANA CAZARES	Mr. Okum made a motion, Mr. Kelly seconded, to deny a service connected disability retirement and find the applicant not permanently incapacitated since the employer can accommodate. The motion passed unanimously.
6939A – ALBA L. ZAZUETA*	Mr. Kelly made a motion, Mr. Okum seconded, to deny a service connected disability retirement and find the applicant not permanently incapacitated since the employer can accommodate. The motion passed unanimously.
6940A – LORI A. AVILA	(Per applicant's request this item was held in open session under Item XII.) Mr. Okum made a motion, Mr. Bernstein seconded, to grant a non-service connected disability retirement pursuant to Government Code Section 31720. Mr. Chery made a substitute motion, Mr. Adams seconded, to return to staff for additional information. The motion passed with Messrs. Kelly and Okum voting no.
6941A – ARETHA L. BROOKS	Mr. Adams made a motion, Mr. Kelly seconded, to deny a service connected disability retirement without prejudice. Ms. Gray made a substitute motion, Mr. Okum seconded, to return to staff for additional information. The motion passed unanimously.

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

APPLICATION NO. & NAME

BOARD ACTION

2664B – JUAN A. NOLAN

Mr. Okum made a motion, Mr. Adams seconded, to grant a non-service connected disability retirement pursuant to Government Code Section 31720. The motion passed with Messrs. Chery, Bravo and Ms. Gray voting no.

B. Staff Recommendations

1. Recommendation as submitted by Jason E. Waller, Senior Staff Counsel, Disability Litigation: That the Board find **Larry L. Waldie** permanently incapacitated due to service-connected injuries and grant a service-connected disability retirement in accordance with Government Code Section 31720. (Letter dated February 14, 2017)

Mr. Waller was present to answer questions from the Board.

Mr. Adams made a motion, Mr. Pryor seconded, to approve the recommendation. The motion passed with Messrs. Bernstein and Kelly voting no and Mr. Okum abstaining.

XIV. EXECUTIVE SESSION

- #### A. Conference with Legal Counsel - Anticipated Litigation Significant Exposure to Litigation (Pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9)

1. Administrative Appeal of Eugenia Ditu

The Board met in Executive Session pursuant to Government Code Section 54956.9(d)(2). It was reported that the Board voted unanimously, on a motion by Mr. Bernstein, seconded by Mr. Okum, to grant the appeal of Eugenia Ditu.

XIV. EXECUTIVE SESSION (Continued)

2. One Unnamed Potential Case

The Board met in Executive Session pursuant to Government Code Section 54956.9(d)(2), and there was nothing to report.

Green Folder Information (Information distributed in each Board Member's Green Folder at the beginning of the meeting)

1. Retirement Board Listing dated February 1, 2017
2. Board of Retirement Revised Meeting Minutes of February 1, 2017
3. Disability Retirement Evaluation Summary – Correction Memo: Jessie M. Hackett (Memo dated March 2, 2017)
4. Disability Retirement Evaluation Summary – Correction Memo: Aretha L. Brooks (Memo dated March 2, 2017)
5. LACERA Legislative Report – Other (Dated March 2, 2017)
6. LACERA Legislative Report - Bills Amending CERL/PEPRA (Dated March 2, 2017)
7. Tod Hipsher vs. LACERA, County of Los Angeles and State of California (Privileged and Confidential Attorney-Client Communication) (Memo dated March 1, 2017)

XV. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 11:23 a.m.

WILLIAM DE LA GARZA, SECRETARY

SHAWN R. KEHOE, CHAIR

March 23, 2017

TO: Each Member
Board of Retirement

FROM: Bernie Buenaflor 
Division Manager, Benefits

FOR: April 5, 2017 Board of Retirement Meeting

SUBJECT: **RATIFICATION OF RECIPROCAL DISABILITY RETIREMENTS**

IT IS RECOMMENDED that the Board approves the reciprocal disability retirements for the following named deferred members who were found to be disabled by the current reciprocal agency for the performance of their duties and have met the burden of proof.

RECIPROCAL AGENCY	DEPT.	NAME	SAFETY/ GENERAL MEMBER	DISABILITY TYPE	RETIREMENT DATE
San Bernardino CERA	Sheriff	Ryan P. Burt	Safety	SCD	2/12/15
CALPERS	Sheriff	Rodney L. Elliott	Safety	SCD	11/30/16
CALPERS	Sheriff	Gregory D. Whipple	Safety	SCD	4/20/16
San Bernardino CERA	Probation	Felicite R. Fort	General	SCD	11/2/15

BB:am



March 28, 2017

TO: Each Member,
Board of Retirement

FROM: Steven P. Rice *SPR*
Chief Counsel

FOR: April 5, 2017 Board of Retirement Meeting

SUBJECT: **BOARD RATIFICATION OF RECIPROCAL DISABILITY RETIREMENTS**

SUMMARY

This memo introduces a new item that will appear on the Board of Retirement's Disability Consent Agenda going forward. By this item, the Board will ratify the reciprocal disability retirements of LACERA members retired for disability by a later reciprocal system. The legal background was explained in detail to the Operations Oversight Committee (OOC) at its March 3, 2017 meeting. A reciprocal disability retirement will be placed on the Board's agenda only after Benefits staff has confirmed that the later system retired the member for disability.

LEGAL AUTHORITY

Under the County Employees Retirement Law (CERL), when a member is retired for disability by a later reciprocal system, the member "may be retired for disability" from LACERA. Cal. Gov't Code §31837. LACERA applies Section 31837 so that members receive the benefit of being retired for disability from both systems. The retirement requires Board approval, as with all other members.

Unlike the usual disability process, the Board need not make a determination with respect to the member's disability, as that determination has already been made by the reciprocal system. Under Section 31837, all this Board needs to do is ratify the member's disability retirement from LACERA so that the member receives the benefits associated with such a retirement.

The Board has the authority and responsibility to approve member retirements. See Cal. Gov't Code §§31670 (service retirements); 31724 (regular disability retirements). The reciprocal disability provisions of CERL are less explicit, but they nevertheless provide for Board action. See, e.g., Cal. Gov't Code §31838(3) (referencing the Board). In addition, staff believes it is a good governance practice for the Board to approve all member retirements, regardless of type, in the exercise of its fiduciary duty to administer the system.

In the past, these members have been administratively retired by staff; the new process will align the retirement process for reciprocal disability retirees with the process for other retirees, all of whom are retired by the Board.

ADDITIONAL INFORMATION

As background information, attached as Attachment 1 is a summary of the procedures LACERA follows in processing reciprocal disability retirements, as discussed with the OOC on March 3, 2017. Staff is reviewing LACERA's past compliance with these procedures and will report back to the OOC and the Board.

CONCLUSION

Under Section 31837, the Board should ratify the reciprocal disability retirements on today's agenda as well as future agendas.

Attachment

Reviewed and Approved:



Gregg Rademacher
Chief Executive Officer

- c: Gregg Rademacher
- Robert Hill
- John Popowich
- Bernie Buenaflor
- Ricki Contreras
- Cynthia Martinez
- Allan Cochran
- Louis Gittens
- Carlos Barrios
- Allen Molina
- Fern Billingsy
- Frank Boyd

ATTACHMENT 1
SUMMARY OF RECIPROCAL DISABILITY RETIREMENT PROCESS

1. A Reciprocity Election is Irrevocable, and Contributions may not be Withdrawn.

Subject to narrow exceptions, once a member establishes reciprocity, a reciprocity election is irrevocable and contributions may not be withdrawn, except that a member may withdraw contributions from all reciprocal systems after leaving service with the last system. Cal. Gov't Code §31831 (a member that has established reciprocity "may not, after that election, rescind the election or withdraw any of his or her accumulated contributions while a member of such other system"). If a member requests to withdraw his or her LACERA contributions when retiring from the reciprocal system, the request will be denied.

LACERA's incoming and outgoing reciprocity application forms have historically, at least as far back as 2000, contained language through which members acknowledged that, once reciprocity is established, they cannot withdraw contributions from either system unless membership in both systems is terminated. Under applicable law, this language is correct and will be enforced.

The rule follows from CERL's specific requirement that, notwithstanding any other provision of the CERL, a reciprocal member can receive no greater benefit from all systems than he or she could receive if all service was with one system. Cal. Gov't Code §31838.5; see *Block v. Orange County Employees' Retirement Association* (2008) 161 Cal.App.4th 1297, 1309 ("A purpose and effect of these reciprocity provisions are to treat a member retiring concurrently from reciprocal retirement systems as having been employed by a single employer and having been a member of a single retirement system for the member's entire career, for purposes of calculating retirement benefits.").

If a member were to be allowed to withdraw contributions from one system while receiving a lifetime benefit from another system, the member would receive a benefit not allowed to members whose service was entirely with one system. A member whose service is with one system can only receive a lifetime benefit, and cannot make a lump sum withdrawal of part of his or her contributions and still receive a pension. The reciprocal member also, during his or her working life, received the advantage of contributions to the second system based on lower entry age (i.e., age at entry to the first reciprocal system). If a member was allowed to "break" the reciprocity election, the second system would have the significant administrative burden of correcting the member's entry age, recalculating contributions, and collecting the underpaid amount.

We are aware that, in certain instances in the past, LACERA allowed a reciprocal disability retiree to withdraw contributions even when he or she was to receive a retirement benefit from the reciprocal system. We have not located and reviewed these cases. They may have presented unique circumstances that justified a deviation from the basic rule against withdrawal; as noted above, CERL includes some narrow exceptions. While each member's case is evaluated individually, the basic CERL rule that must be applied by LACERA is that reciprocal members may not withdraw their contributions from one reciprocal system unless contributions are withdrawn from all reciprocal systems.

2. *A Reciprocal Member must Concurrently Retire, with Board Approval.*

Upon retirement from one reciprocal system, a member must concurrently retire from LACERA. This follows from the rule, discussed above, that the election is irrevocable and contributions cannot be withdrawn. Cal. Gov't Code §31831. "Concurrent" does not literally mean on the same day, and there can be delay between the reciprocal retirements, and yet they will be regarded as concurrent if they are filed within a reasonable time, which may vary from case to case. The concurrent retirement requirement is applied flexibly to accomplish the purpose of the reciprocity statutes. The member must also submit a retirement election form to LACERA before benefits are paid, so that LACERA can properly calculate the benefit based on the option chosen by the member.

When a member is retired for disability by a later reciprocal system, the member "may be retired for disability" from LACERA. Cal. Gov't Code §31837. LACERA applies Section 31837 so that members receive the benefit of being retired for disability from both systems, including healthcare and the other advantages associated with being a disability retiree. Previously, reciprocal disability retirees may have received a service retirement. Staff will review past practice and report back as appropriate to the Operations Oversight Committee and the Board with respect to this issue.

In the past, reciprocal disability retirees have been administratively retired by staff. However, the retirement requires Board approval, as with all other members. In the future, Board approval will take the form of an agenda item on the Board's Consent calendar; these retirements will be a new item on the Consent calendar. This process change will bring the approval of reciprocal disability retirements into alignment with the approval of all other retirements.

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3. Calculation of Benefits.

a. SCD Benefits.

A member who has received a service-connected or industrial disability retirement (SCD) from a reciprocal system on account of disability arising out of the reciprocal employment will be retired for disability by LACERA, as stated above. Such a member is entitled to an annuity from LACERA which is the actuarial equivalent of the member's accumulated contributions. Cal. Gov't Code §31837(3) ("... such allowance shall be an annuity which is the actuarial equivalent of the member's accumulated contributions when retirement under the other system is for disability arising out of and in the course of employment subject to such other system"). The member, and his or her survivors, is entitled to the same tax treatment, retiree health care eligibility, and survivor benefits as LACERA provides to any other SCD retiree.

b. NSCD Benefits.

A safety member under age 55 or a general member under age 65 who is retired for a nonservice-connected disability (NSCD) and receives a disability retirement from a reciprocal system shall receive a retirement allowance equal to the greater of (a) the amount the member is entitled to as a service retirement, or (b) the sum of (i) an annuity which is the actuarial equivalent of the member's accumulated contributions and (ii) if the Board of Retirement determines that the disability is not due to intemperate use of alcohol or drugs, willful misconduct, or violation of law, a disability retirement as computed under Sections 31727 or 31727.2. Cal. Gov't Code §§31837(2), 31838. The member, and his or her survivors, is entitled to any additional benefits afforded to any other NSCD retiree.

c. Benefit Cap.

Section 31838.5 provides that the combined allowance provided to a disability retiree by his or her reciprocal systems cannot be "greater than the amount the member would have received had all the member's service been with only one entity" (the Cap). Section 31838.5 further provides, "Each entity shall calculate its respective obligations based upon the member's service with that entity and each shall adjust its payment on a pro rata basis." This limitation applies to both SCD and NSCD retirees. With respect to an SCD retiree, the foregoing limit applies only where the member is employed by the second agency on or after January 1, 1984.

To implement Section 31838.5, each reciprocal agency calculates its obligations based on the member's service with that agency and adjusts its payment on a pro rata basis so as not to exceed the Cap. So the member is not disadvantaged, the

Cap is the largest benefit the member would have been eligible to receive from any of the member's reciprocal agencies. Accordingly, the Cap will be calculated using the most favorable benefit formula and the highest final average compensation available to the member at any of his or her reciprocal systems.

Section 31838.5 provides that, for a reciprocal disability retiree, LACERA will not pay more than its pro rata share. However, if a reciprocal agency pays more than its pro rata share, LACERA will reduce its payment (even to zero) to ensure that the member does not receive more from the combined agencies than the Cap. *Block v. Orange County Employees' Retirement Association, supra*, 161 Cal.App.4th at 1317, 1318.

The *Block* case involved application of the Cap to benefits received by a member who concurrently retired from OCERS and CalPERS. CalPERS was the member's first or outgoing agency, and OCERS was the second or incoming system. Mr. Block applied for a service-connected disability retirement from OCERS and concurrently applied for service retirement benefits from CalPERS. The OCERS Board granted an SCD. The Court in *Block* upheld the OCERS Board's application of the Section 31838.5 Cap, even though it resulted in OCERS paying less than its pro rata share because of an overpayment by CalPERS.

The Court in *Block* stated:

The CERL reciprocity provisions were intended to prevent *impairment* of retirement benefits of a member who changed employers, not to place such members in a better position than those who remained with the same employer throughout their service.

161 Cal.App.4th at 1317 (italics in original). The Court in *Block* reviewed the legislative history of the statute, and concluded:

What we glean from the legislative history is an expression of the Legislature's intent that a member retiring due to service-connected or nonservice-connected disability is not to receive in reciprocal benefits – however labeled – an amount greater than what the member would receive if all of the member's service had been with one entity.

161 Cal.App.4th at 1318.

While the result in *Block* (that a system may pay less than its pro rata share if another system pays more) may seem strange, it is necessary to prevent a member from being advantaged because he or she worked with multiple public employers,

instead of one. Under *Block*, a member will not receive less than the amount that would have been received if all the service was with one system, and therefore the pension promise to the member has been kept.

However, LACERA wants to pay its fair share. Therefore, if LACERA pays less than its pro rata share because of an overpayment by another agency, LACERA will send a letter to the overpaying system and the member expressing LACERA's desire that payments be adjusted so each agency pays its pro rata share. LACERA will actively pursue discussions with the other agency to resolve the issue.

4. LACERA will take Steps to Correct Erroneously Broken Reciprocity.

As stated in Section 1 above, a reciprocity election is irrevocable. Therefore, reciprocity cannot be "broken."

If LACERA discovers that a member has been allowed to withdraw funds from a reciprocal agency, retire from one system while still working at a reciprocal system, or take other actions contrary to the above rules, and no exception applies, steps will be taken, in consultation with the other agency, to correct the erroneously broken reciprocity. If circumstances exist such that reciprocity cannot be restored, it may be necessary to deviate from the above rules. For example, if it is determined after consultation with the Legal Division and other staff that it is not feasible to restore reciprocity, and LACERA is the second (or later) agency, LACERA must adjust the member's entry age and collect unpaid contributions, plus interest, because a reciprocal member receives the benefit of a lower entry age on entry into the second (or later) agency. See Cal. Gov't Code §31833.

Any unusual situations that are contrary to the reciprocity rules stated in this memo will be handled on a case-by-case basis following discussion among the Legal Division and other staff.

5. LACERA will Counsel Reciprocal Members and Maintain Necessary Records.

LACERA members will be counseled about the applicable rules when they establish incoming or outgoing reciprocity, when they file their disability application (if known to LACERA), and at other times they may be considering their retirement options.

Staff will exercise due diligence to maintain necessary documentation on reciprocal members, as with all members. For reciprocal members, such records will include records of counseling, a copy of the reciprocity application from the reciprocal system (if available), and records of other actions relating to members' reciprocal employment and benefits.



March 23, 2017

TO: Each Member
Board of Retirement

FROM: Ricki Contreras, Manager 
Disability Retirement Services Division

FOR: April 5, 2017 Board of Retirement Meeting

SUBJECT: **DISMISS WITH PREJUDICE THE APPEAL OF MAX D. HARTWELL**

Mr. Max D. Hartwell applied for a service-connected disability retirement on July 12, 2012. On February 5, 2014, the Board denied Mr. Hartwell's application for service-connected disability retirement and granted him a non-service connected disability retirement.

Mr. Hartwell's attorney filed a timely appeal. On March 23, 2017, the applicant's attorney advised LACERA that his client did not wish to proceed with his appeal.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

Dismiss with prejudice Max D. Hartwell's appeal for a service-connected disability retirement.

FJB: RC: mb

Hartwell, Max - Withdrawal. doc.

Attachment

NOTED AND REVIEWED:



Francis J. Boyd, Sr. Staff Counsel

Date: 3/28/17



March 23, 2017

TO: Each Member
Board of Retirement

FROM: Ricki Contreras, Manager 
Disability Retirement Services Division

FOR: April 5, 2017 Board of Retirement Meeting

SUBJECT: DISMISS WITH PREJUDICE THE APPEAL OF RAMONA SALAS

Ms. Ramona Salas applied for a service-connected disability retirement on October 2, 2014. On November 2, 2016, the Board denied Ms. Salas' application for service-connected disability retirement.

Ms. Salas' attorney filed a timely appeal. On February 14, 2017, the applicant's attorney advised LACERA that his client did not wish to proceed with her appeal.

IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:

Dismiss with prejudice Ramona Salas' appeal for a service-connected disability retirement.

FJB: RC: mb

Salas, Ramona - Withdrawal. doc

Attachment

NOTED AND REVIEWED:



Francis J. Boyd, Sr. Staff Counsel

Date: 3/23/17

Law Offices of

OLSON

HAGEL &

FISHBURN

LLP

California's Vested Rights Doctrine and the *Marin case*— Where Are We and Where are We Going?

Los Angeles County Employees Retirement Association

Board of Retirement: April 5, 2017

Board of Investments: April 12, 2017

Chris Waddell
Senior Attorney

Introduction—What We'll Cover

- Overview of California Vested Rights Doctrine
 - What is it?
 - Where did it Come From?
 - What are the Rules?
 - How Have the Rules Been Applied?
- The *Marin* and *CalFire* Cases
 - Where did they come from?
 - What do they say?
 - What is their status?
 - What might the Supreme Court do?

What is the Doctrine?

- “Public employment gives rise to certain obligations which are protected by the **contract clause of the Constitution**, including the right to the payment of salary which has been earned.”
- “Accordingly,...since a pension right is an integral portion of contemplated compensation, it cannot be destroyed, **once it has vested**, without impairing a contractual obligation.”
 - *Miller v. California* (1977) 18 Cal. 3d 808, 815
 - *Citing Kern v. City of Long Beach* (1947) 29 Cal. 2d 848, 853
- **Brief** journey into the law of contracts required before delving into an examination of vested rights.

U.S. and California Contracts Clauses

- “No state shall...pass any...law impairing the obligation of contracts,...”
 - U.S. Constitution Art. II, §10, cl. 1
- “A...law impairing the obligation of contracts may not be passed.”
 - California Constitution Art. 1, §9

Where's the "Contract"

- Contracts may either be express or implied.
 - Cal. Civil Code §1619
- Express and implied contracts are of "equal dignity."
- Most pension rights cases are based upon an ***implied*** contract.
 - "After services have been rendered by a public officer under a law specifying his compensation, there arises an ***implied contract*** under which he is entitled to have the amount so fixed. And the constitutional protection extends to such contracts just as it does to those specifically expressed"
 - *CTA v. Cory* (1984) 155 Cal. App. 3d 494, 505

“Once it Has Vested...”

- “The right to pension benefits **vests** upon the acceptance of employment, even though the right to immediate payment of a full pension may not mature until certain conditions are satisfied.”

- *Miller* at 815

- “...vested right to a pension based on the system then in effect.”

- *Miller* at 81

If Vested, Then What?

- Although vested, rights not set in stone;
 - “Reasonable modifications and changes” permissible;
 - “Necessary to permit adjustments in accord with changing conditions and at the same time maintain the integrity of the system and carry out its beneficent policy.”
 - *Miller* at 816, citing *Kern* at 854-55

What are Reasonable Modifications?

- The Courts decide.
- “Must bear some material relation to the theory of a pension system and its successful operation.”
- “Changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages.”
 - Measure is the advantage or disadvantage to the particular employee whose own contractual rights, already earned, are involved.
 - Offsetting improvement must relate generally to the benefit that has been diminished.
 - *Miller* at 816; *Betts v. Board of Administration* (1978) 21 Cal. 3d 859, 863-865

What if There's a Fiscal Emergency?

- “A substantial impairment may be constitutional if it is reasonable and necessary to serve an important public purpose.”
 - *Board of Administration v. Wilson* (1997) 52 Cal. App. 4th 1109, 1154
- Test of “necessity” strictly interpreted; has never been applied in California in a manner to validate an impairment of a vested right.
 - “Fiscal Emergency” alone is not enough to justify an impairment. Four factor test; impairment must be temporary and vested benefits must ultimately be reinstated with interest.
 - Plan sponsor has burden to justify.
 - “A governmental entity can always find a use for extra money, especially when taxes do not have to be raised” *Wilson, supra.*

Future Benefit Accruals– Legislature v. Eu

- Unanimous 1991 California Supreme Court upholding term limits.
- Legal challenge included federal contracts clause claim that the pension benefits impliedly promised to incumbent legislators included the right to earn future pension benefits through continued service based on terms in effect when they assumed office.
- Court said California cases confirmed both federal and state contracts clauses protected pension benefits of public officers.
- Court ruled that initiative's ban on future participation in the Legislator's Retirement plan impaired the vested rights of incumbent legislators to ***continue to participate*** in the Legislator's Retirement System.
 - *Legislature v. Eu* (1991) 54 Cal. 3d. 492, 528
- “We conclude that the incumbent legislators had a vested right to earn additional pension benefits through continued service....”
 - *Eu* at 530
- Supreme Court's most recent expression of the “California Rule”

Retired Employees' Association of Orange County v. County of Orange

- AKA the “REOC” case.
- Unanimous 2011 decision of the California Supreme Court.
- Addressed vesting of retiree health benefits.
 - “...we conclude generally that that legislation in California may be said to create contractual rights when the statutory language or circumstances accompanying its passage “clearly ‘...evinced a legislative intent to create private rights of a contractual nature enforceable against the [governmental body].”
 - “Although the intent to make a contract must be clear, our case law does not inexorably require that the intent be express.”
 - Ultimately it’s a matter of the parties’ intent.
- REOC decision did not cite or discuss *Legislature v. Eu*, which remains the latest expression of the CA Supreme Court’s views in the specific context of public pension vested rights.

Vested Rights– 3 Part Inquiry

- Is the benefit vested?
- If the benefit was vested, was it impaired?
- If the benefit was vested and was impaired, was a comparable new advantage provided to offset the impairment?

Which Brings us to the Marin Case

- First of two cases before the First District Court of Appeals challenging actions by four '37 Act systems to bring their policies and practices regarding pensionable compensation into compliance with PEPRA.
 - *Marin*: Standby/on-call pay and “in-kind flexible benefit conversions.”
 - *Alameda/Contra Costa/Merced*: above benefits plus leave cash-outs.
- *Prospective* elimination of benefits for pensionable compensation purposes challenged as impairment of vested rights.
- MCERA and Attorney General said Legislature could clarify ambiguous '37 Act provisions regarding pensionable compensation
 - MCERA: “The Board made its change to “compensation earnable” prospectively because it was changing its future final compensation periods based on clarification afforded by PEPRA effective as of January 1, 2013.”
- Therefore, according to MCERA and Attorney General, no impairment of plaintiffs’ vested rights.

Marin— What No One Saw Coming---

- “Sua Sponte”:
 - *Marin* court ignored argument of MCERA and Attorney General and engaged in a lengthy reexamination of the vested rights doctrine.
 - Two key elements:
 - Requirement for a comparable new advantage in the event a vested right is impaired is “a recommendation, not.... a mandate.” *Marin Association of Public Employees, et. al., v. Marin County Employees’ Retirement Association, et. al. (2016) 2 Cal. App. 5th 674, 699.*
 - Definition of “impairment” reformulated:
 - “Thus, short of actual abolition, a radical reduction of benefits, or a fiscally unjustifiable increase in contributions, The governing body may make *reasonable* modifications and changes before the pension becomes payable and that until that time the employee does not have a right to any fixed or definite benefits but only to a substantial or *reasonable* pension.” *Marin, supra* at 702 (emphasis original).

Marin— Where Did This Come From?

- Not from any of the parties
- “Public attention” on the “alarming state” of unfunded public pension liabilities following the 2008/09 crash.
 - “Ticking fiscal time bomb” *Marin, supra* at 680-81.
- Extensive citation of 2012 Little Hoover Commission report:
 - Situation “dire,” “unmanageable,” a “crisis” that “will take a generation to untangle,” and “a harsh reality that could not longer be ignored.” *Marin, supra* at 681.

From Commission to Legislature to the Court--

- Commission: “To provide immediate savings of the scope needed, state and local governments must have the flexibility to alter future, unaccrued retirement benefits for current workers.” *Marin, supra* at 682.
- *Marin* court: “The Legislature heard and agreed” and adopted PEPRA in response. (Id.).
 - Court recited history of pension spiking issue that prompted in large part enactment of PEPRA;
 - Court’s rationale in context of pension spiking, but ***not limited*** to that issue.

Limited or Not Limited?

- “We emphasize the limited nature of our holding.”
 - Legislature’s change to definition of compensation earnable was “expressly made purely prospective...”
 - MCERA’s implementation also explicitly prospective.
 - “No occasion to consider” whether any other part of PEPPRA qualifies as a reasonable alteration of pension rights. *Marin, supra* at 708-09.
- Rationale may not be applicable to impairment of benefits of already-retired employees.
 - “The likelihood of a change amounting to an impermissible impairment is greater when the change applies to retired employees. Retirees receive an extra measure of judicial solicitude because their part of the contract has already been fully performed. ... The patent unfairness of diminishing the benefits of a pensioner earned prior to ceasing employment needs no belaboring.” *Marin, supra* at 697, footnote 19.

Some Observations About the Marin Court's Legal Rationale

- Courts usually strive to decide cases on the narrowest possible legal grounds– not the case here.
- Appellate courts usually strive to avoid critiquing decisions of the Supreme Court– not the case here.
- *Marin* court's analysis relies on the Supreme Court's predominant use of "should" as opposed to "must" in describing the requirement for a comparable new advantage. *Marin, supra* at 697 – 99.
 - *Marin* court focused on the fact that plaintiff's lost in the one case that used "must."
 - Ignored that plaintiffs **won** in 6 of the 10 Supreme Court cases that used "should" with similar results in appellate courts.

Status?

- Multiple requests for Supreme Court Review and/or Depublication filed.
 - Supreme Court granted Review on November 22, 2016. All further action, including briefing, deferred until First District Court of Appeal (same court; different Division) decides the ACERA/CCERA/Merced case.
 - Oral argument is yet to be scheduled in that case.



One More Case to Add to the Mix---

- *Cal Fire Local 2881 v. CalPERS* (2016) 7 Cal. App. 5th 115.
 - Challenge to PEPRAs prospective elimination of purchase of airtime.
 - 15 week window to purchase between PEPRAs enactment and effective dates. *Cal Fire* at 122.
 - Yet another Division of the First District Court of Appeal.
 - Decided December 30, 2016– 4 ½ months after *Marin* decision and 1 month after Supreme Court granted review thereof.

Cal Fire– The Decision

- Plaintiffs lose– no vested right to purchase airtime:
 - “...plaintiffs must meet the ‘heavy burden’ of demonstrating that ‘the statutory language and circumstances accompanying its passage clearly evince a legislative intent to create private rights of a contractual nature enforceable against the state...”
Cal Fire at 126.
 - Citing the Supreme Court’s decision in REOC.
 - First time REOC has been applied to a pension case.
- *Cal Fire* court also adopted *Marin* rationale:
 - “We agree with this conclusion reached by our colleagues and, as such, reject plaintiffs’ claim that, absent proof that CalPERS members were granted a comparable advantage, the Legislature’s elimination of the airtime service credit must be deemed constitutionally barred.” *Cal Fire* at 131.

Cal Fire-- Status

- Petition for Review filed with the Supreme Court on February 8, 2017 along with Requests for Depublication.
 - Court just extended its time to grant or deny review until May 9, 2017.
 - If no action within that time, Petition for review is deemed denied.

So, Where are We?

- 60+ years of California Supreme Court and appellate court precedent enunciating and enforcing the California vested rights doctrine— literally dozens of cases.
- 2 decisions from different divisions of the same appellate court challenging this precedent and severely constraining that doctrine with a third case (ACERA/CCCERA/Merced) still pending before yet another division of that court.
 - One case (*Marin*) pending Supreme Court Review; no further action until ACERA/CCERA/Merced decided;
 - The other (*Cal Fire*) awaiting Supreme Court decision to grant or deny Review.

To Review----

- **Current Doctrine:**
 - Vested pension rights upon acceptance of employment implied from exchange of labor for compensation;
 - Protects already-accrued benefits and level of future benefits;
 - Impairment requires comparable new advantage in order to be valid;

Versus

- ***Marin/Cal Fire:***
 - Vested pension rights only if clear legislative intent to create them;
 - Little or no protection for future benefit accruals;
 - Comparable new advantage not required for pre-retirement impairment of benefits.

Why Does This Matter to California Public Retirement Systems?

- ***If*** upheld, *Marin* and *Cal Fire* potentially open the door to local and/or statewide legislation, including potential ballot measures that could reduce or potentially eliminate altogether future DB plan benefit accruals.
- ***Significant*** plan administration and funding concerns:
 - Increased staff and IT system costs required for implementation of new benefit designs/structures;
 - Potential impacts on amortization of unfunded liabilities associated with freeze on future benefit accruals
 - Shorter investment horizon = potentially lower investment return assumptions.

Where are we Going?



QUESTIONS?



March 23, 2017

TO: Each Member
Board of Retirement

FROM: Ricki Contreras, Division Manager
Disability Retirement Services



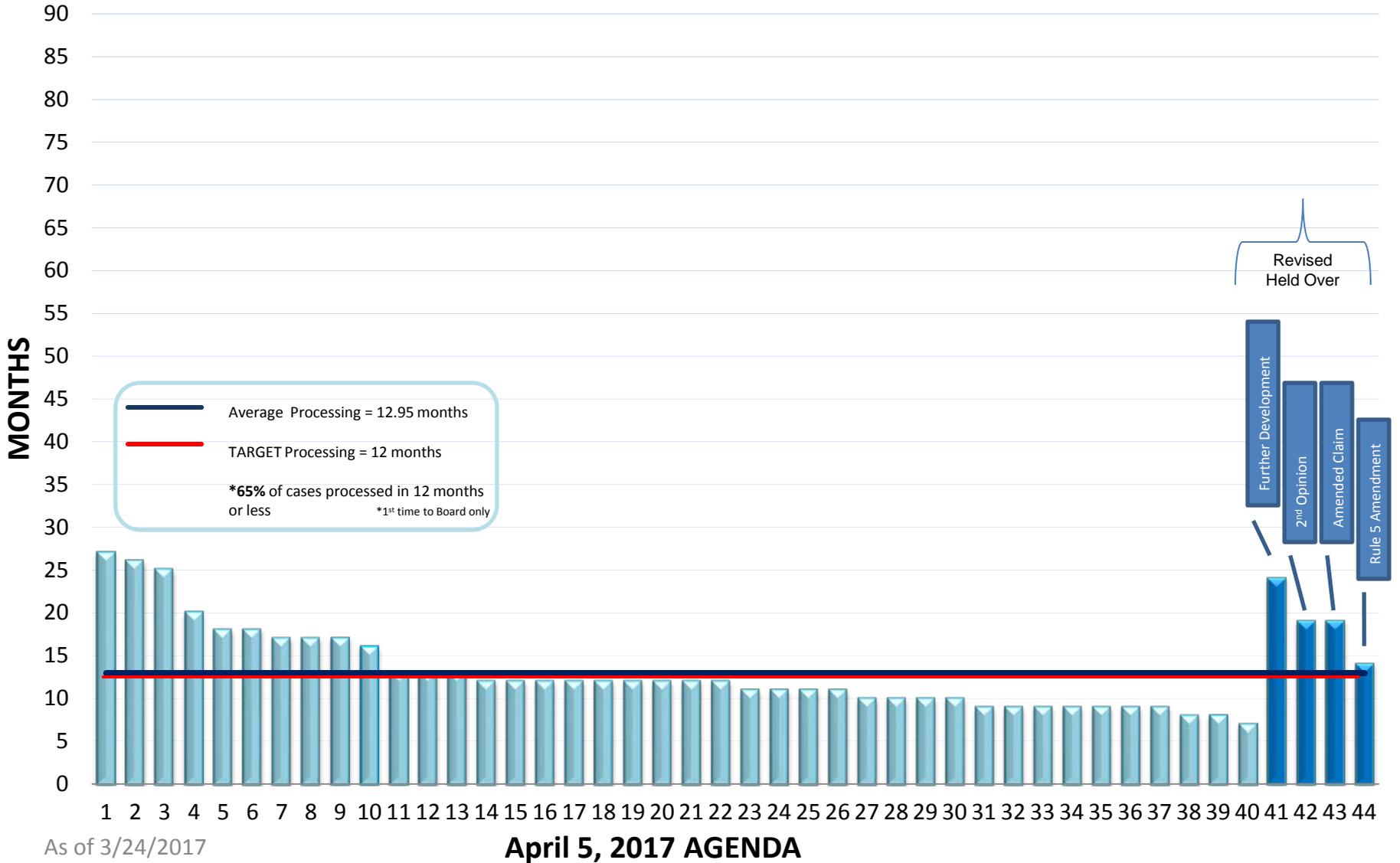
FOR: April 5, 2017 Board of Retirement Meeting

SUBJECT: **Application Processing Time Snapshot Reports**

The following chart shows the total processing time from receipt of the application to the first Board action for all cases on the April 5, 2017 Disability Retirement Applications Agenda.

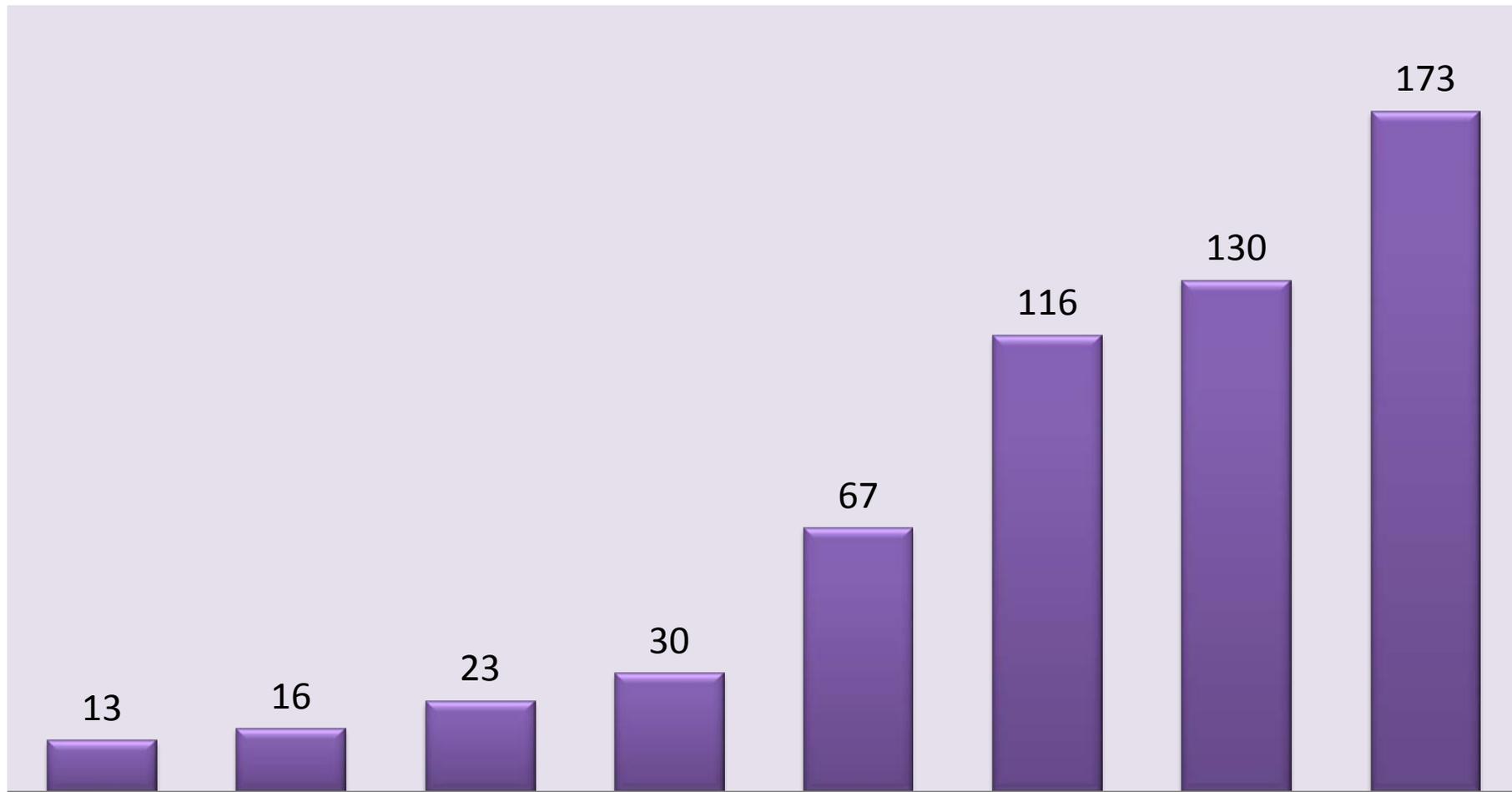
Consent & Non-Consent Calendar				
Number of Applications	40			
Average Processing Time (in Months)	12.95			
Revised/Held Over Calendar				
Number of Applications	4			
Average Processing Time (in Months)	Case 1	Case 2	Case 3	Case 4
	24	19	19	14
Total Average Processing Time for Revised/Held Over Calendar	19			

ACTUAL vs. AVERAGE PROCESSING TIME



TIME ELAPSED FOR PENDING APPLICATIONS

NUMBER OF APPLICATIONS



25+

20-24

16-19

13-15

10-12

7-9

4-6

0-3

MONTHS



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



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**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**