

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
BOARD OF RETIREMENT
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA**

**REGULAR MEETING
January 18, 2022
9:30 a.m.**

MINUTES

Chair Eley called the meeting to order at 9:30 a.m.

Recording Secretary administered the Roll Call attendance.

Attendance was as follows:

Present via Zoom Video conference pursuant to Government Code § 54953, as amended by AB 361:

Frank Eley, Chair; Shawn Dewane, Vice Chair; Richard Oates, Adele Tagaloa, Charles Packard, Chris Prevatt, Arthur Hidalgo, Jeremy Vallone, and Wayne Lindholm

Also Present via Zoom: Steve Delaney, Chief Executive Officer; Brenda Shott, Assistant CEO, Internal Operations; Suzanne Jenike, Assistant CEO, External Operations; Gina Ratto, General Counsel; Jenny Sadoski, Director of Information Technology, Anthony Beltran, Audio-Visual Technician; Cammy Torres; Recording Secretary

Absent: Shari Freidenrich

CONSENT AGENDA

MOTION by Mr. Packard, **seconded** by Mr. Lindholm to approve recommendations on all of the following items on the Consent Agenda:

BENEFITS

C-1 OPTION 4 RETIREMENT ELECTION

Recommendation: Grant election of retirement benefit payment, Option 4, based on Segal Consulting's actuarial report.

1. McHenry, Michael P.
2. Whitehurst, Daniel W.

ADMINISTRATION

C-2 BOARD MEETING MINUTES

Regular Board Meeting Minutes

December 13, 2021

Recommendation: Approve minutes.

C-3 BOARD FINDINGS PURSUANT TO GOVERNMENT CODE § 54953, AS AMENDED BY AB 361, AND ADOPTION OF BOARD RESOLUTION 2022-01

Recommendation: That the Board (1) make the following findings pursuant to Government Code section 54953, as amended by AB 361;

- a. The Board has reconsidered the circumstances of the state of emergency resulting from the COVID-19 pandemic; and
- b. The Board has determined that the following circumstances exist:
 - i. The state of emergency continues to directly impact the ability of the members of the Board to meet safely in person; and
 - ii. State or local officials continue to impose or recommend measures to promote social distancing.

and

(2) Adopt Board of Retirement Resolution 2022-01 to reflect such findings.

C-4 2022 BUDGET AMENDMENT – IT CAPITAL EXPENDITURES

Recommendation: Approve an amendment to OCERS’ Administrative Budget for Fiscal Year 2022 to carryover costs related to the 2021 Business Plan initiatives to upgrade the Board Room Audio/Visual equipment for \$532,000 and implement new backup solutions to enhance recovery of on premise and cloud systems for \$250,000.

The motion passed **unanimously.**

CONSENT ITEMS: DISABILITY/MEMBER BENEFITS AGENDA

OPEN SESSION

CONSENT ITEMS

MOTION by Dewane, **seconded** by Lindholm, to approve staff’s recommendation on all of the following items on the Disability/Member Benefits Consent Agenda:

DC-1: DANIEL BOWDISH

Investigator, Orange County Sheriff's Department (Safety Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant non-service connected disability retirement.
- Set the effective date as September 11, 2020.

DC-2: LIDIA CARMONA

Social Worker II, Orange County Social Services Agency (General Member)

Recommendation: The Disability Committee recommends that the Board:

- Deny service connected disability retirement due to insufficient evidence of job causation.

DC-3: EDITH GAGE

Correctional Services Technician, Orange County Sheriff's Department (General Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant Service connected disability retirement.
- Set the effective date as March 26, 2021.

DC-4: LILIAN GRANILLO

Sergeant, Orange County Sheriff's Department (Safety Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as September 11, 2020.

DC-5: ROBERT HOFFMANN

Deputy Sheriff II, Orange County Sheriff's Department (Safety Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as March 26, 2021.

DC-6: BRIAN HOPP

Firefighter, Orange County Fire Authority (Safety Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as January 18, 2019.

DC-7: JEFFREY HUBERT

Fire Apparatus Engineer, Orange County Fire Authority (Safety Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as January 1, 2021.

DC-8: JEFFREY McBRIDE
Firefighter, Orange County Fire Authority (Safety Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as April 22, 2021.

DC-9: HERMAN RANGEL
Employment & Eligibility Specialist, Orange County Social Services Agency (General Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as, October 14, 2016, the day following the last day of regular compensation as an Employment & Eligibility Specialist.
- Find the Applicant is capable of performing other duties in the service of the County of Orange pursuant to Government Code Section 31725.65.
- Grant a supplemental disability retirement payment allowance in the amount of the salary difference between the higher and lower paying positions effective May 7, 2021, the date of the position change, until the day Mr. Rangel wishes to retire from the new position.

DC-10: DAVID WOLF
Fire Captain/Paramedic, Orange County Fire Authority (Safety Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as the day after the last day of regular compensation.

DC-11: RANDY ZERANCE
Sheriff's Special Officer II, Orange County Sheriff's Department (General Member)

Recommendation: The Disability Committee recommends that the Board:

- Grant service connected disability retirement.
- Set the effective date as the day after the last day of regular compensation.

The motion passed **unanimously.**

OPEN SESSION

**DA-1: INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE DISABILITY/MEMBER BENEFITS
CONSENT AGENDA**

None.

DA-2: MCDONALD, KEVIN – REQUEST FOR REDUCTION OF OVERPAID BENEFITS

Recommendation: Staff recommends that the Board deny the Applicant’s request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2,500.

Ms. Jenike presented item DA-2.

Mr. McDonald requested that the Board reduce his overpayment by \$2,500 due to his belief that OCERS was responsible for his receiving of an overpayment of benefits.

MOTION by Dewane, **seconded** by Packard, to deny the Applicant’s request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2,500.

After Board discussion, a **SUBSTITUTE MOTION** by Prevatt, **seconded** by Packard was made to grant the Applicant’s request to reduce the overpayment amount of \$3,465.73 owed by the Applicant due to overpaid disability benefits by \$2,500.

The **SUBSTITUTE MOTION** passed unanimously.

DA-3: ADOPTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTER OF THE APPLICATION OF JAMES B. MORELL FOR A RECALCULATED RETIREMENT ALLOWANCE (ON REMAND FROM THE LOS ANGELES COUNTY SUPERIOR COURT AFTER JUDGMENT ON PEREMPTORY WRIT OF MANDATE)

Recommendation: Staff recommends that the Board adopt the proposed Findings of Fact, Conclusions of Law, and Decision, attached as Exhibit B to the Board’s materials, in the matter of The Application of James B. Morell for a Recalculated Retirement Allowance.

Ms. Ratto presented item DA-3.

Mr. Dewane asked that Ms. Ratto’s presentation of the background of the matter be added to these Minutes. Ms. Ratto’s remarks appear below:

Mr. Morell’s Application for a Recalculated Retirement Allowance was considered and decided by the Board at its December 13, 2021 meeting.

At the December 13 meeting, and in accordance with the Judgment and Writ issued by the Los Angeles Superior Court, the Board:

1. Set aside its October 18, 2018 decision wherein the Board denied Mr. Morell’s appeal. The grounds for the Board’s denial were “(a) that OCERS and Mr. Morell were bound by the 2002 Settlement Agreement and Judgment in the *In Re Retirement Cases*, and (b) that OCERS’ staff had calculated Mr. Morell’s retirement allowance in accordance with that Settlement Agreement and Judgment”.
2. After setting aside its decision from October 2018, on December 13, 2021, the Board

heard argument from Mr. Morell and OCERS' counsel, considered evidence submitted by both parties, and asked questions of both.

3. Following oral argument and questioning by the Board, the Board voted unanimously to **deny** the Application of James B. Morell for a Recalculated Retirement Allowance.

Further, at the December 13, 2021 Board meeting, after voting unanimously to deny the Application of Mr. Morell for a recalculated retirement allowance, the Board Chair directed OCERS Staff to prepare Proposed Findings of Fact, Conclusions of Law, and Decision for service on Mr. Morell by December 22, 2021, and further directed Mr. Morell to serve any submitted changes and objections by January 4, 2022. The Board Chair asked OCERS Staff to deliver both of these documents – the Proposed Findings of Fact, Conclusions of Law, and Decision and Mr. Morell's Changes and/or Objections—to the Board on or before January 7, 2022 for the Board's final consideration at the Board's meeting today. Mr. Morell stated at the December 13 meeting that he had no objection to this timeline or procedure for the Proposed Findings of Fact, Conclusions of Law, and Decision.

In accordance with the Board Chair's direction, on December 22, 2021, OCERS staff served on Mr. Morell Staff's preliminary Proposed Findings of Fact, Conclusions of Law, and Decision on the Applicant. That preliminary document was provided to the Board and it is attached to the Board materials as Exhibit C.

On January 4, 2022, Mr. Morell served on OCERS his Objections to the Proposed Findings of Fact, Conclusions of Law, and Decision. Mr. Morell's Objections were provided to the Board, and they are attached to the Board materials as Exhibit D.

OCERS staff reviewed Applicant's Objections, and revised the Proposed Findings of Fact, Conclusions of Law, and Decision to address some of Applicant's objections. The revisions are reflected in redline in the document attached as Exhibit A to the Board materials.

A clean copy of the **revised** Proposed Findings of Fact, Conclusions of Law, and Decision for the Board's consideration is attached as Exhibit B to the Board materials.

The task before the Board this morning is to adopt Findings of Fact, Conclusions of Law and Decision in this case to support the Board's determination in Mr. Morell's case made at the December 13th Board meeting and to support our Return on the Writ to be filed with to the Superior Court.

We are not here today to re-argue this case. In December, the Board heard this matter in accordance with the instructions given to the Board by the Superior Court and the Board rendered its decision. We are here today to adopt Findings and Conclusions that support the Board's decision.

Staff recommends the Board adopt the Findings of Fact, Conclusions of Law and Decision marked as Exhibit B.

MOTION by Dewane, **seconded** by Packard, to adopt the proposed Findings of Fact, Conclusions of Law, and Decision, attached as Exhibit B to the Board materials, in the matter of The Application of James B. Morell for a Recalculated Retirement Allowance.

Mr. Morell stated his arguments against staff recommendation.

The **MOTION** passed unanimously. A copy of the Findings of Fact, Conclusions of Law, and Decision adopted by the Board is attached to these Minutes.

DA-4: FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION IN THE MATTERS OF THE BENEFIT APPEALS OF MEMBERS SZEWCZYK, ROBERT AND MORIKAWA, RODNEY

Recommendation: In the *Matters of Robert Szewczyk and Rodney Morikawa*, Staff recommends the Board exercise its authority pursuant to subdivision (d) of section 31534 of the California Government Code and:

- (1) Set this matter for hearing before itself;
- (2) Accept the record before the referee, together with additional evidence, written briefing and argument from the parties in accordance with a schedule determined by the Board; and
- (3) Consider all such testimony, evidence, briefing and argument at a future meeting of the Board at which time the Board will decide the matter as if it had not been referred to the referee.

Ms. Ratto presented item DA-4.

Mr. Kalinski, attorney representing Mr. Szewczyk and Mr. Morikawa, requested that the Board not adopt staff recommendation and to instead adopt the hearing officer's recommended findings and decision.

MOTION by Prevatt, **seconded** by Packard to approve staff recommendation.

SUBSTITUTE MOTION by Oates, **seconded** by Packard, to send this item back to the hearing officer to consider new evidence.

After discussion, Mr. Oates, with the agreement of Mr. Packard, withdrew the **SUBSTITUTE MOTION**.

SECOND SUBSTITUTE MOTION by Oates, **seconded** by Packard to adopt the hearing officer's recommended findings and decision.

On roll call vote, the **SECOND SUBSTITUTE MOTION** failed, with 6 votes in favor and 2 votes against.

On the original **MOTION** by Prevatt, **seconded** by Packard, to approve staff's recommendation, the **MOTION** passed 7-1 in favor of the MOTION, with Mr. Oates voting "No."

Chair Eley directed staff to bring the item back to the Board for a hearing at the March 21, 2022 Board meeting, and approved the following briefing schedule:

Opening brief and additional evidence by OCERS: due February 8th
Response brief and additional evidence by Mr. Kalinski: due March 1st
OCERS reply to response brief: due March 8th

The Board recessed for break at 10:58 a.m.

The Board reconvened from break at 11:16 a.m.

The Board adjourned into closed session at 11:17 a.m.

CLOSED SESSION

**DA-5: MICHELLE WACHTER
STAFF RECOMMENDATION –**

- (1) MOVE TO RESCIND BOARD ACTION ON AUGUST 19, 2019 REGARDING THE APPLICATION FOR DISABILITY RETIREMENT FILED BY MICHELLE WACHTER; AND**
- (2) REFER THE MATTER BACK TO THE HEARING OFFICER ON THE SOLE ISSUE OF PERMANENT INCAPACITY**

Recommendation: Staff recommends that the Board (1) rescind its prior action in this matter to consider new evidence; and (2) refer the matter back to the Hearing Officer on the sole issue of permanent incapacity, pursuant to Government Code section 31534(d).

The Board reconvened into open session at 11:47 a.m.

OPEN SESSION

REPORT OF ACTIONS TAKEN IN CLOSED SESSION

**DA-5: MICHELLE WACHTER
STAFF RECOMMENDATION –**

- 1. MOVE TO RESCIND BOARD ACTION ON AUGUST 19, 2019 REGARDING THE APPLICATION FOR DISABILITY RETIREMENT FILED BY MICHELLE WACHTER; AND**
- 2. REFER THE MATTER BACK TO THE HEARING OFFICER ON THE SOLE ISSUE OF PERMANENT INCAPACITY**

Mr. Eley reported that the Board unanimously approved staff recommendation on item DA-5.

ACTION ITEMS:

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA
None.

A-2 AUDIT COMMITTEE – EXTERNAL AUDITOR CONTRACT AWARD

Presentation by Brenda Shott CPA, Assistant CEO Finance and Internal Operations, OCERS

Recommendation: The Audit Committee recommends the Board of Retirement award a contract for financial auditor services to Moss Adams LLP, subject to satisfactory negotiation of terms.

Ms. Shott presented item A-2.

MOTION by Dewane, **seconded** by Packard, to award a contract for financial auditor services to Moss Adams LLP, subject to satisfactory negotiation of terms.

The **MOTION** passed unanimously.

A-3 REINSTATEMENT OF EMERGENCY PAID SICK LEAVE (EPSL)

Presentation by Cynthia Hockless, Director of Human Resources, OCERS

Recommendation:

Staff recommends that the Board of Retirement approve the reinstatement of Emergency Paid Sick Leave (EPSL) for Orange County Employees Retirement System (OCERS) Direct employees from December 31, 2021, through April 07, 2022. Approval and adoption of emergency leave practices will provide employees with compensation relief during COVID-19-related absences. The recommendation includes the following:

1. Authorize the Chief Executive Officer, or Designee, to administer a 2022 Emergency Paid Sick Leave Program effective December 31, 2021, to April 7, 2022, that provides employees up to 40 hours of paid sick leave for qualifying COVID-related absences. The use of this leave will be retroactively applied.
2. Authorize the Chief Executive Officer, the discretion to provide up to 40 additional hours of paid sick leave for qualifying COVID-related absences and to extend the program to June 30, 2022, in a manner consistent with combating the health pandemic.
3. Authorize the Chief Executive Officer, or Designee, after review by Counsel and notification to the Board, to administer future state and/or federal statutorily required leave programs in a manner consistent with the parameters approved by the Board for the health pandemic.

This recommendation mirrors the reinstatement of EPSL approved by the Orange County Board of Supervisors for County of Orange employees at their January 11, 2022, Board meeting.

Ms. Hockless presented item A-3.

MOTION by Tagaloa, **seconded** by Packard, to approve the reinstatement of Emergency Paid Sick Leave (EPSL) as outlined in the staff recommendation.

The **MOTION** passed unanimously.

Mr. Prevatt left the meeting at 12:01 p.m.

INFORMATIONAL ITEMS

Presentations

I-1 DISCOVERY OF ERRONEOUS CALCULATION OF FINAL AVERAGE SALARY FOR FULL-TIME MEMBERS WITH LESS THAN THREE YEARS OCERS SERVICE AND PART-TIME MEMBERS

Presentation by Steve Delaney, Chief Executive Officer, OCERS

Mr. Delaney presented item I-1 and described in detail the background to this item.

Mr. Delaney explained that OCERS inclusion of “Total Compensation” in Final Average Salary calculations for those with less than three years of service or as part time employees has been wrong for more than twenty years. There was no request for Board action at that time as staff needs to determine who may be impacted, with early results suggesting very few.

Mr. Delaney also stated that a formal process will be put in place to address Board Member questions in the future, while a review of all processes will begin as well.

I-2 2021 OCERS INNOVATIONS AND PROCESS IMPROVEMENTS

Presentation by Steve Delaney, Chief Executive Officer, OCERS and the OCERS Team

Noting that “continuous improvement” is foundational to OCERS culture, Mr. Delaney introduced item I-2. Then together with the Executive Management Team presented the annual Innovations and Process Improvement overview report.

I-3 COVID-19 UPDATE

Presentation by Steve Delaney, Chief Executive Officer, OCERS

Mr. Delaney presented the COVID-19 update and stated that OCERS plans to return to in-person work on a hybrid basis as of March 11. He also gave an update as to other pension systems’ return to work status.

Written Reports

No written reports were pulled for discussion.

R-1 MEMBER MATERIALS DISTRIBUTED

Written Report

Application Notices
Death Notices

January 18, 2022
January 18, 2022

R-2 COMMITTEE MEETING MINUTES

- 10-04-2021 Audit Committee Meeting Minutes

R-3 CEO FUTURE AGENDAS AND 2022 OCERS BOARD WORK PLAN

Written Report

R-4 QUIET PERIOD – NON-INVESTMENT CONTRACTS

Written Report

R-5 BOARD COMMUNICATIONS

Written Report

R-6 2021 OCERS YEAR IN REVIEW: COMMUNICATION PLAN

Written Report

R-7 DISABILITY RETIREMENT STATISTICS – 2021 REPORT

Written Report

R-8 ANNUAL FORM 700 DESIGNATED FILERS LIST AND FACT SHEET

Written Report

R-9 BOARD COMMUNICATIONS POLICY FACT SHEET

Written Report

R-10 FOURTH QUARTER 2021 EDUCATION AND TRAVEL EXPENSE REPORT

Written Report

R-11 OCERS TRUSTEE EDUCATION SUMMARY REPORT

Written Report

R-12 2022 OCERS BOARD COMMITTEE ASSIGNMENTS

Written Report

R-13 CONTRACT STATUS FOR NAMED SERVICE PROVIDERS

Written Report

BOARD MEMBER COMMENTS

N/A

CIO COMMENTS

Ms. Murphy gave an update on the Investment Markets. She also stated that OCERS 2021 calendar year returns will be in the neighborhood of 15% for the year.

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

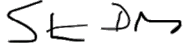
Ms. Jenike stated that the approval of 2022 COLA will be brought to the Board at the February Board Meeting. She will however share the Segal letter providing the final anticipated COLA percentage with the Board as soon as it is received.

COUNSEL COMMENTS

Ms. Ratto reminded the Board that Form 700 would need to be completed by April 1.

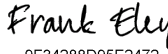
The meeting **ADJOURNED** at 12:58 p.m.

Submitted by:

DocuSigned by:

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Steve Delaney
Secretary to the Board

Approved by:

DocuSigned by:

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Frank Eley
Chairman