

All persons wishing to address the Board must complete a speaker's card, stating their name and the agenda item (including "Open Forum") they wish to address. The Board may take action on items not on the agenda only if findings pursuant to the Sunshine Ordinance and Brown Act are made that the matter is urgent or an emergency.

Oakland Police and Fire Retirement Board meetings are held in wheelchair accessible facilities. Contact Retirement Systems, 150 Frank Ogawa Plaza, Suite 3332 or call (510) 238-7295 for additional information.



Retirement Systems
150 Frank H. Ogawa Plaza
Oakland, California 94612

AGENDA

AUDIT COMMITTEE MEMBERS

John C. Speakman
Chairman

Vacant
Member

Robert J. Muszar
Member

**In the event a quorum of the Board participates in the Committee meeting, the meeting is noticed as a Special Meeting of the Board; however, no final Board action can be taken. In the event that the Audit Committee does not reach quorum, this meeting is noticed as an informational meeting between staff and the Chair of the Audit Committee.*

**REGULAR MEETING of the AUDIT / OPERATIONS COMMITTEE
of the OAKLAND POLICE AND FIRE RETIREMENT SYSTEM ("PFRS")**

Wednesday, October 31, 2018 – 9:00 am
One Frank H. Ogawa Plaza, Hearing Room 1
Oakland, California 94612

- - - ORDER OF BUSINESS - - -

- 1. Subject: PFRS Audit Committee Meeting Minutes**
From: Staff of the PFRS Board

Recommendation: APPROVE August 29, 2018 Audit Committee meeting minutes.
- 2. Subject: Administrative Expenses Report**
From: Staff of the PFRS Board

Recommendation: ACCEPT an informational report regarding PFRS administrative expenses from July 1, 2018 through August 31, 2018.
- 3. Subject: PFRS Policy Governing the Overpayment or Underpayment of Member Benefits**
From: Staff of the PFRS Board

Recommendation: DISCUSSION regarding PFRS Policy Governing the Overpayment or Underpayment of Member Benefits.
- 4. REVIEW OF PENDING AUDIT AGENDA ITEMS**
- 5. Future Scheduling**
- 6. Open Forum**
- 7. Adjournment of Meeting**

AN AUDIT/OPERATIONS COMMITTEE MEETING of the Oakland Police and Fire Retirement System (“PFRS”) was held on Wednesday, August 29, 2018 in Hearing Room 3, One Frank Ogawa Plaza, Oakland, California.

Committee Members Present: • John C. Speakman, Chairman
• Robert J. Muszar, Member
• Christine Daniel, Member

Additional Attendees: • Katano Kasaine, Plan Administrator
• Teir Jenkins & David Low, Staff Member
• Pelayo Llamas, PFRS Legal Counsel

The meeting was called to order at 9:05 am.

1. **PFRS Audit Committee Meeting Minutes** – Member Muszar made a motion to approve the June 27, 2018 Audit Committee meeting minutes, second by Member Daniel. Motion passed.

[SPEAKMAN – Y / DANIEL – Y / MUSZAR – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

2. **Scope of Services and Initiation of the Financial Audit of the PFRS system for the year ended June 30, 2018** – Annie Louie from Macias Gini and O’Connell, LLP, reported details of the upcoming financial audit of the PFRS Fund. Following some committee and staff discussion, member Muszar made a motion to recommend Board approval of the Scope of Services and initiation of the Financial Audit of the PFRS Fund for the year ended June 30, 2018, second by member Daniel. Motion passed.

[SPEAKMAN – Y / DANIEL – Y / MUSZAR – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

3. **Administrative Expenses Report** – Investment Officer Teir Jenkins presented the administrative expenses report from July 1, 2017 through June 30, 2018. Following some committee and staff discussion, member Muszar made a motion to accept the administrative expenses report from July 1, 2017 through June 30, 2018, second by member Daniel. Motion passed.

[SPEAKMAN – Y / DANIEL – Y / MUSZAR – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

4. **Resolution No. 7020 – Resolution to approve a two-year extension of the professional service agreement between the City of Oakland Police and Fire Retirement System Board and Cheiron, Inc.** – Staff reported that the service agreement between the PFRS Board and Cheiron Inc had expired and recommended a two-year extension of the service agreement through June 30, 2020. Following Committee and Staff discussion, Member Daniel made a motion to recommend Board approval of Resolution No. 7020 – A resolution to approve a two-year extension of the professional service agreement between the City of Oakland Police and Fire Retirement System Board and Cheiron, Inc. through June 30, 2020 at fees not to exceed \$45,500 for FY2018-2019 and \$46,500 for FY2019-2020, second by member Muszar. Motion passed.

[SPEAKMAN – Y / DANIEL – Y / MUSZAR – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

5. **PFRS Policy Governing the Overpayment or Underpayment of Member Benefits** – Member Muszar noted that the documents included as attachment 1 and 2 were identical. He said attachment 2 should have been his submitted recommendations regarding the PFRS Policy Governing the Overpayment or Underpayment of Member Benefits. Member Muszar recommended that this matter be held over until the September 2018 Audit Committee meeting for discussion. Following additional committee discussion, member Muszar made a motion to postpone discussion on this matter until the September 2018 Audit Committee meeting, second by member Daniel. Motion passed.

[SPEAKMAN – Y / DANIEL – Y / MUSZAR – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

6. **Discussion of the 2006 Management Audit of the PFRS System** – The Audit Committee and staff continued discussion regarding consideration of conducting a management audit of the PFRS system from the previous Audit Committee meeting. The Committee and staff discussed whether to include or exclude the examination of the investment-related aspects of the management audit in the new audit. **MOTION:** Member Muszar made a motion to recommend Board approval for a draft Request for Proposal (RFP) to request service for a management audit limited to verification of operational issues addressed in the previous management audit; there was no second to this motion and it failed.

MOTION: Following some discussion between the committee and staff, member Muszar made a motion to recommend that the Board act to authorize the audit committee to develop a management audit limited in scope to examining the operational issues covered in the previous management audit, second by member Daniel. Motion passed.

[SPEAKMAN – Y / DANIEL – Y / MUSZAR – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

7. **Pending Audit Agenda List** – Staff and Audit Committee discussed the pending items list.
8. **Future Scheduling** – The next Audit Committee meetings was scheduled for September 26, 2018. Member Muszar made a motion directing staff to add an additional agenda item to a future audit agenda item addressing the development of hearing procedures, second by member Daniel. Motion passed.

[SPEAKMAN – Y / DANIEL – Y / MUSZAR – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

Member Muszar wanted to add an agenda item to the audit committee agenda to have a dialogue regarding sensitive personal information at public meetings. Following some Committee discussion, Member Daniel suggested to PFRS legal counsel provide information on this matter when presenting information about hearing procedures at the upcoming meeting.

9. **Open Forum** – No Report.

10. **Meeting Adjournment** – Meeting adjourned at 9:48 am.

JOHN C. SPEAKMAN, COMMITTEE CHAIRMAN

DATE

DRAFT

Table 1

OAKLAND POLICE AND FIRE RETIREMENT SYSTEM

Administrative Budget Spent to Date (Preliminary)

As of August 31, 2018

	Approved Budget		August 2018		FYTD		Remaining		Percent Remaining	
Internal Administrative Costs										
PFRS Staff Salaries	\$	1,084,000	\$	79,055	\$	157,751	\$	926,249		85.4%
Board Travel Expenditures		52,500		200		3,200		49,300		93.9%
Staff Training		20,000		-		-		20,000		100.0%
Staff Training - Tuition Reimbursement		7,500		-		-		7,500		100.0%
Annual Report & Duplicating Services		4,000		-		-		4,000		100.0%
Board Hospitality		3,600		-		-		3,600		100.0%
Payroll Processing Fees		35,000		-		-		35,000		100.0%
Miscellaneous Expenditures		46,700		773		773		45,927		98.3%
Internal Service Fees (ISF)		65,400		-		-		65,400		100.0%
Contract Services Contingency		50,000		1,200		1,200		48,800		97.6%
Office Construction Costs*		75,227		9,897		15,745		59,482		79.1%
Internal Administrative Costs Subtotal :	\$	1,443,927	\$	91,125	\$	178,669	\$	1,265,258		87.6%
Actuary and Accounting Services										
Audit	\$	45,000	\$	-	\$	-	\$	45,000		100.0%
Actuary		45,000		-		-		45,000		100.0%
Actuary and Accounting Subtotal:	\$	90,000	\$	-	\$	-	\$	90,000		100.0%
Legal Services										
City Attorney Salaries	\$	188,000	\$	16,053	\$	23,410	\$	164,590		87.5%
Legal Contingency		150,000		-		-		150,000		100.0%
Legal Services Subtotal:	\$	338,000	\$	16,053	\$	23,410	\$	314,590		93.1%
Investment Services										
Money Manager Fees	\$	1,301,900	\$	-	\$	-	\$	1,301,900		100.0%
Custodial Fee		124,000		-		-		124,000		100.0%
Investment Consultant (PCA)		100,000		-		-		100,000		100.0%
Investment Subtotal:	\$	1,525,900	\$	-	\$	-	\$	1,525,900		100.0%
Total Operating Budget	\$	3,397,827	\$	107,178	\$	202,079	\$	3,195,748		94.05%

*Carry Forward from FY 2017-2018

Table 2

OAKLAND POLICE AND FIRE RETIREMENT SYSTEM

Cash in Treasury (Fund 7100) - Preliminary

As of August 31, 2018

	August 2018
Beginning Cash as of 7/31/2018	\$ 7,810,370
Additions:	
City Pension Contribution - August	\$ 3,735,083
Investment Draw (Incoming Wire) - 8/1/2018	1,000,000
Misc. Receipts	7,570
Total Additions:	\$ 4,742,654
Deductions:	
Pension Payment (July Pension Paid on 8/1/2018)	(4,570,004)
Expenditures Paid	(429,376)
Total Deductions	\$ (4,999,380)
 Ending Cash Balance as of 8/31/2018*	 \$ 7,553,643

* On 9/01/2018, August pension payment of appx \$4,604,000 will be made leaving a cash balance of \$2,950,000

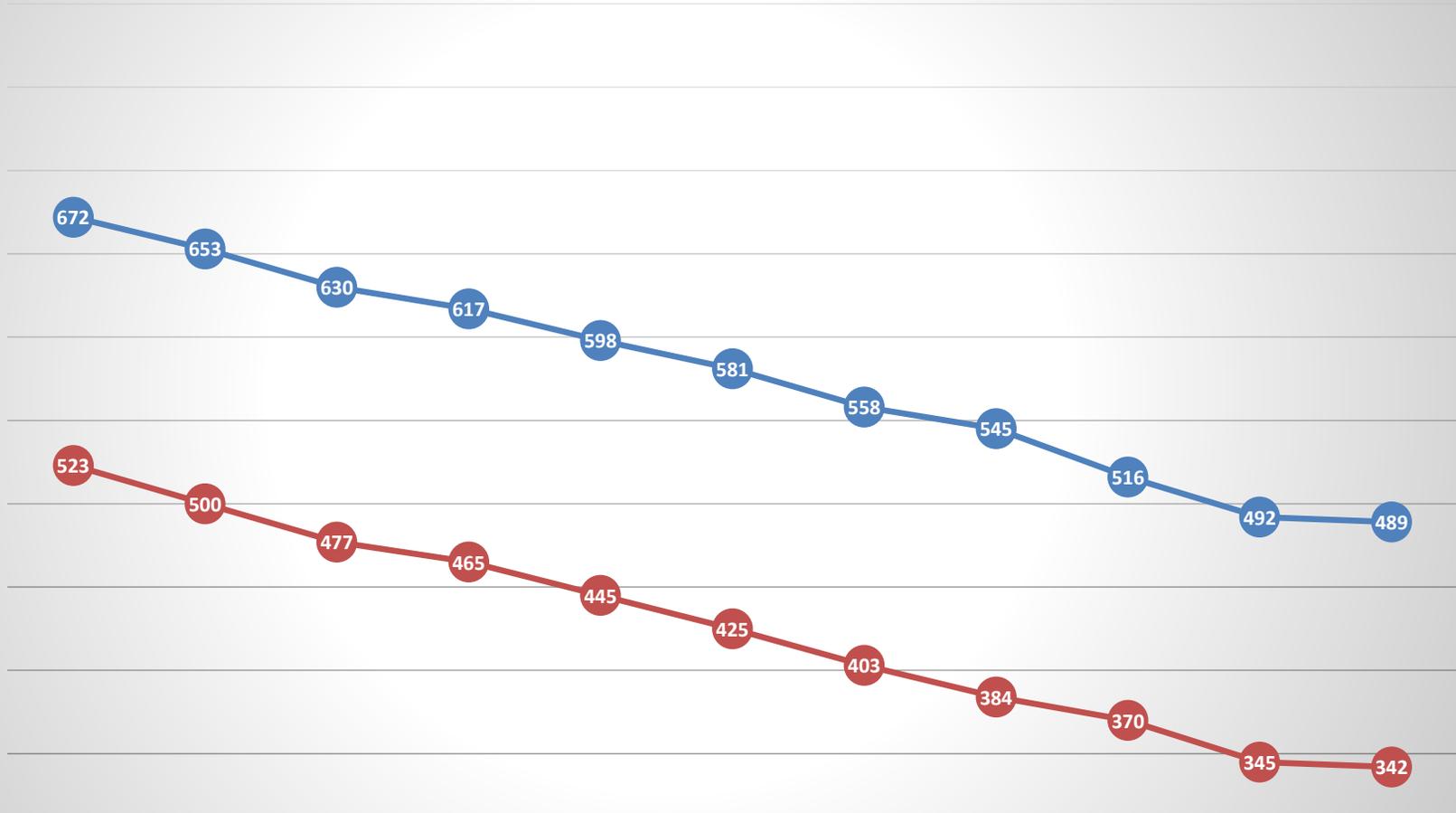
Table 3
CITY OF OAKLAND POLICE AND FIRE RETIREMENT SYSTEM

Census
As of August 31, 2018

COMPOSITION	POLICE	FIRE	TOTAL
Retired Member:			
Retiree	357	210	567
Beneficiary	132	132	264
Total Retired Members	489	342	831
Total Membership:	489	342	831

COMPOSITION	POLICE	FIRE	TOTAL
Retired Member:			
Service Retirement	324	182	506
Disability Retirement	151	146	297
Death Allowance	14	14	28
Total Retired Members:	489	342	831
Total Membership as of August 31, 2018:	489	342	831
Total Membership as of June 30, 2018:	492	345	837
Annual Difference:	-3	-3	-6

Oakland Police and Fire Retirement System Pension Plan Membership Count As of August 31, 2018 (FY 2009 - FY 2019)



	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019 FYTD
● Police	672	653	630	617	598	581	558	545	516	492	489
● Fire	523	500	477	465	445	425	403	384	370	345	342
● Total	1195	1153	1107	1082	1043	1006	961	929	886	837	831



A G E N D A R E P O R T

TO: Oakland Police and Fire
Retirement Board

FROM: David Jones
Plan Administrator

SUBJECT: Draft policy governing the overpayment
and underpayment of PFRS member
benefits

DATE: October 22, 2018

SUMMARY

Oakland Police and Fire Retirement System ("PFRS") staff request that the PFRS Board of Administration ("PFRS Board") review and provide comments to a draft policy governing the overpayment and underpayment of member retirement allowances (the "Policy").

BACKGROUND

To develop this Policy, staff researched and reviewed the bylaws, rules and regulations, and operational policies of several public pension systems including: the San Diego City Employees' Retirement System, San Joaquin County Employees' Retirement Association, San Mateo County Employees' Retirement Association, San Jose Federated Employees' Retirement System, City of Fresno Retirement System, Fresno County Employees' Retirement Association, Sacramento Regional Transit District, and Contra Costa County Employees' Retirement Association. Staff used this research, to draft a Policy to specifically address the needs and concerns of PFRS. The Policy will guide staff in the effective and efficient resolution of overpayment and underpayment of retirement allowances to members.

At the April 25, 2018 Audit Committee meeting, staff submitted for Audit Committee review the Agenda Report addressing the Draft Policy Governing Overpayment and Underpayment of Member Retirement Allowances. Following Audit Committee discussion, a motion made by Member Muszar (1) to hold this matter over until the June 2018 Audit Committee meeting for further discussion and (2) to have Committee Members submit to staff written comments by June 15, 2018 in order for them to be published with the June 2018 agenda, passed.

On April 30, staff delivered by email the DRAFT Policy Governing Overpayment and Underpayment of Member Retirement Allowances to each Board member requesting comments be returned to staff by June 13, 2018.

At the June 27, 2018 Audit Committee meeting, the Audit Committee decided that continued work on this matter would be carried over to the August 2018 Audit Committee meeting for continued discussion and editing.

PFRS Board Meeting
October 31, 2018

Board of Administration, Oakland Police and Fire Retirement System

Subject: Draft policy governing the overpayment and underpayment of PFRS member benefits

Date: October 22, 2018

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At the August 29, 2018 Audit Committee meeting, the Audit Committee decided that continued work on this matter would be carried over to the September 2018 Audit Committee meeting for continued discussion and editing. However, the September 26, 2018 Audit Committee was canceled and the work on this matter was carried over to the October 31, 2018 Audit Committee meeting for continued discussion and editing.

RECOMMENDATION

Staff recommends the PFRS Board review and provide comments to the draft Policy included as Attachment 1.

Respectfully submitted,



David Jones, Plan Administrator
Oakland Police and Fire Retirement System

Attachments (2):

1. *Draft policy governing the overpayment and underpayment of PFRS member benefits by staff.*
2. *Draft policy governing the overpayment and underpayment of PFRS member benefits – Edit version by Member Muszar*

ATTACHMENT 1

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

I. PURPOSE

The purpose of this Policy Governing the Overpayment or Underpayment of Member Retirement Allowances ("Policy") is to set forth procedures for handling the overpayment and underpayment of Retirement Allowance payments to members and beneficiaries ("Members") of the Oakland Police and Fire Retirement System ("PFRS").

Deleted: Benefits

Deleted: -

The PFRS Board may implement a different correction process that it determines is appropriate. In the event of any inconsistency between applicable law and this Policy, the law shall take precedence.

Deleted: This Policy is designed for use when a benefit overpayment/underpayment affecting an individual or small groups of Members.

Deleted: under special large scale adjustments; such as court orders, charter interpretation, changes to a Memoranda of Understanding ("MOU")

II. INTRODUCTION

The Oakland Police and Fire Retirement Board ("PFRS Board") has a fiduciary obligation to the retirement fund to conserve fund assets and protect the integrity of the fund for the benefit of all PFRS Members.

Deleted: members and beneficiaries ("Members") of the Oakland Police and Fire Retirement System

Members have a right to accurate and timely pension payments. Except as determined by a court of law or the PFRS Board pursuant to the Policy, no Member may receive or retain retirement allowance payments over the amounts to which the Member is entitled, and no Member may be deprived of retirement allowance payments to which the Member is entitled.

Deleted: This duty includes maintaining the tax-qualified status of the Plan. Therefore, the PFRS Board, acting through its delegated administrative staff ("Staff"), has a duty to investigate any retirement allowance overpayments or underpayments promptly and diligently, and to recover overpayments and pay out underpayments of retirement plan benefits, unless circumstances exist that make it unreasonable to do so.

Deleted: benefit

Deleted: benefit

Deleted: to receive. Subject to all applicable laws, it shall be PFRS' policy to remit to a Member the amount of any underpayment of benefits, and to make every reasonable effort to recover from a Member the amount of any overpayment of benefits consistent with the Policy and the procedures established herein by the PFRS Board.

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

III. POLICY

It is the policy of the PFRS Board, acting through its delegated administrative staff (“Staff”), to investigate any alleged retirement allowance overpayments or underpayments promptly and diligently, and make every reasonable effort to recover overpayments and pay out underpayments of Retirement Allowances, unless the PFRS Board determines, pursuant to the terms of this Policy, that circumstances dictate otherwise.

After the discovery of an overpayment or underpayment of benefits, and after the required written notification to the affected Member, PFRS will adjust future benefit payments to the Member to reflect the correct total amount to which the Member is entitled (as indicated below). PFRS will also pay or assess the Member as appropriate for the underpayment or overpayment in a lump sum, installments, adjustments to future monthly benefit payments, or a combination of these methods to which the Members are entitled in accordance with this policy and applicable law.

Overpayment of Retirement Allowance to PFRS’ Members and Beneficiaries

1. PFRS Staff will correct the Member’s recurring monthly overpayment to the correct amount going forward at the earliest practical time after discovering any overpayments.
2. PFRS will take all reasonable steps to recover the full amount of all overpayments subject to the provisions of the Policy and applicable law.
3. PFRS will recover overpayments by (a) a lump sum payment from the Member, (b) periodic installment payments from the Member, or (c) offsetting the amount to be recovered against monthly benefit payments over a period of time not to exceed three years; unless the PFRS Board, in its discretion and because of legal or practical considerations, determines that another process is warranted.
4. The PFRS Board believes that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpayments only where the cumulative total amount overpaid to the Member is \$20 or more. Accordingly, the Retirement Plan Administrator (the “Plan Administrator”) is authorized to not seek recovery of any overpayments where the total amount overpaid to the Member is less than \$20.
5. The Plan Administrator shall have authority to negotiate the terms of recovering overpayments through installments, lump sums, or as offsets against monthly benefit payments for amounts below five thousand dollars (\$5,000.00). The PFRS Board must approve installment overpayment recovery agreements when the total amount of overpayment is five thousand dollars (\$5,000.00) or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and documented financial hardship of the Member or Member’s estate will be considered by the Plan Administrator and/or the PFRS Board when agreeing to

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
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installment recovery terms. Any forgiveness of debt above One Hundred Dollars (\$100.00) must be approved by the PFRS Board.

6. PFRS may pursue all legal remedies to collect overpayments, including making a claims against an estate or trust.
7. Upon the death of the Member before full repayment of an overpayment has been made, PFRS shall pursue a claim or claims against the Member's estate, survivors, heirs and/or beneficiaries to recover the unpaid amounts.
8. If a Member dies while making repayments to PFRS, the entire balance of the amount owed shall become due upon the Member's death and deducted from the final remittance check. Any remaining unpaid balance shall be pursued in accordance with this Policy. Overpayments due shall not be deducted from a Member's \$1,000 death benefit payment unless there is no designated qualified beneficiary. If the deceased Member has a surviving spouse who is entitled to a reduced continuation of the Member's monthly benefit, the Plan Administrator has the authority to collect a reduced monthly amount from the surviving spouse without changing the total amount owed by the deceased Member.
9. Before collecting an overpayment from the monthly retirement allowance of a Member without consent, PFRS will give at least 30-day's notice.
10. The PFRS Board adopts the following procedures for accomplishing the recovery of overpaid benefits:
 - A. **Notification of Overpayment.** Upon discovery of an overpayment, PFRS shall send a **Notice of Overpayment of Member Retirement Allowance** by certified mail, return receipt requested, or by express delivery service, to the Member advising the Member as follows:
 - i. The notice will identify the facts and circumstances of the overpayment and details showing the total amount of the overpayment.
 - ii. The notice will request payment to PFRS of the amount overpaid, subject to the provisions of the Policy.
 - iii. The notice will provide three options of repayment, one of which may be selected by the Member:
 - (1) Option 1 — lump sum payment to PFRS for the full amount overpaid. Lump sum payment must be made within 30 days of the notice.

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POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

- (2) Option 2 — reduction from monthly benefit payments in the amount equal to ten percent (10%) of the total overpayment, until paid back in full.
- (3) Option 3 — repayment in equal installments over the same length of time that the overpayments occurred or three years, whichever is longer. Unless a financial hardship is approved by the PFRS Board, the installment period shall not exceed 3 years.
- iv. The notice and agreement to repay excess benefits will provide that Option 2 (10%) will go into effect by default if the Member fails to choose an alternative option within 30 days following the date of the notice.
- v. The notice shall state that dispute of overpayment must be submitted in writing to the Retirement office within 30 days following the date the notice was sent. This dispute should include supporting documentation, if applicable.

Underpayment of Retirement Allowance to Members and Beneficiaries

- 1. When PFRS has underpaid Retirement Allowances, the Member shall be entitled to a prospective adjustment to his or her Retirement Allowance necessary to correct the underpayment, as well as a lump sum payment for all past underpayments. The corrective payment shall be made as soon as is reasonably practicable following PFRS's discovery of the underpayment.
- 2. If a Member who was underpaid Retirement Allowances has died prior to payment of the lump sum amount due, the following procedures will be followed:
 - A. **Deceased Member with a Qualifying Widow/Widower for Survivor's Continuance**
 - i. If a deceased Member has a qualifying widow/ widower, the payment will be made directly to that person.
 - B. **Deceased Member without a Qualifying Widow/Widower for Survivor's Continuance**
 - i. If there is an open probate (i.e., no order for final distribution has been made), payment will be made to the estate through the personal representative or other legal process provided for in the Member's state of residence.
 - ii. If final distribution of the estate has been made, PFRS will review the order for final distribution to determine how assets that were unknown at

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

the time of final distribution are to be distributed under the order. Payment will then be made in compliance with the order for final distribution, if possible.

- iii. If the Member's estate passed into an intervivos trust, the underpayment may be made to the Trustee after satisfactory inspection of trust documents.
 - iv. If probate was not established, distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property pursuant to California Probate Code Section 13101 or other legal process provided for in the Member's state of residence.
 - v. PFRS staff shall make reasonable efforts to locate the beneficiary entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such beneficiary, or by other means of similar intended effect.
 - vi. If, after taking the above steps, PFRS staff has not been able locate a beneficiary entitled to payment, PFRS shall hold the funds on behalf of that beneficiary for five years. If the funds are not claimed within five years, the funds may be transferred into the PFRS reserve fund. If a beneficiary later appears to claim the funds, the PFRS Board will consider such claims on a case-by-case basis.
3. Underpayments of \$20 or less will only be paid at the request of the Member.

IV. Periodic Review

- 1. Review of this Policy will be conducted by the Audit and Operations Committee not less than every three years.

The Policy governing the overpayment or underpayment of Member benefits of the Oakland Police and Fire Retirement System is hereby approved by vote of the Retirement Board, effective

<DATE>

WALTER L. JOHNSON, SR.
PRESIDENT
OAKLAND POLICE & FIRE RETIREMENT SYSTEM BOARD

KATANO KASAINÉ
SECRETARY
OAKLAND POLICE & FIRE RETIREMENT SYSTEM BOARD

ATTACHMENT 2

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

I. PURPOSE

The purpose of this Policy Governing the Overpayment or Underpayment of Member ~~Benefits Retirement Allowances~~ (“Policy”) is to set forth procedures for handling the overpayment and ~~under payment~~ underpayment of Retirement Allowance payments to members and beneficiaries (“Members”) of the Oakland Police and Fire Retirement System (“PFRS”).

This Policy is designed for use when a ~~benefit~~ Retirement Allowance overpayment/underpayment ~~affecting~~ affects an individual or a small groups of Members. The PFRS Board may implement a different correction process that it determines is appropriate ~~under special whenever~~ large scale adjustments, ~~such as court orders, charter interpretation, changes to a Memoranda of Understanding (“MOU”) are necessitated by this Policy. For the purposes of this Policy, a large scale adjustment is an adjustment affecting twenty (20) or more Members.~~

In the event of any inconsistency between applicable law, ~~including any applicable statutes of limitations~~, and this Policy, the law shall take precedence.

II. INTRODUCTION

The Oakland Police and Fire Retirement Board (“PFRS Board”) has a fiduciary obligation to the retirement fund to conserve fund assets and protect the integrity of the fund for the benefit of all ~~PFRS members and beneficiaries (“Members”) of the Oakland Police and Fire Retirement System. This duty includes maintaining the tax-qualified status of the Plan. Therefore, the PFRS Board, acting through its delegated administrative staff (“Staff”), has a duty to investigate any retirement allowance overpayments or underpayments promptly and diligently, and to recover overpayments and pay out underpayments of retirement plan benefits, unless circumstances exist that make it unreasonable to do so.~~

Members have a right to accurate and timely pension payments. Except as determined by a court of law or the PFRS Board pursuant to the Policy, no Member may receive or retain ~~benefit~~ Retirement Allowance payments over the amounts to which the Member is entitled, and no Member may be deprived of ~~benefit~~ Retirement Allowance payments to which the Member is entitled ~~to receive. Subject to all applicable laws, it shall be PFRS' policy to remit to a Member the amount of any underpayment of benefits, and to make every reasonable effort to recover from a Member the amount of any overpayment of benefits consistent with the Policy and the procedures established herein by the PFRS Board.~~

Commented [b1]: Changed to be consistent with the title of the Policy.

Commented [b2]: Simply making the abbreviated reference the first time the reference is made.

Commented [b3]: Hopefully changed throuout the doucument for consistency.

Commented [b4]: Thought it might be a good idea to define “large scale”.

Commented [b5]: I believe in most cases that would be 3 years, which I believe is reasonably consistent with past practices.

Commented [b6]: Perhaps we should consider placing the Introduction before Purpose.

Commented [b7]: Reference to tax status seemed out of place and unnecessary.

Commented [b8]: Relocated and joined with other language to draft a revised stand-alone Policy statement.

Commented [b9]: Addressed in revised Policy Statement.

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

III. POLICY

~~Therefore, It is the policy of the PFRS Board, acting through its delegated administrative staff ("Staff"), has a duty to investigate any alleged retirement allowance overpayments or underpayments promptly and diligently, and, consistent with any applicable statutes of limitations, to make every reasonable effort to recover overpayments and pay out underpayments of Retirement plan benefits Allowances, unless the PFRS Board determines, pursuant to the terms of this Policy, that circumstances exist that make it unreasonable to do so dictate otherwise.~~

IV. PROCEDURES

A. Notice

Upon discovery of an overpayment or underpayment, PFRS shall send a **Notice of Overpayment (or Underpayment) of Member Retirement Allowance** ("Notice" or "Notification") by certified mail, return receipt requested, or by express delivery service, to each affected Member. The Notice shall provide the information specified in either Section A1 or Section A2 below, as appropriate.

1. Notice of Underpayment of Member Retirement Allowance

The **Notice of Underpayment of Member Retirement Allowance** will advise the Member as follows:

- a. The facts and circumstances of the underpayment including details showing the total amount of the underpayment and how those amounts were determined.
- b. If applicable, a detailed description of any prospective corrections to be made and the effective date of such corrections.
- c. The amount, method of payment and timing of any back-payment due to the Member.
- d. The Member's right to appeal and the procedures for filing an appeal provided that the Member shall be given a minimum of thirty (30) days to file. The Notice will inform the Member that an appeal will not stay prospective corrections and that it may delay the payment of back-pay awards.

2. Notice of Overpayment of Member Retirement Allowance

Commented [b10]: The purpose here is to create a Policy statement that stands alone and is not mixed in with other drafting.

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Commented [b12]: My goal was to have the Policy flow from start to finish – Notice, Prospective Corrections, Retroactive Recoveries, Misc. stuff.

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Commented [b13]: I thought it might be good to address the question of stays in the Policy.

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**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

The Notice of Overpayment of Member Retirement Allowance will advise the Member as follows:

- a. The facts and circumstances of the overpayment including details showing the total amount of the overpayment and how those amounts were determined.
- b. If applicable, a detailed description any prospective corrections to be made and the effective date of such corrections.
- c. That the full amount of the overpayment must be repaid to PFRS through selection of one of the following options:
 - (1) Option 1 — lump sum payment to PFRS for the full amount overpaid. Lump sum payment must be made within 30 days of the Notice.
 - (2) Option 2 — reduction from monthly benefit payments in the amount equal to ten percent (10%) of the total overpayment, not to exceed ten percent (10%) of the Member’s monthly Retirement Allowance, until paid back in full.
 - (3) Option 3 — repayment in equal installments over the same length of time that the overpayments occurred or three years, whichever is longer.
- d. That Option 2 (10%) will go into effect by default if the Member fails to choose an alternative option within 30 days following the date of the Notice.
- e. The procedures by which the Member may claim and apply for a financial hardship and/or negotiate an alternative repayment plan pursuant to the terms of the Policy.
- f. The Member’s right to appeal and the procedures for filing an appeal provided that the Member shall be given a minimum of thirty (30) days to file. The Notice will inform the Member that an appeal will not stay prospective corrections and that collection of amounts owed will be stayed for a maximum of ninety (90) days pending the processing of the appeal.

B. Prospective Corrections

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Commented [b14]: I was concerned that 10% of the total amount owed could exceed 10% of the Retirement Allowance. I think a 10% reduction is probably the most we should require people to absorb.

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Commented [b15]: The Policy authorizes the Plan Administrator to negotiate. Members should be noticed that this is available to them.

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**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

After the discovery and verification of an overpayment or underpayment of benefits Retirement Allowances, and after the required written notification Notification to the affected Member(s), PFRS will adjust future benefit payments to the Member to reflect the correct total amount to which the Member is entitled (as indicated below). Prospective corrections will be implemented at the earliest possible time but no earlier than fifteen (15) days following the date of Notice. PFRS will also pay or assess the Member as appropriate for the underpayment or overpayment in a lump sum, installments, adjustments to future monthly benefit payments, or a combination of these methods to which the Members are entitled in accordance with this policy and applicable law

Commented [b16]: This provides time to make whatever banking adjustments that might be required if the Retirement Allowance is reduced prospectively.

C. Collection of Overpayments of Retirement Allowance to PFRS' Members and Beneficiaries

- 1- PFRS Staff will correct the Member's recurring monthly overpayment to the correct amount going forward at the earliest practical time after discovering any overpayments.
- 2-3. Except as provided below, PFRS will take all reasonable steps to recover the full amount of all overpayments subject to the provisions of the Policy and applicable law.
- 3-4. Unless the PFRS Board, in its discretion and because of legal or practical considerations, determines otherwise PFRS will recover overpayments by one of the following methods: (a) a lump sum payment from the Member; (b) periodic installment payments from the Member deduction from the monthly Retirement Allowance in the amount equal to ten percent (10%) of the total overpayment, not to exceed ten percent (10%) of the Member's monthly Retirement Allowance, until paid back in full; or (c) offsetting the amount to be recovered against monthly benefit payments over a period of time not to exceed three years; unless the PFRS Board, in its discretion and because of legal or practical considerations, determines that another process is warranted.
- 4-5. The PFRS Board believes has determined that considerations of cost effectiveness make it prudent and reasonable to pursue recovery of overpayments only where the cumulative total amount overpaid to the Member is \$20 fifty dollars (\$50.00) or more. Accordingly, the Retirement Plan Administrator (the "Plan Administrator") is authorized to not seek recovery of any write-off overpayments where the total amount overpaid to the Member is less than \$20 fifty dollars (\$50).
- 5-6. In addition to the options identified in Section IV A. 2. and IV B 2 of this Policy, the Plan Administrator shall have authority to negotiate, renegotiate and approve the alternative terms of recovering for the recovery of overpayments through installments, lump sums, or as offsets against monthly benefit payments for amounts when the amount of the overpayment is below five thousand dollars (\$5,000.00). The Subject to PFRS Board approval, the Plan Administrator may negotiate alternative terms for the recovery of overpayments must approve

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Commented [b17]: The original language was not very distinguishable from Option C. This spells it out.

Commented [b18]: I think \$20 was too low. I would be comfortable going to \$100.

Commented [b19]: This probably needs to be developed a little further but I am attempting to give the Plan Administrator the authority to renegotiate terms of payment when a justifiable change in circumstances occurs. For example, a financial hardship could occur after a payment plan is in place.

Also, maybe we should state somewhere that a Member can always pay off what is owed at any time.

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

~~installment overpayment recovery agreements~~ when the total amount of overpayment is five thousand dollars (\$5,000.00) or more. Among other things, the likelihood of collection, the cost of collection, the amount of possible recovery and documented financial hardship of the Member or Member's estate will be considered by the Plan Administrator and/or the PFRS Board when agreeing to ~~alternative installment~~ recovery terms. ~~The Plan Administrator shall have the authority to forgive up to one hundred dollars (\$100.00) of any amount owed.~~ Any forgiveness of ~~debt amounts owed~~ above ~~One-one Hundred Dollars-dollars~~ (\$100.00) must be approved by the PFRS Board.

~~6-7.~~ PFRS may pursue all legal remedies to collect overpayments, including making a claims against ~~an the Member's~~ estate or trust.

~~7.~~ Upon the death of the Member before full repayment of an overpayment has been made, PFRS shall pursue a claim or claims against the Member's estate, survivors, heirs and/or beneficiaries to recover the unpaid ~~amounts~~.

~~8.~~ If a Member dies while making repayments to PFRS, ~~and there is no surviving spouse who is eligible for a continuing Retirement Allowance,~~ the entire balance of the amount owed shall become due upon the Member's death and ~~will be~~ deducted from the final remittance check ~~if the check has not already been issued and deposited into the deceased Member's account.~~ Any remaining unpaid balance shall be pursued in accordance with this Policy ~~as a claim against the deceased Member's estate.~~ Overpayments due shall ~~not~~ be deducted from a Member's \$1,000 death benefit payment ~~unless there is no designated qualified beneficiary.~~

~~8-9.~~ If the deceased Member has a surviving spouse who is entitled to a ~~reduced-full~~ continuation of the Member's monthly ~~benefit~~ Retirement Allowance, ~~the balance owed at the time of the Member's death will be collected from future Retirement Allowance payments at the same rate and on the same schedule as was in place at the time of the Member's death.~~ When the surviving spouse is entitled to a reduced Retirement Allowance, the Plan Administrator has the authority to collect a reduced monthly amount from the surviving spouse without changing the total amount owed by the deceased Member; ~~provided that the amount collected shall be reduced by at least the same percentage that the monthly Retirement Allowance was reduced.~~

~~9.~~ Before collecting an overpayment from the monthly retirement allowance of a Member without consent, PFRS will give at least 30 day's ~~notice~~.

~~10.~~ The PFRS Board adopts the following procedures for accomplishing the recovery of overpaid benefits:

~~A.~~ **Notification of Overpayment.** Upon discovery of an overpayment, PFRS shall send ~~a Notice of Overpayment of Member Retirement Allowance~~ by certified mail, return receipt requested, or by ~~express delivery service,~~ to the Member advising the Member as follows:

Commented [b20]: This seemed somewhat redundant with the following sections. I am not comfortable with inclusion of the word "survivors".

Commented [b21]: I am opposed to the practice of backing money out of accounts once it has been deposited.

Commented [b22]: Notice requirements moved into another section.

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**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

- a. ~~The notice will identify the facts and circumstances of the overpayment and details showing the total amount of the overpayment.~~
- b. ~~The notice will request payment to PFRS of the amount overpaid, subject to the provisions of the Policy.~~
- c. ~~The notice will provide three options of repayment, one of which may be selected by the Member:~~
 - (1) ~~Option 1 — lump sum payment to PFRS for the full amount overpaid. Lump sum payment must be made within 30 days of the notice.~~
 - (2) ~~Option 2 — reduction from monthly benefit payments in the amount equal to ten percent (10%) of the total overpayment, until paid back in full.~~
 - (3) ~~Option 3 — repayment in equal installments over the same length of time that the overpayments occurred or three years, whichever is longer. Unless a financial hardship is approved by the PFRS Board, the installment period shall not exceed 3 years.~~
- d. ~~The notice and agreement to repay excess benefits will provide that Option 2 (10%) will go into effect by default if the Member fails to choose an alternative option within 30 days following the date of the notice.~~
- e. ~~The notice shall state that dispute of overpayment must be submitted in writing to the Retirement office within 30 days following the date the notice was sent. This dispute should include supporting documentation, if applicable.~~

D. Payment of Underpayment of Retirement Allowance to Members and Beneficiaries

~~+~~ When PFRS has underpaid Retirement Allowances, the Member shall be entitled to a prospective adjustment to his or her Retirement Allowance necessary to correct the underpayment, as well as a lump sum payment for all past underpayments. The corrective payment shall be made as soon as is reasonably practicable following PFRS's discovery of the underpayment and Notice to the Member(s).

~~2-1.~~ If a Member who was underpaid Retirement Allowances has died prior to payment of the lump sum amount due, the following procedures will be followed:

A. Deceased Member with a Qualifying ~~Widow/Widower~~Spouse for Survivor's Continuance

~~i.~~ If a deceased Member has a qualifying widow/ widowerspouse, the Notice required by Section IV A of this Policy will be provided to the qualifying spouse. Future Retirement Allowance payments will be appropriately adjusted

Commented [b23]: This is the only place in the Policy where an "agreement to repay" is mentioned. I agree, that having an agreement to repay is a good idea but it needs to be fleshed out a little. For example, Option 2 is the default option. How would we handle it when Option 2 went into play by default?

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**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

and the lump-sum -payment of past underpayments will be made directly to ~~that person~~ the qualified spouse.

B--A. Deceased Member without a Qualifying ~~Widow/Widower~~Spouse for Survivor's Continuance

- i. If the deceased Member does not have a qualifying spouse and there is an open probate (i.e., no order for final distribution has been made), payment will be made to the estate through the personal representative or other legal process provided for in the Member's state of residence. The Notice required by Section IV A of this Policy will be forwarded to the executor of the estate or probate referee, whichever is appropriate.
- ii. If final distribution of the estate has been made, PFRS will review the order for final distribution to determine how assets that were unknown at the time of final distribution are to be distributed under the order. Notice and Payment-payment will then be made in compliance with the order for final distribution, if possible.
- iii. If the Member's estate passed into an intervivos- inter-vivos trust (living trust), Notice and the underpayment may be made to the Trustee after satisfactory inspection of trust documents.
- iv. If probate was not established, Notice and distribution will be made in accordance with any applicable and valid Affidavit for Payment of Personal Property pursuant to California Probate Code Section 13101 or other legal process provided for in the Member's state of residence.
- v. PFRS staff shall make reasonable efforts to locate the beneficiary entitled to payment by sending a letter by certified mail, return receipt requested, to the last known address of each such beneficiary, or by other means of similar intended effect.
- vi. If, after taking the above steps, PFRS staff has not been able locate a beneficiary entitled to payment, PFRS shall hold the funds on behalf of that beneficiary for five years. If the funds are not claimed within five years, the funds may be transferred into the PFRS reserve fund. If a beneficiary later appears to claim the funds, the PFRS Board will consider such claims on a case-by-case basis.

2. Total Underpayments-underpayments of \$20 fifty dollars (\$50.00) or less will only be paid at the request of the Member.

V. Processing of Appeals

Commented [b24]: What if there is no estate, as can be the case for property held jointly with right of survivorship? Should we have a paragraph to address circumstances where there is no estate?.

Commented [b25]: Does this cover my question at b23?

Commented [b26]: This almost reads like an escrow account of some sort. Is that really necessary? Is there an easier way to account for the funds?

Commented [b27]: I would be comfortable going as high as \$100.

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**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
POLICY GOVERNING THE OVERPAYMENT OR UNDERPAYMENT
OF MEMBER RETIREMENT ALLOWANCES**

~~3-~~ Appeals filed pursuant to this Policy which cannot be resolved informally, will be processed in accordance with Section 2603 of the City Charter and any procedures adopted by the PFRS Board for the conduct of such hearings.

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Commented [b28]: I think 2603 applies here as the action would amount to an individual "claim".

IV. Periodic Review

1. Review of this Policy will be conducted by the Audit and Operations Committee not less than every three years.

The Policy ~~governing~~ Governing the ~~overpayment~~ Overpayment or ~~Underpayment~~ of Member ~~benefits~~ Retirement Allowances of the Oakland Police and Fire Retirement System is hereby approved by vote of the Retirement Board, effective <DATE>.

Commented [b29]: General Comments: I would like to see us adopt a standardized formatting and numbering system for Board Policies. If not already there, I believe that Board Policies should be posted to the PFRS web page.

I would like to thank Staff for the work they put into this – it represents a very solid effort with a complicated and sensitive topic.

I also would like to thank Staff and the members of the Audit Committee for providing this opportunity for written comment.

bob.muszar

WALTER L. JOHNSON, SR.
PRESIDENT
OAKLAND POLICE & FIRE RETIREMENT SYSTEM BOARD

KATANO KASAINÉ
SECRETARY
OAKLAND POLICE & FIRE RETIREMENT SYSTEM BOARD



AGENDA REPORT

TO: Oakland Police and Fire
Retirement Board

FROM: David Jones
Plan Administrator

SUBJECT: Audit Committee Agenda Pending List

DATE: October 22, 2018

	SUBJECT	PROPOSED SCHEDULED MEETINGS	STATUS
1	City of Oakland Travel Insurance for PFRS Board Member Travel on Board Business	VERBAL	Pending additional research
2	Procedures Addressing (1) Board Hearings and (2) Sensitive Personal Information at public meetings	November 2018	Continuing to Prepare Report
2	Plan Administrator Status Report regarding status of request to City Administrator to set up Working Group to Address Actuarial Funding date of July 1, 2026	VERBAL	Meetings are Ongoing

Respectfully submitted,

David Jones, Plan Administrator
Oakland Police and Fire Retirement System

All persons wishing to address the Board must complete a speaker's card, stating their name and the agenda item (including "Open Forum") they wish to address. The Board may take action on items not on the agenda only if findings pursuant to the Sunshine Ordinance and Brown Act are made that the matter is urgent or an emergency.

Oakland Police and Fire Retirement Board meetings are held in wheelchair accessible facilities. Contact Retirement Systems, 150 Frank Ogawa Plaza, Suite 3332 or call (510) 238-7295 for additional information.



**Retirement Systems
150 Frank H. Ogawa Plaza
Oakland, California 94612**

AGENDA

INVESTMENT COMMITTEE MEMBERS

- Jaime T. Godfrey**
Chairman
- R. Steve Wilkinson**
Member
- Martin J. Melia**
Member

**In the event a quorum of the Board participates in the Committee meeting, the meeting is noticed as a Special Meeting of the Board; however, no final Board action can be taken. In the event that the Investment Committee does not reach quorum, this meeting is noticed as an informational meeting between staff and the Chair of the Investment Committee.*

**REGULAR MEETING of the INVESTMENT AND FINANCIAL MATTERS COMMITTEE
of the OAKLAND POLICE AND FIRE RETIREMENT SYSTEM ("PFRS")**

**Wednesday, October 31, 2018 – 10:00 am
One Frank H. Ogawa Plaza, Hearing Room 1
Oakland, California 94612**

- - - ORDER OF BUSINESS - - -

1. **Subject:** PFRS Investment Committee Meeting Minutes
From: Staff of the PFRS Board

Recommendation: **APPROVE** September 26, 2018 Investment Committee meeting minutes.
2. **Subject:** Investment Market Overview
From: Pension Consulting Alliance

Recommendation: **ACCEPT** an informational report on the global investment markets through October 2018.
3. **Subject:** Preliminary Investment Fund Performance Report for the Quarter Ending September 30, 2018
From: Pension Consulting Alliance

Recommendation: **ACCEPT** the Preliminary Investment Fund Performance Report for the Quarter Ending September 30, 2018.
4. **Subject:** Resolution No. 7028 – Hiring of a Domestic Defensive Equity Asset Class Investment Manager
From: Staff of the PFRS Board

Recommendation: **RECOMMEND BOARD APPROVAL** of Resolution No. 7028 – Resolution authorizing a professional service agreement with SPI Strategies, LLC to serve as investment manager of the U.S./Domestic Defensive Equity asset class for the Oakland Police And Fire Retirement System over the term of five (5) years at a fee rate not to exceed 0.5 percent of the portfolio's assets value each year.

**OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
REGULAR INVESTMENT COMMITTEE MEETING
OCTOBER 31, 2018**

ORDER OF BUSINESS, continued

5. **Subject:** Resolution No. 7027 – Resolution authorizing the execution of an amendment to extend the Master Custody Agreement with the Northern Trust Company to perform Custodian Bank Services for PFRS for a three-year period ending September 30, 2021, at annual fees of \$116,500

From: Staff of the PFRS Board

Recommendation: **RECOMMEND BOARD APPROVAL** of Resolution No. 7027 – Resolution authorizing the execution of an amendment to extend the Master Custody Agreement with the Northern Trust Company to perform Custodian Bank Services for PFRS for a three-year period ending September 30, 2021, at annual fees of \$116,500.

6. **Subject:** Follow-up review and recommendation of Board action regarding Hansberger Growth Investors, a PFRS International Equity Investment Manager

From: Staff of the PFRS Board and PCA

Recommendation: **RECOMMEND BOARD APPROVAL** of PCA follow-up review and recommendation of Board action regarding Hansberger Growth Investors, a PFRS International Equity Investment Manager.

7. **Subject:** Follow-up review and recommendation of Board action regarding Reams Asset Management, a PFRS Core Plus Fixed Income Investment Manager

From: Staff of the PFRS Board and PCA

Recommendation: **RECOMMEND BOARD APPROVAL** of PCA follow-up review and recommendation of Board action regarding Reams Asset Management, a PFRS Core Plus Fixed Income Investment Manager.

8. **Schedule of Pending Investment Committee Meeting Agenda Items**

9. **Future Scheduling**

10. **Open Forum**

11. **Adjournment of Meeting**

AN INVESTMENT AND FINANCIAL MATTERS COMMITTEE MEETING of the Oakland Police and Fire Retirement System (“PFRS”) was held September 26, 2018 in Hearing Room 3, One Frank Ogawa Plaza, Oakland, California.

Committee Members Present:

- Jaime T. Godfrey, Chairman
- R. Steven Wilkinson, Member
- Martin J. Melia, Member

Additional Attendees:

- Pelayo Llamas, Deputy City Attorney / PFRS Legal Counsel
- David Low & Teir Jenkins, Staff Members
- David Sancewich, Kristen Chase & Sean Copus, Pension Consulting Alliance (PCA)

The meeting was called to order at 10:09 am. Member Wilkinson was absent at the start of the meeting and arrived at 10:19 am. Chairman Godfrey rearranged the order of business.

4. **\$14.2 million 4th Quarter 2018 Member Benefits Drawdown** – Sean Copus from Pension Consulting Alliance (PCA) reported to the Investment Committee from which investment accounts and amounts that drawdowns would be made to pay for Member Benefits for the period of October 2018 through December 2018. Chairman Godfrey made a motion to recommend Board approval of the PCA recommendation for \$14.2 million member Benefits Drawdowns to pay for Member Benefits for the period of October 2018 through December 2018, second by member Melia. Motion passed.

[GODFREY – Y / MELIA – Y / WILKINSON – ABSENT]
(AYES: 2 / NOES: 0 / ABSTAIN: 0)

5. **Updated List of Thermal Coal Companies Prohibited from the PFRS Investment Portfolio** – Mr. Copus reported that PCA is required to provide to the PFRS board a list that identifies companies with which the PFRS investment portfolio is not permitted to make investments which are not part of any commingled account. Mr. Copus and the Committee members discussed the updated list of thermal coal companies and the instruction. Following some additional discussion between the staff and investment committee, member Melia made a motion to recommend Board approval of the updated list of Thermal Coal companies prohibited from the PFRS investment portfolio, second by Chairman Godfrey. Motion passed.

[GODFREY – Y / MELIA – Y / WILKINSON – ABSENT]
(AYES: 2 / NOES: 0 / ABSTAIN: 0)

6. **Investment Committee Pending Agenda Items** – The Investment Committee and staff reviewed the schedule of pending investment committee meeting agenda items. Chairman Godfrey made a motion to accept the informational report, second by member Melia. Motion passed.

[GODFREY – Y / MELIA – Y / WILKINSON – ABSENT]
(AYES: 2 / NOES: 0 / ABSTAIN: 0)

7. **Future Scheduling** – The next Investment Committee meeting was scheduled for October 31, 2018.

3. **Investment Market Overview** – Mr. Copus reported on the global economic factors affecting the PFRS Fund. Chairman Godfrey made a motion accept the Informational Report from PCA, second by Member Melia. Motion passed.

[GODFREY – Y / MELIA – Y / WILKINSON – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

1. **Approval of Investment Committee meeting minutes** – Member Melia made a motion to approve the August 29, 2018 Investment Committee meeting minutes, second by Member Wilkinson. Motion passed.

[GODFREY – Y / MELIA – Y / WILKINSON – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

2. **Investment Manager Interviews – Candidates for Domestic Defensive Equity Asset Class Investment Manager** – The Investment Committee received presentations from three investment managers, AQR Capital Management, Intech Investment Management, and SPI Strategies regarding the hiring of a new PFRS Domestic Defensive Equity Asset Class Investment Manager. Mr. Copus reported that the hiring of the new manager addresses the de-risking of \$15-20 million from the Domestic Equities segment of the PFRS Investment Portfolio currently invested with SSgA Russell 1000 Growth and SSgA Russell 1000 Value investments.

Following individual presentations by each investment manager, the Investment Committee, Staff and PCA discussed the interviews. Following extensive discussion, Member Wilkinson made a motion to recommend Board approval of hiring SPI Strategies as the Domestic Defensive Equity Asset Class investment manager pending discussion and agreement with SPI Strategies about lowering their fees to a level not to exceed 50 basis points, second by member Melia. Motion passed.

[GODFREY – Y / MELIA – Y / WILKINSON – Y]
(AYES: 3 / NOES: 0 / ABSTAIN: 0)

8. **Open Forum** – No Report.
9. **Adjournment of Meeting** – The meeting adjourned at 12:09 pm.

JAIME T. GODFREY, COMMITTEE CHAIRMAN

DATE

PCA INVESTMENT MARKET RISK METRICS

Monthly Report



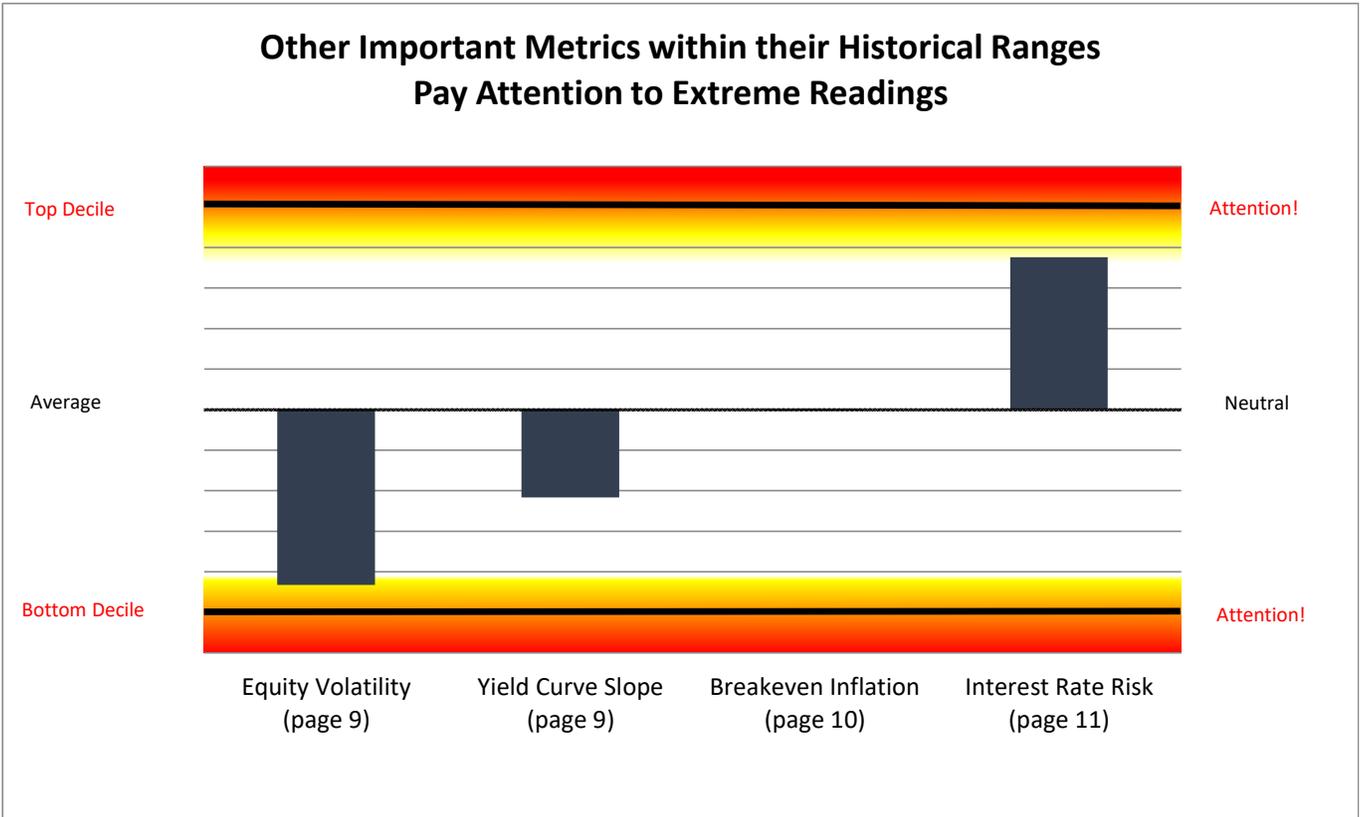
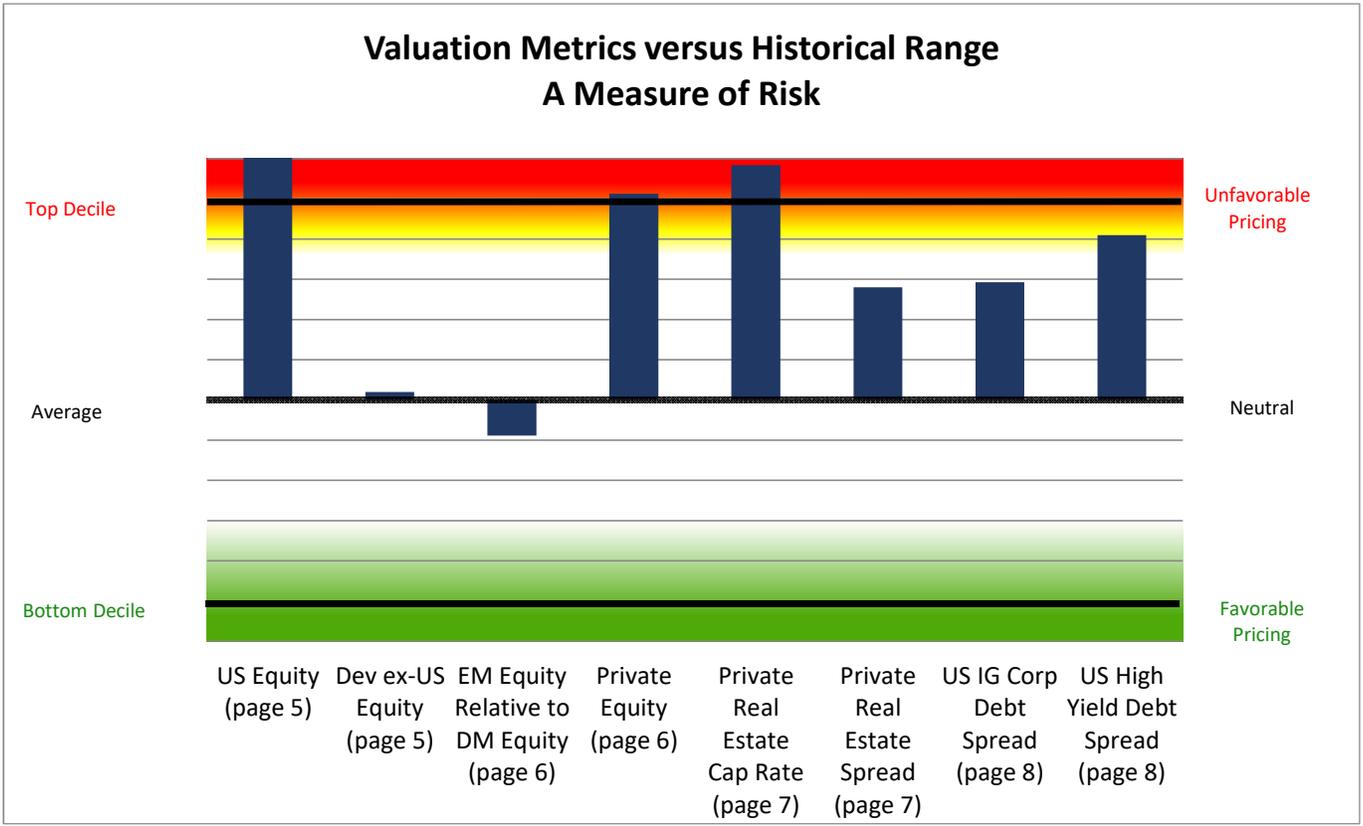
October 2018
(as of 9/30/18)

Takeaways

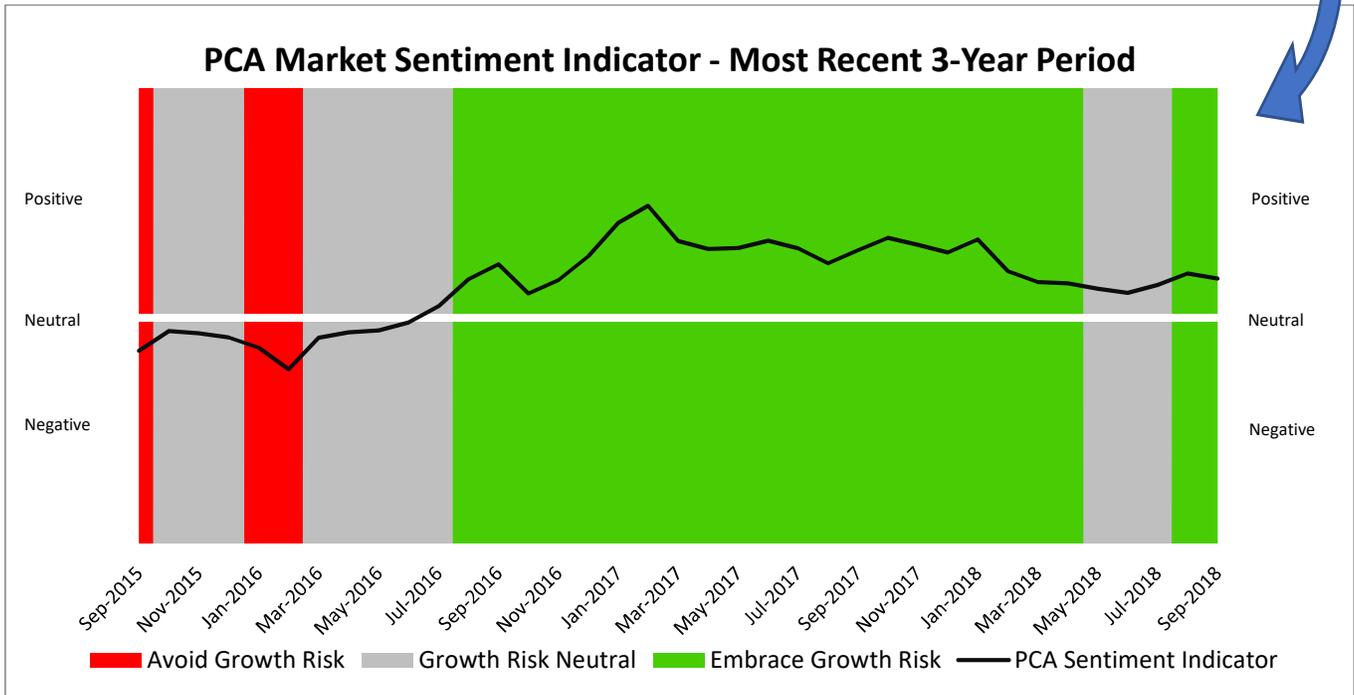
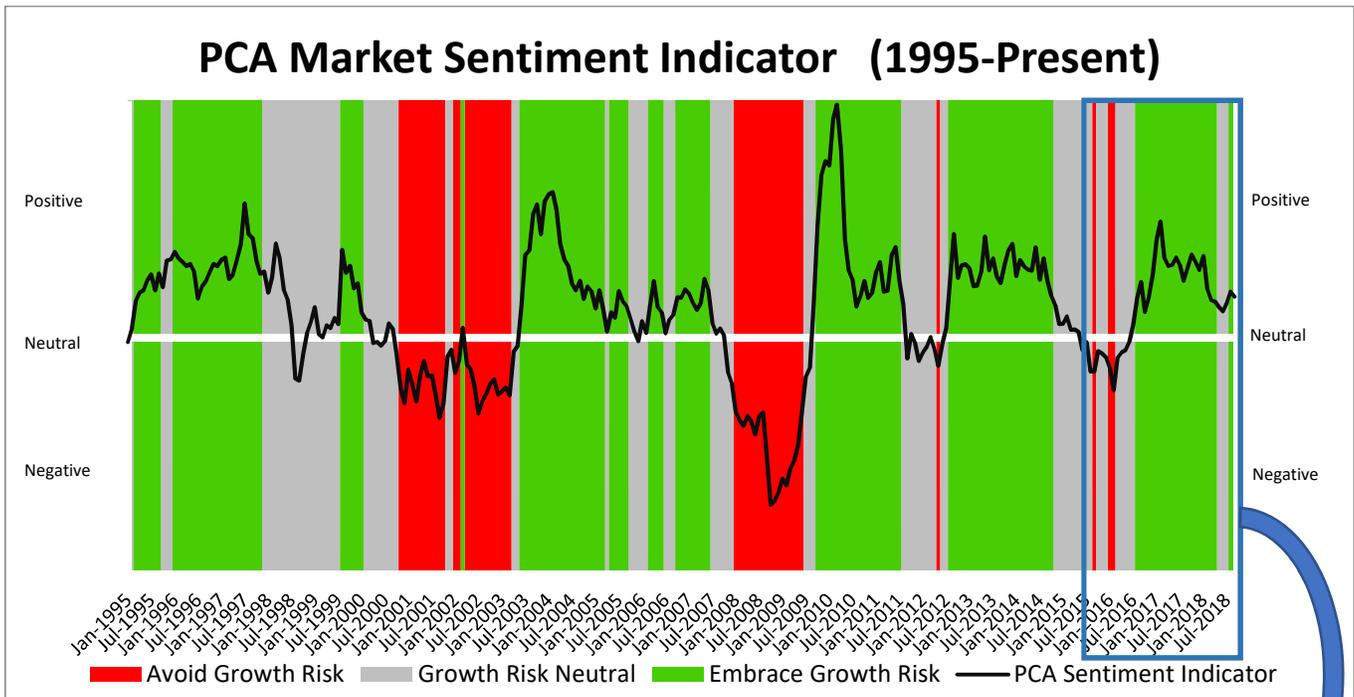
- September completed another strong quarter for U.S. equity markets, with most broad indices producing mid-to-high single-digit returns. Other asset types and regions were more challenged, with Emerging Markets equity and U.S. Treasury-centric fixed income indices producing unfavorable returns over the month and quarter.
- Implied equity market volatility (i.e., VIX) declined at the margin over the month and still remains materially below the long-term average level.
- PCA's sentiment indicator (page 4) remained positive (**green**) for the second month as year-over-year changes in bond spreads remained in positive territory.
- U.S. Treasury interest rates increased by roughly 10-20 basis points across the yield curve during September. The yield curve is currently fairly flat, with the spread between 30-year and 3-month U.S. Treasury yields at 1.0% as of month-end.
- Non-U.S. Developed and Emerging Markets equity valuations are currently in-line with long-term averages, but they remain modestly cheap relative to U.S. levels.
- A prevailing market theme at the moment is the divergence of U.S. fiscal and monetary policies. Whereas fiscal policy is currently stimulative, monetary policy is generally tightening as economic growth, inflation, and unemployment are approaching late-cycle levels. PCA expects this to remain a topic of interest/concern over the near- and intermediate-terms.
- The global economic system is in the early stages of a transition. This change is from an environment of easy monetary policy, strong asset returns, and robust growth to a period of tighter monetary policy, lower asset returns, and more disparate and challenging growth. Monitoring this transition will be crucial to institutional portfolio management.

¹See Appendix for the rationale for selection and calculation methodology used for the risk metrics.

Risk Overview



Market Sentiment



Information Behind Current Sentiment Reading

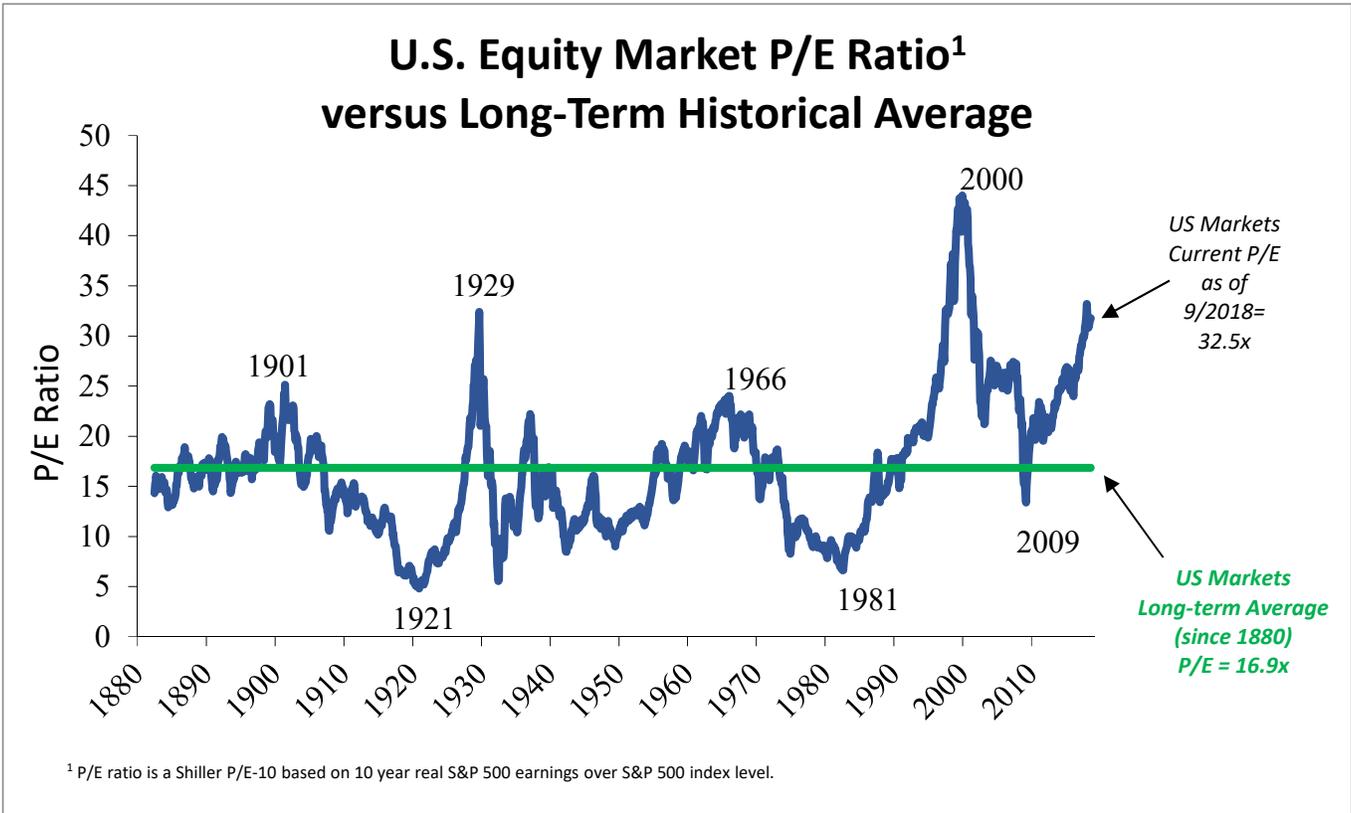
Bond Spread Momentum Trailing-Twelve Months
 Equity Return Momentum Trailing-Twelve Months
 Agreement Between Bond Spread and Equity Spread Momentum Measures?

Positive	■
Positive	■
Agree	■

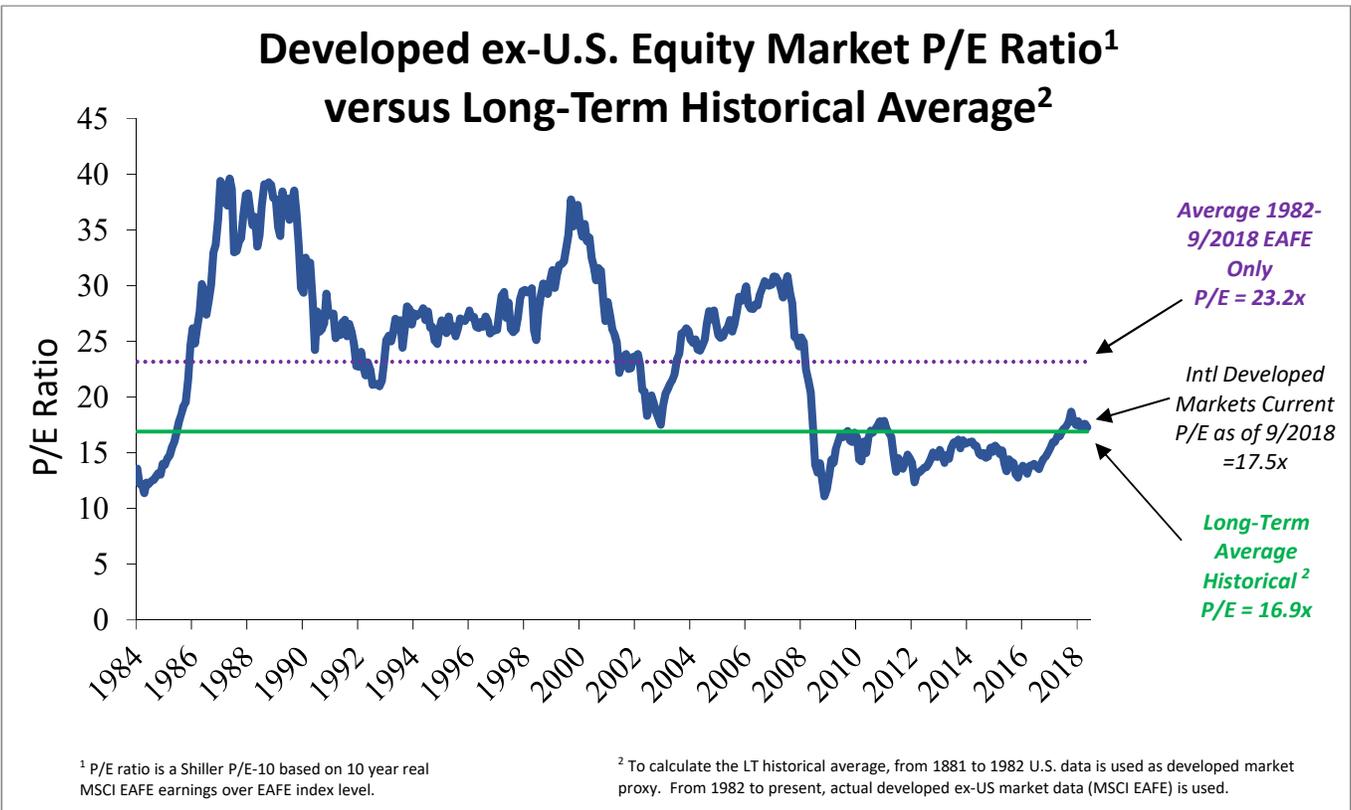
Growth Risk Visibility (Current Overall Sentiment)

Positive	■
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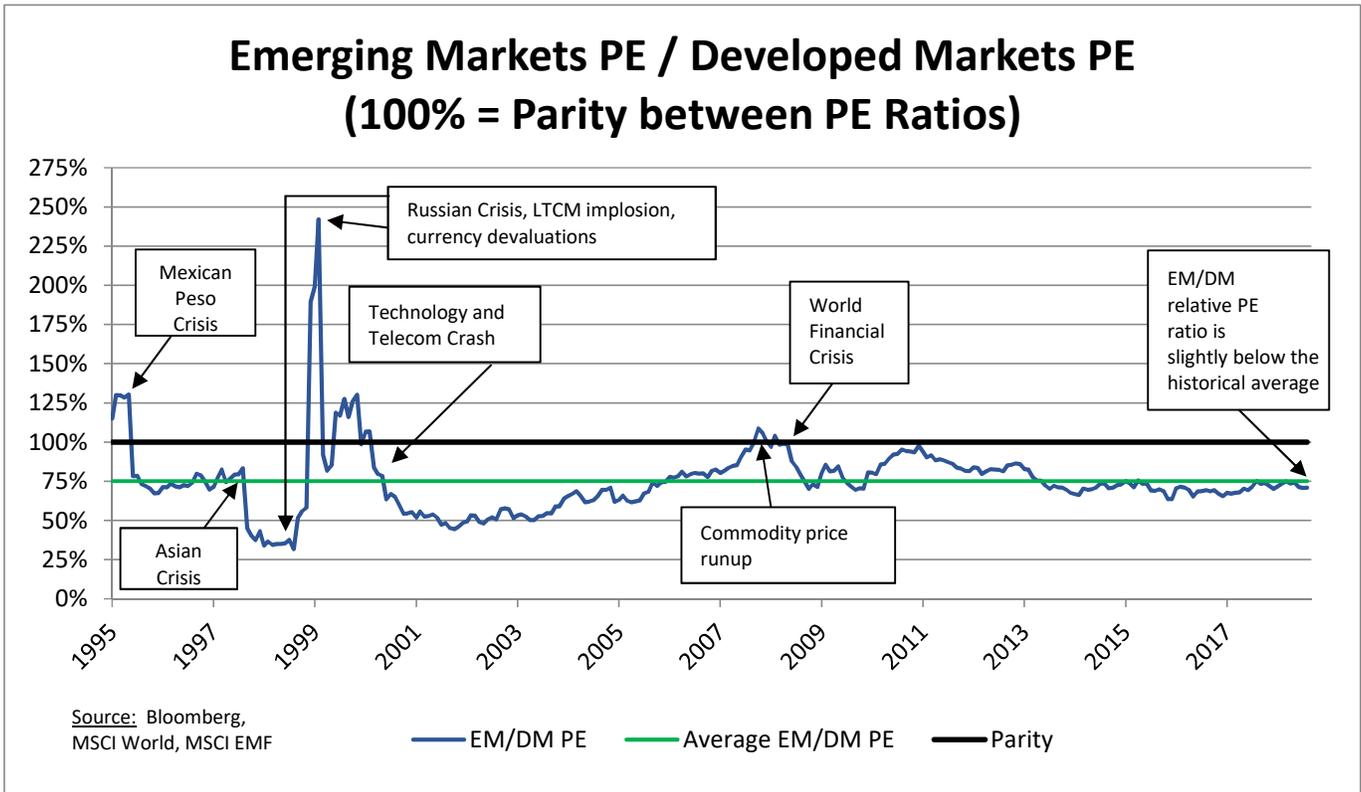
Developed Public Equity Markets



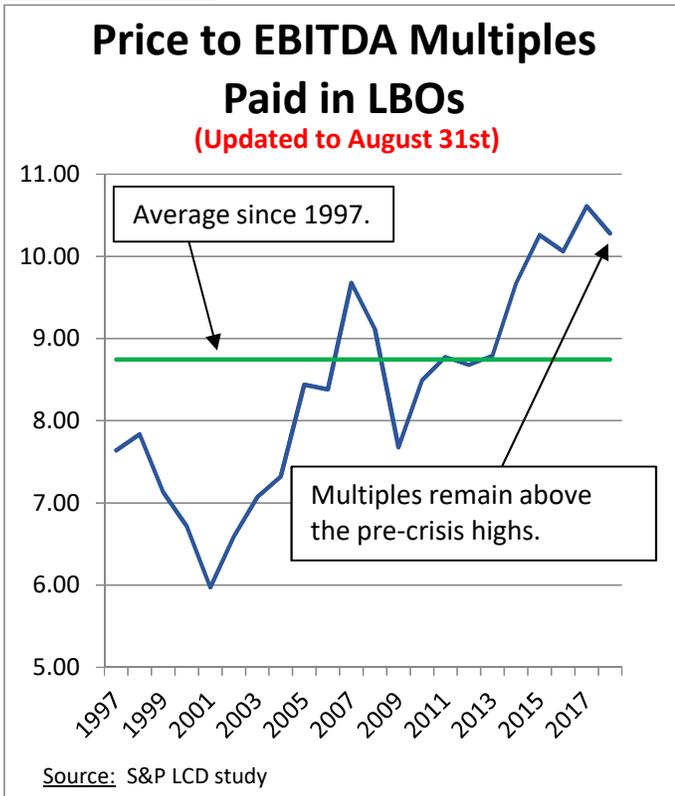
(Please note the difference in time scales)



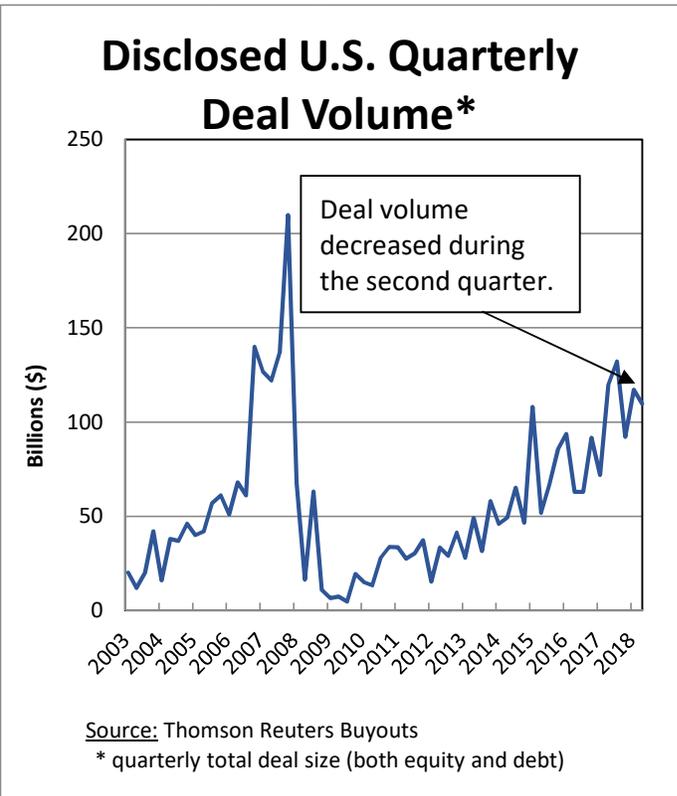
Emerging Market Public Equity Markets



US Private Equity

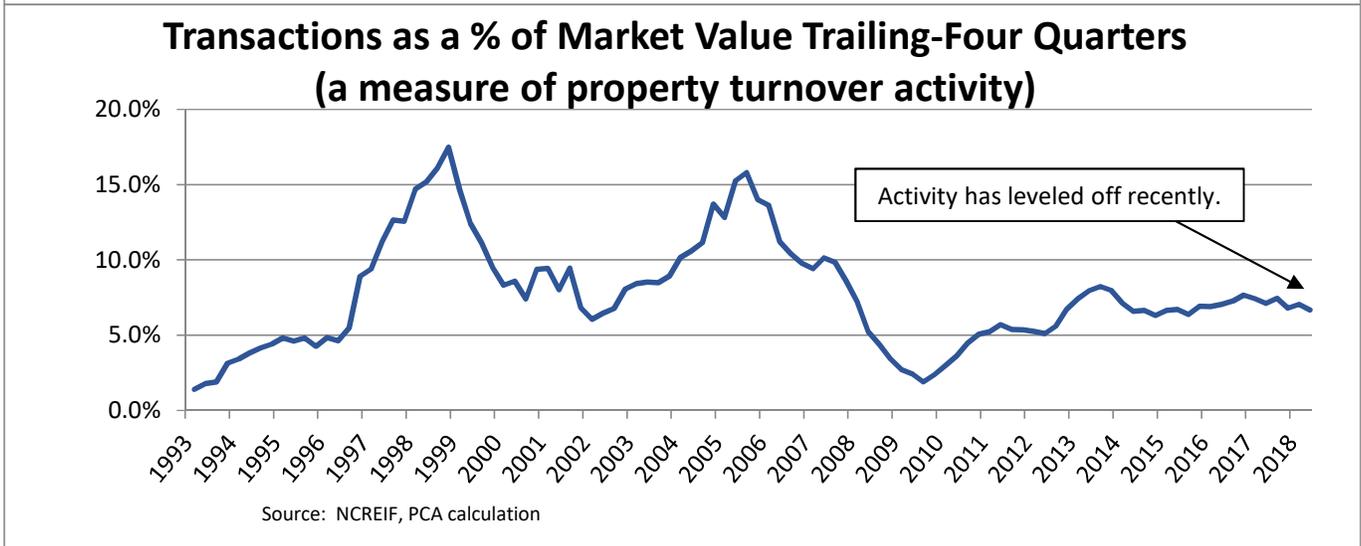
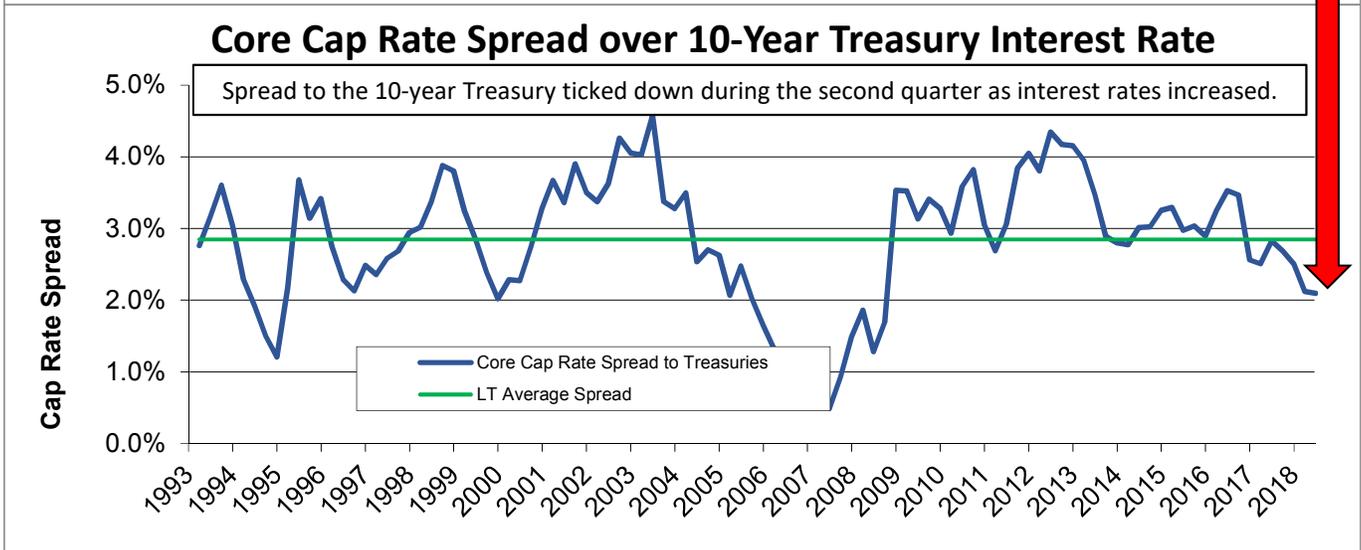
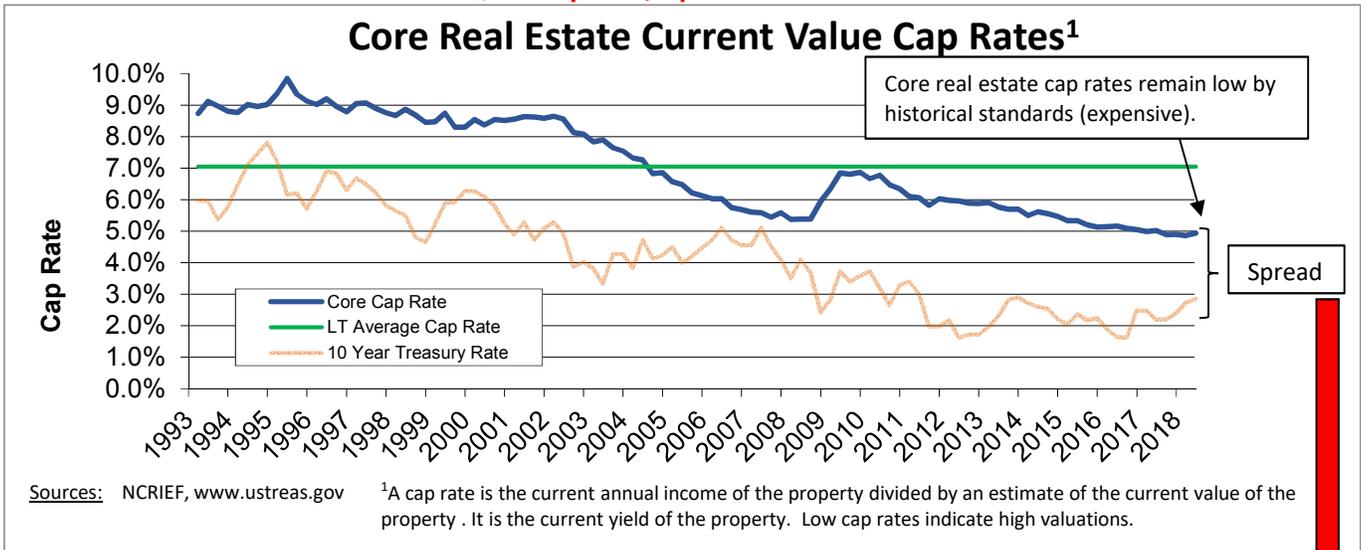


Quarterly Data, Updated to June 30th



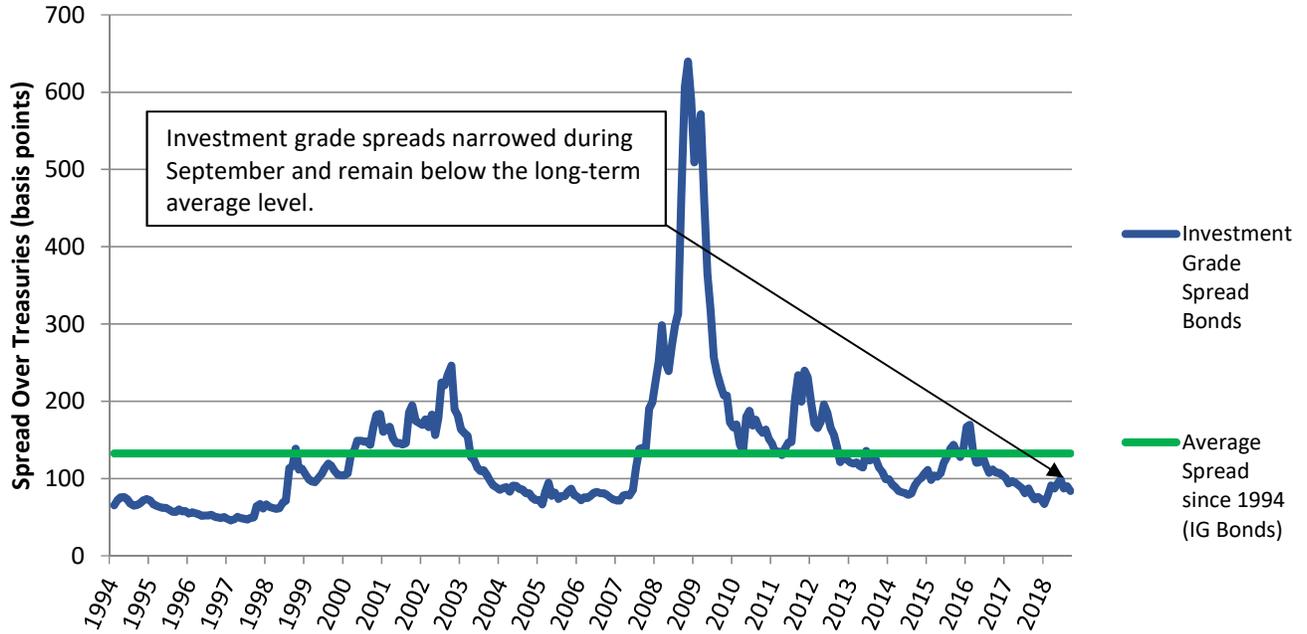
Private Real Estate

Quarterly Data, Updated to June 30th.



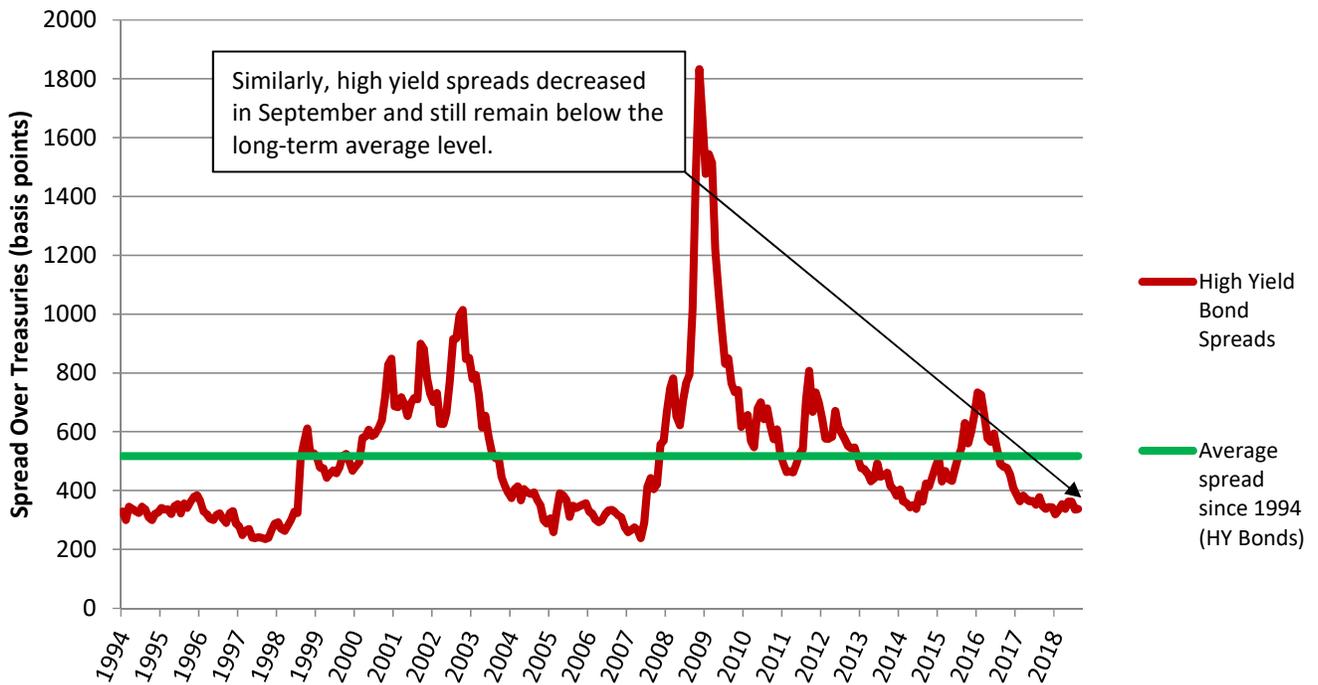
Credit Market US Fixed Income

Investment Grade Corporate Bond Spreads



Source: LehmanLive: Barclays Capital US Corporate Investment Grade Index Intermediate Component.

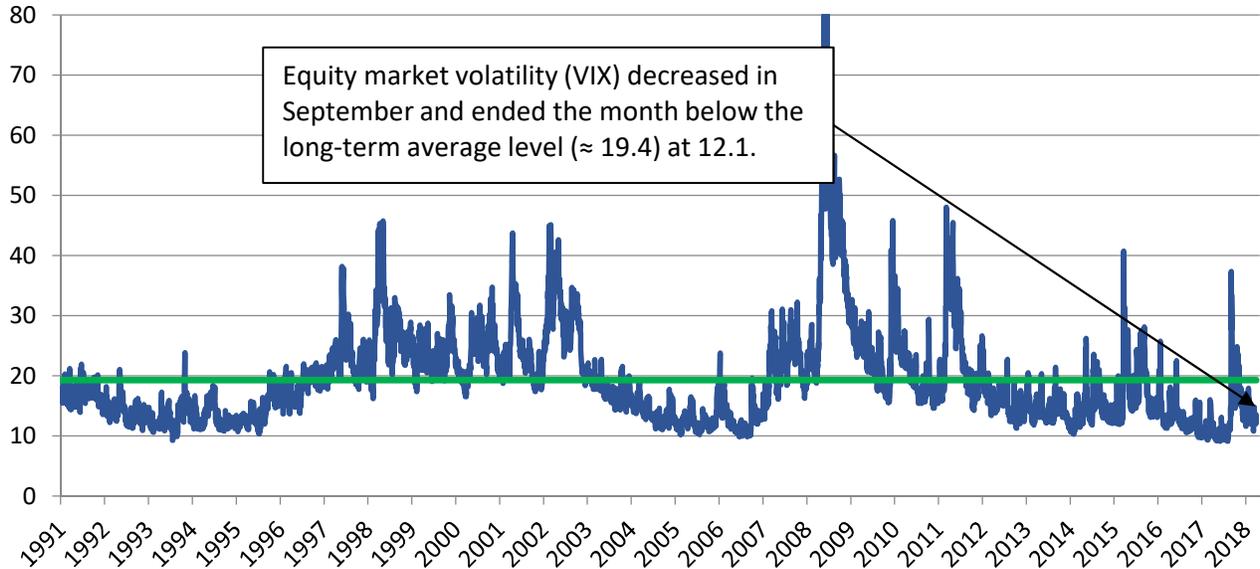
High Yield Corporate Bond Spreads



Source: LehmanLive: Barclays Capital U.S. Corporate High Yield Index.

Other Market Metrics

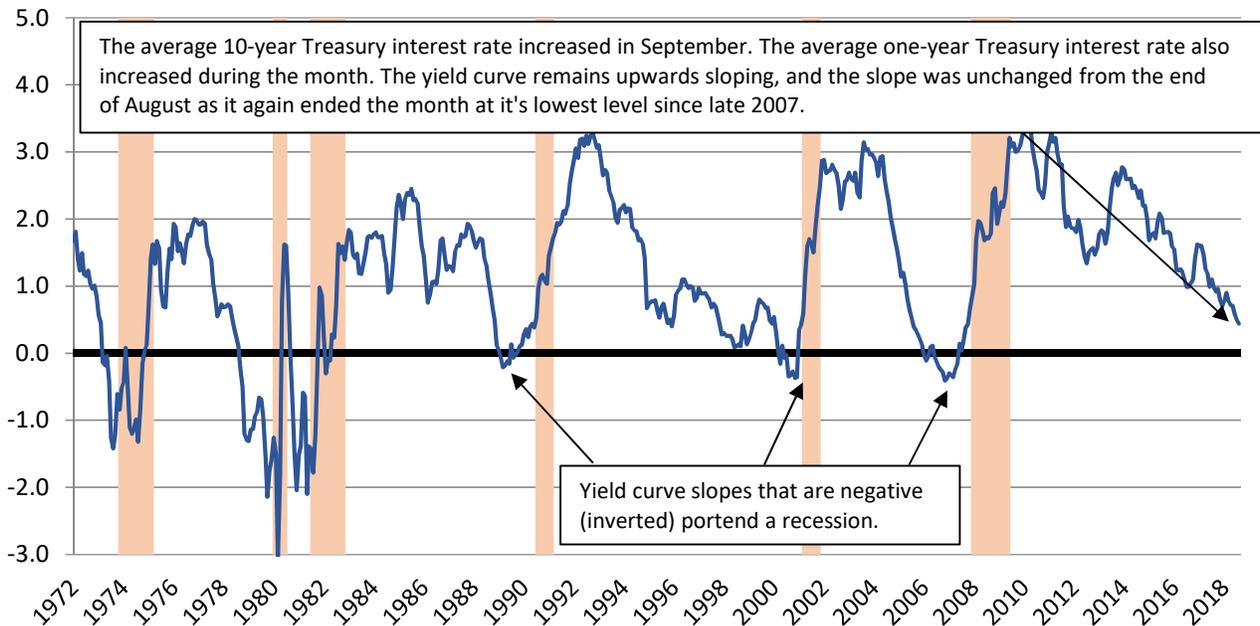
VIX - a measure of equity market fear / uncertainty



Source: <http://www.cboe.com/micro/vix/historical.aspx>

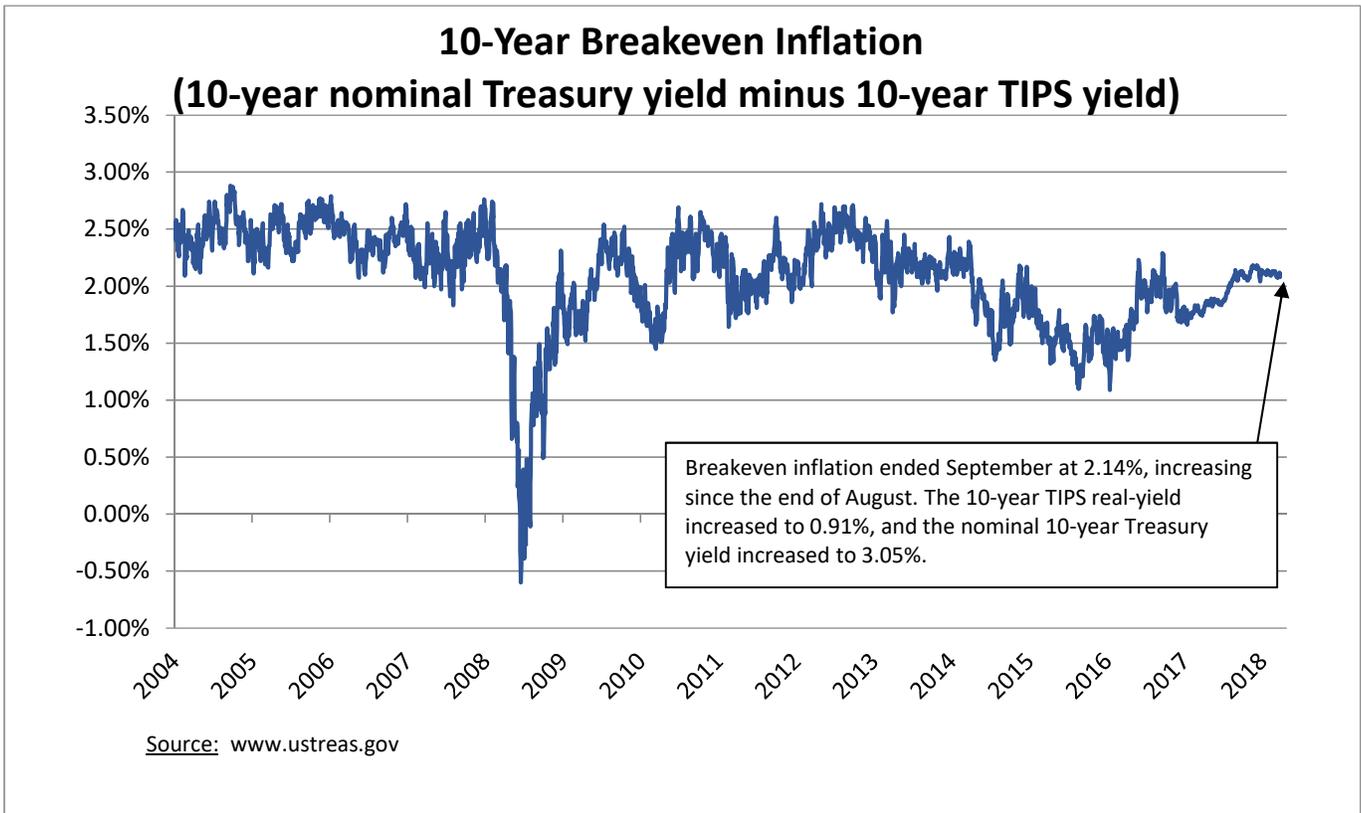
(Please note the difference in time scales)

Yield Curve Slope

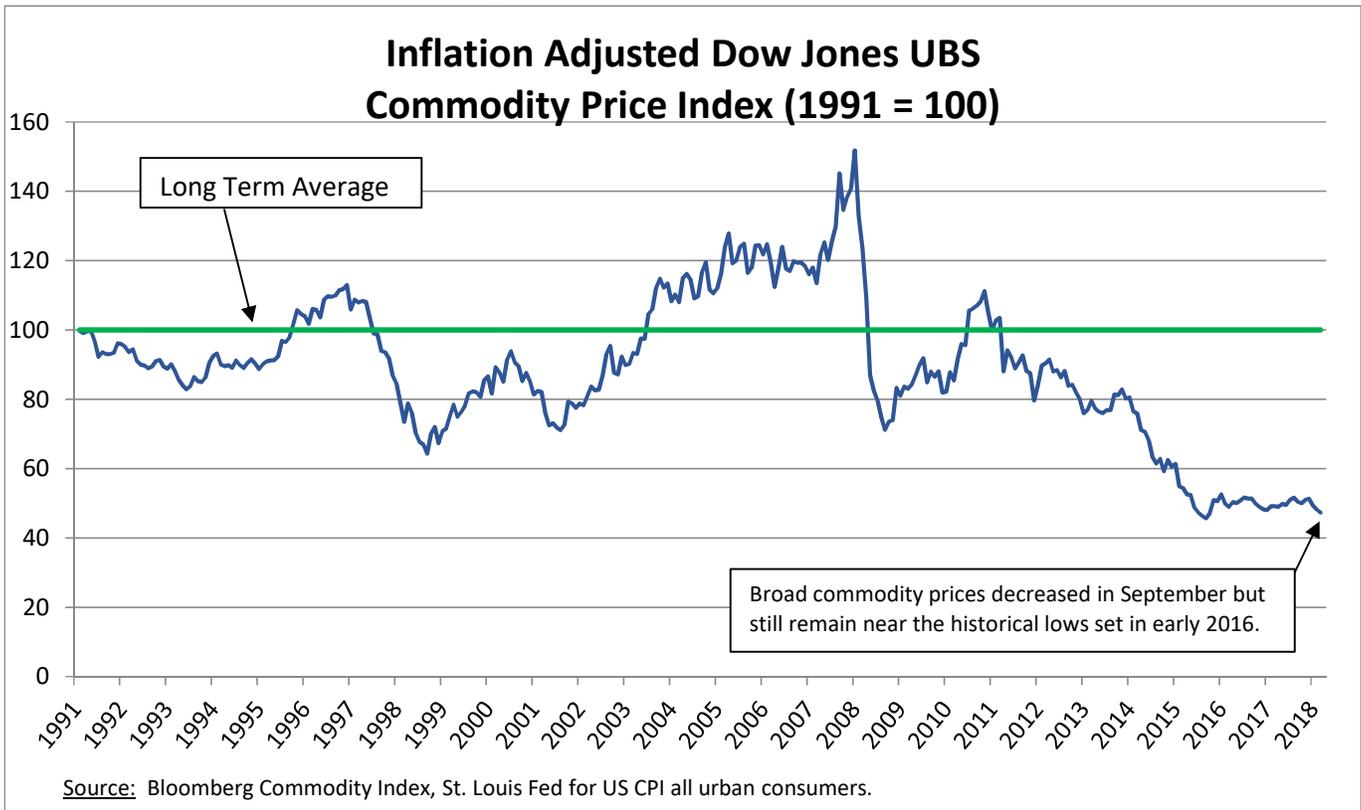


Source: www.ustreas.gov (10 yr treasury yield minus 1 year treasury yield)

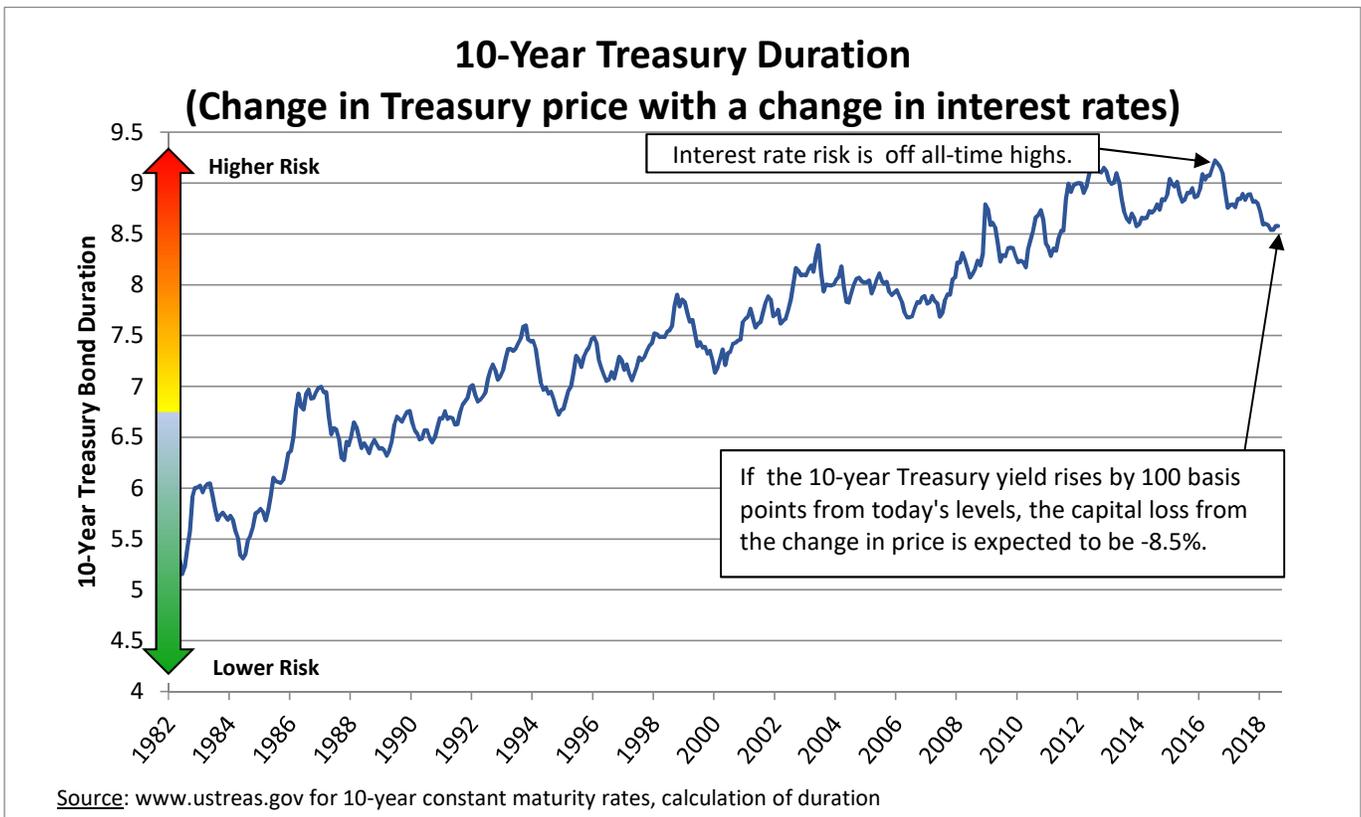
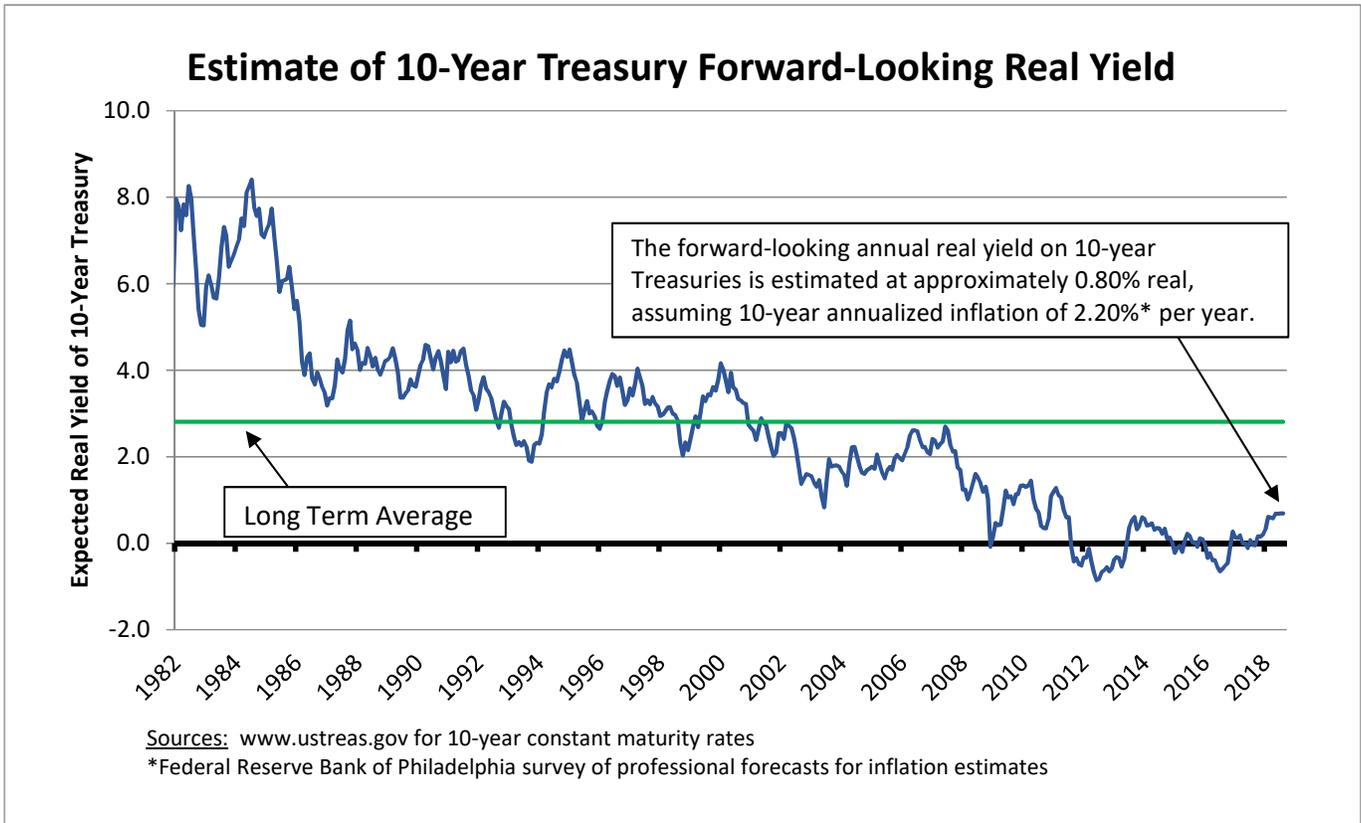
Measures of Inflation Expectations



(Please note the difference in time scales)



Measures of U.S. Treasury Interest Rate Risk



Appendix

Appendix

METRIC DESCRIPTION, RATIONALE FOR SELECTION AND CALCULATION METHODOLOGY

US Equity Markets:

Metric: P/E ratio = Price / "Normalized" earnings for the S&P 500 Index

To represent the price of US equity markets, we have chosen the S&P 500 index. This index has the longest published history of price, is well known, and also has reliable, long-term, published quarterly earnings. The price= P of the P/E ratio is the current price of the market index (the average daily price of the most recent full month for the S&P 500 index). Equity markets are very volatile. Prices fluctuate significantly during normal times and extremely during periods of market stress or euphoria. Therefore, developing a measure of earnings power (E) which is stable is vitally important, if the measure is to provide insight. While equity prices can and do double, or get cut in half, real earnings power does not change nearly as much. Therefore, we have selected a well known measure of real, stable earnings power developed by Yale Professor Robert Shiller known as the Shiller E-10. The calculation of E-10 is simply the average real annual earnings over the past 10 years. Over 10 years, the earnings shenanigans and boom and bust levels of earnings tend to even out (and often times get restated). Therefore, this earnings statistic gives a reasonably stable, slow-to-change estimate of average real earnings power for the index. Professor Shiller's data and calculation of the E-10 are available on his website at <http://www.econ.yale.edu/~shiller/data.htm>. We have used his data as the base for our calculations. Details of the theoretical justification behind the measure can be found in his book *Irrational Exuberance* [Princeton University Press 2000, Broadway Books 2001, 2nd ed., 2005].

Developed Equity Markets Excluding the US:

Metric: P/E ratio = Price / "Normalized" earnings for the MSCI EAFE Index

To represent the price of non-US developed equity markets, we have chosen the MSCI EAFE index. This index has the longest published history of price for non-US developed equities. The price= P of the P/E ratio is the current price of the market index (the average daily price of the most recent full month for the MSCI EAFE index). The price level of this index is available starting in December 1969. Again, for the reasons described above, we elected to use the Shiller E-10 as our measure of earnings (E). Since 12/1972, a monthly price earnings ratio is available from MSCI. Using this quoted ratio, we have backed out the implied trailing-twelve month earnings of the EAFE index for each month from 12/1972 to the present. These annualized earnings are then inflation adjusted using CPI-U to represent real earnings in US dollar terms for each time period. The Shiller E-10 for the EAFE index (10 year average real earnings) is calculated in the same manner as detailed above.

However, we do not believe that the pricing and earnings history of the EAFE markets are long enough to be a reliable representation of pricing history for developed market equities outside of the US. Therefore, in constructing the Long-Term Average Historical P/E for developed ex-US equities for comparison purposes, we have elected to use the US equity market as a developed market proxy, from 1881 to 1982. This lowers the Long-Term Average Historical P/E considerably. We believe this methodology provides a more realistic historical comparison for a market with a relatively short history.

Appendix

METRIC DESCRIPTION, RATIONALE FOR SELECTION AND CALCULATION METHODOLOGY

Emerging Market Equity Markets:

Metric: Ratio of Emerging Market P/E Ratio to Developed Market P/E Ratio

To represent the Emerging Markets P/E Ratio, we have chosen the MSCI Emerging Market Free Index, which has P/E data back to January 1995 on Bloomberg. To represent the Developed Markets PE Ratio, we have chosen the MSCI World Index, which also has data back to January 1995 on Bloomberg. Although there are issues with published, single time period P/E ratios, in which the denominator effect can cause large movements, we feel that the information contained in such movements will alert investors to market activity that they will want to interpret.

US Private Equity Markets:

Metrics: S&P LCD Average EBITDA Multiples Paid in LBOs and US Quarterly Deal Volume

The Average Purchase Price to EBITDA multiples paid in LBOs is published quarterly by S&P in their LCD study. This is the total price paid (both equity and debt) over the trailing-twelve month EBITDA (earnings before interest, taxes, depreciation and amortization) as calculated by S&P LCD. This is the relevant, high-level pricing metric that private equity managers use in assessing deals. Data is published monthly.

US quarterly deal volume for private equity is the total deal volume in \$ billions (both equity and debt) reported in the quarter by Thomson Reuters Buyouts. This metric gives a measure of the level of activity in the market. Data is published quarterly.

U.S Private Real Estate Markets:

Metrics: US Cap Rates, Cap Rate Spreads, and Transactions as a % of Market Value

Real estate cap rates are a measure of the price paid in the market to acquire properties versus their annualized income generation before financing costs (NOI=net operating income). The data, published by NCREIF, describes completed and leased properties (core) on an unleveraged basis. We chose to use current value cap rates. These are capitalization rates from properties that were revalued during the quarter. This data relies on estimates of value and therefore tends to be lagging (estimated prices are slower to rise and slower to fall than transaction prices). The data is published quarterly.

Spreads between the cap rate (described above) and the 10-year nominal Treasury yield, indicate a measure of the cost of properties versus a current measure of the cost of financing.

Transactions as a % of Market Value Trailing-Four Quarters is a measure of property turnover activity in the NCREIF Universe. This quarterly metric is a measure of activity in the market.

Credit Markets US Fixed Income:

Metric: Spreads

The absolute level of spreads over treasuries and spread trends (widening / narrowing) are good indicators of credit risk in the fixed income markets. Spreads incorporate estimates of future default, but can also be driven by technical dislocations in the fixed income markets. Abnormally narrow spreads (relative to historical levels) indicate higher levels of valuation risk, wide spreads indicate lower levels of valuation risk and / or elevated default fears. Investment grade bond spreads are represented by the Barclays Capital US Corporate Investment Grade Index Intermediate Component. The high yield corporate bond spreads are represented by the Barclays Capital US Corporate High Yield Index.

Appendix

METRIC DESCRIPTION, RATIONALE FOR SELECTION AND CALCULATION METHODOLOGY

Measure of Equity Market Fear / Uncertainty

Metric: VIX – Measure of implied option volatility for U.S. equity markets

The VIX is a key measure of near-term volatility conveyed by implied volatility of S&P 500 index option prices. VIX increases with uncertainty and fear. Stocks and the VIX are negatively correlated. Volatility tends to spike when equity markets fall.

Measure of Monetary Policy

Metric: Yield Curve Slope

We calculate the yield curve slope as the 10 year treasury yield minus the 1 year treasury yield. When the yield curve slope is zero or negative, this is a signal to pay attention. A negative yield curve slope signals lower rates in the future, caused by a contraction in economic activity. Recessions are typically preceded by an inverted (negatively sloped) yield curve. A very steep yield curve (2 or greater) indicates a large difference between shorter-term interest rates (the 1 year rate) and longer-term rates (the 10 year rate). This can signal expansion in economic activity in the future, or merely higher future interest rates.

Measures of US Inflation Expectations

Metrics: Breakeven Inflation and Inflation Adjusted Commodity Prices

Inflation is a very important indicator impacting all assets and financial instruments. Breakeven inflation is calculated as the 10 year nominal treasury yield minus the 10 year real yield on US TIPS (treasury inflation protected securities). Abnormally low long-term inflation expectations are indicative of deflationary fears. A rapid rise in breakeven inflation indicates an acceleration in inflationary expectations as market participants sell nominal treasuries and buy TIPS. If breakeven inflation continues to rise quarter over quarter, this is a signal of inflationary worries rising, which may cause Fed action and / or dollar decline.

Commodity price movement (above the rate of inflation) is an indication of anticipated inflation caused by real global economic activity putting pressure on resource prices. We calculate this metric by adjusted in the Dow Jones UBS Commodity Index (formerly Dow Jones AIG Commodity Index) by US CPI-U. While rising commodity prices will not necessarily translate to higher US inflation, higher US inflation will likely show up in higher commodity prices, particularly if world economic activity is robust.

These two measures of anticipated inflation can, and often are, conflicting.

Measures of US Treasury Bond Interest Rate Risk

Metrics: 10-Year Treasury Forward-Looking Real Yield and 10-Year Treasury Duration

The expected annualized real yield of the 10 year U.S. Treasury Bond is a measure of valuation risk for U.S. Treasuries. A low real yield means investors will accept a low rate of expected return for the certainty of receiving their nominal cash flows. PCA estimates the expected annualized real yield by subtracting an estimate of expected 10 year inflation (produced by the Survey of Professional Forecasters as collected by the Federal Reserve Bank of Philadelphia), from the 10 year Treasury constant maturity interest rate.

Duration for the 10-Year Treasury Bond is calculated based on the current yield and a price of 100. This is a measure of expected percentage movements in the price of the bond based on small movements in percentage yield. We make no attempt to account for convexity.

Definition of “extreme” metric readings

A metric reading is defined as “extreme” if the metric reading is in the top or bottom decile of its historical readings. These “extreme” reading should cause the reader to pay attention. These metrics have reverted toward their mean values in the past.

PCA Market Sentiment Indicator

Explanation, Construction and Q&A

By:

Pension Consulting Alliance, LLC.

PCA has created the PCA Market Sentiment Indicator (PMSI) to complement our valuation-focused PCA Investment Market Risk Metrics. This measure of sentiment is meant to capture significant and persistent shifts in long-lived market trends of economic growth risk, either towards a risk-seeking trend or a risk-aversion trend.

This paper explores:

- What is the PCA Market Sentiment Indicator (PMSI)?
- How do I read the indicator graph?
- How is the PCA Market Sentiment Indicator (PMSI) constructed?
- What do changes in the indicator mean?



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PCA Market Sentiment Indicator

PCA has created a market sentiment indicator for monthly publication (the PMSI – see below) to complement PCA's Investment Market Risk Metrics.

PCA's Investment Market Risk Metrics, which rely significantly on standard market measures of relative valuation, often provide valid early signals of increasing long-term risk levels in the global investment markets. However, as is the case with numerous valuation measures, the Risk Metrics may convey such risk concerns long before a market corrections take place. The PMSI helps to address this early-warning bias by measuring whether the markets are beginning to acknowledge key Risk Metrics trends, and / or indicating non-valuation based concerns. Once the PMSI indicates that the market sentiment has shifted, it is our belief that investors should consider significant action, particularly if confirmed by the Risk Metrics. Importantly, PCA believes the Risk Metrics and PMSI should always be used in conjunction with one another and never in isolation. The questions and answers below highlight and discuss the basic underpinnings of the PCA PMSI:

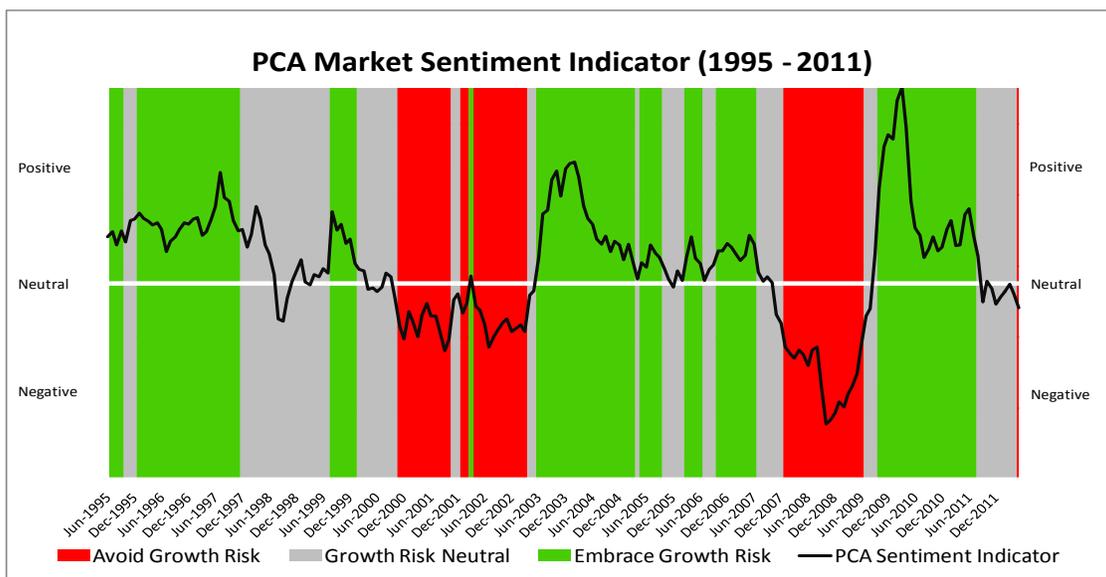
What is the PCA Market Sentiment Indicator (PMSI)?

The PMSI is a measure meant to gauge the market's sentiment regarding economic growth risk. Growth risk cuts across most financial assets, and is the largest risk exposure that most portfolios bear. The PMSI takes into account the momentum (trend over time, positive or negative) of the economic growth risk exposure of publicly traded stocks and bonds, as a signal of the future direction of growth risk returns; either positive (risk seeking market sentiment), or negative (risk averse market sentiment).

How do I read the PCA Market Sentiment Indicator (PMSI) graph?

Simply put, the PMSI is a color coded indicator that signals the market's sentiment regarding economic growth risk. It is read left to right chronologically. A green indicator on the PMSI indicates that the market's sentiment towards growth risk is positive. A gray indicator indicates that the market's sentiment towards growth risk is neutral or inconclusive. A red indicator indicates that the market's sentiment towards growth risk is negative. The black line on the graph is the level of the PMSI. The degree of the signal above or below the neutral reading is an indication the signal's current strength.

Momentum as we are defining it is the use of the past behavior of a series as a predictor of its future behavior.



PCA Market Sentiment Indicator

How is the PCA Market Sentiment Indicator (PMSI) Constructed?

The PMSI is constructed from two sub-elements representing investor sentiment in stocks and bonds:

1. Stock return momentum: Return momentum for the S&P 500 Equity Index (trailing 12-months)
2. Bond yield spread momentum: Momentum of bond yield spreads (excess of the measured bond yield over the identical duration U.S. Treasury bond yield) for corporate bonds (trailing 12-months) for both investment grade bonds (75% weight) and high yield bonds (25% weight). The scale of this measure is adjusted to match that of the stock return momentum measure.

The black line reading on the graph is calculated as the average of the stock return momentum measure and the bonds spread momentum measure. The color reading on the graph is determined as follows:

1. If both stock return momentum and bond spread momentum are positive = GREEN (positive)
2. If one of the momentum indicators is positive, and the other negative = GRAY (inconclusive)
3. If both stock return momentum and bond spread momentum are negative = RED (negative)

What does the PCA Market Sentiment Indicator (PMSI) mean? Why might it be useful?

There is strong evidence that time series momentum is significant and persistent. In particular, across an extensive array of asset classes, the sign of the trailing 12-month return (positive or negative) is indicative of future returns (positive or negative) over the next 12 month period. The PMSI is constructed to measure this momentum in stocks and corporate bond spreads. A reading of green or red is agreement of both the equity and bond measures, indicating that it is likely that this trend (positive or negative) will continue over the next 12 months. When the measures disagree, the indicator turns gray. A gray reading does not necessarily mean a new trend is occurring, as the indicator may move back to green, or into the red from there. The level of the reading (black line) and the number of months at the red or green reading, gives the user additional information on which to form an opinion, and potentially take action.

ⁱ Momentum as we are defining it is the use of the past behavior of a series as a predictor of its future behavior.

ⁱⁱ "Time Series Momentum" Moskowitz, Ooi, Pedersen, August 2010
<http://pages.stern.nyu.edu/~lpederse/papers/TimeSeriesMomentum.pdf>

City of Oakland Police and Fire Retirement System
Preliminary 3Q 2018 Performance
As of 9/30/2018, gross of fees

Segment Manager	Benchmark	Style	3Q 2018	1-year	3-year	5-year	Since Inception ⁸	Inception Date ⁹
Total Plan (Gross of Fees)			3.9	10.3	12.0	8.8	---	---
Total Plan (Net of Fees)¹⁰			3.8	10.0	11.6	8.5	---	---
Policy Benchmark¹			4.5	10.3	11.8	8.8	---	---
Public Equity			5.0	14.4	15.9	11.8	---	---
Public Equity Benchmark⁴			5.9	14.4	15.8	11.6	---	---
Domestic Equity			6.3	18.6	17.4	13.5	---	---
Russell 3000 (blend)⁵			7.1	17.6	17.1	13.5	---	---
Large Cap			7.5	18.5	17.3	13.8	---	---
Northern Trust	Large Cap Core	Large Cap Core	7.4	17.7	17.0	13.7	14.9	5/2010
Russell 1000	Large Cap Core	Large Cap Core	7.4	17.8	17.1	13.7	14.9	---
SSgA Russell 1000 Value	Large Cap Value	Large Cap Value	5.7	9.5	13.6	---	8.5	10/2014
Russell 1000 Value	Large Cap Value	Large Cap Value	5.7	9.5	13.6	---	8.3	---
SSgA Russell 1000 Growth	Large Cap Growth	Large Cap Growth	9.2	26.3	20.6	---	15.6	10/2014
Russell 1000 Growth	Large Cap Growth	Large Cap Growth	9.2	26.3	20.6	---	15.6	---
Midcap			5.9	17.0	18.6	14.4	---	---
Earnest Partners	Mid Cap Core	Mid Cap Core	5.9	17.0	18.6	14.4	10.0	3/2006
Russell Mid Cap	Mid Cap Core	Mid Cap Core	5.0	14.0	14.5	11.7	8.9	---
Small Cap			2.3	21.4	16.7	11.0	---	---
NWQ	Small Cap Value	Small Cap Value	-1.4	10.6	16.1	11.4	8.2	1/2006
Russell 2000 Value	Small Cap Value	Small Cap Value	1.6	9.3	16.1	9.9	7.2	---
Rice Hall James	Small Cap Growth	Small Cap Growth	5.2	30.8	---	---	30.8	7/2017
Russell 2000 Growth	Small Cap Growth	Small Cap Growth	5.5	21.1	---	---	23.2	---
International Equity			0.8	2.0	11.1	5.7	---	---
MSCI ACWI Ex US (blend)⁶			0.8	2.3	10.5	4.6	---	---
Hansberger	International	International	-0.4	2.9	12.6	6.3	4.9	1/2006
MSCI ACWI Ex US	ACWI ex US	ACWI ex US	0.8	2.3	10.5	4.6	4.3	---
Fisher	International	International	1.4	0.3	10.8	5.8	5.0	3/2011
MSCI ACWI Ex US	ACWI ex US	ACWI ex US	0.8	2.3	10.5	4.6	4.2	---
State Street Global	International	International	1.4	3.1	9.6	4.8	7.5	7/2002
MSCI EAFE	Developed Markets	Developed Markets	1.4	3.3	9.8	4.9	7.5	---
Fixed Income			0.3	0.2	2.6	3.0	---	---
BC Universal (blend)⁷			0.3	-1.0	2.0	2.5	---	---
Reams	Core Plus	Core Plus	-0.4	-0.7	1.6	2.4	5.4	1/1998
BC Universal (blend) ⁷	Core Plus	Core Plus	0.3	-1.0	2.0	2.5	4.8	---
Ramirez	Core	Core	0.3	-0.1	---	---	2.3	1/2017
BC Aggregate	Core	Core	0.0	-1.2	---	---	1.1	---
DDJ	High Yield/Bank Loans	High Yield/Bank Loans	2.1	6.0	9.0	---	7.2	1/2015
BofAML US HY Master II	High Yield/Bank Loans	High Yield/Bank Loans	2.4	2.9	8.2	---	5.7	---
Crisis Risk Offset			---	---	---	---	---	---
Parametric	Risk Premia/Trend Following	Risk Premia/Trend Following	---	---	---	---	---	9/2018
Covered Calls			4.7	9.3	12.4	---	9.1	3/2014
CBOE BXM			4.9	9.8	10.4	---	7.8	---
Parametric BXM	Passive Covered Calls	Passive Covered Calls	5.2	8.6	10.9	---	8.1	3/2014
Parametric DeltaShift	Active Covered Calls	Active Covered Calls	7.0	12.9	14.9	---	11.3	---

Source of Blended Benchmarks: PCA Performance Group

1. Starting on 5/1/2016, Policy Benchmark consists of 48% Russell 3000, 12% MSCI ACWI ex U.S., 20% BbgBC Universal, 20% CBOE BXM

4. Public Equity Benchmark consists of 76% Russell 3000 and 24% MSCI ACWI ex U.S.

5. Domestic Equity Benchmark consists of S&P 500 thru 3/31/98, 10% R1000, 20% R1000V, 5% RMC from 4/1/98 - 12/31/04, and Russell 3000 from 1/1/05 to the present.

6. International Equity Benchmark consists of MSCI EAFE thru 12/31/04, and MSCI ACWI x US thereafter.

7. Fixed Income Benchmark consists of BbgBC Aggregate prior to 4/1/06, and BbgBC Universal thereafter.

8. Performance is calculated based on the first full month of performance since funding.

9. Inception date reflects the month when portfolio received initial funding.

10. Annual 3- & 5-year investment manager fees estimated at 34 basis points

City of Oakland Police and Fire Retirement System
Preliminary Market Value Summary
As of 9/30/2018

Manager	Style	Market Value \$(000)	Target	Actual ¹	Difference
Total Plan		\$391,500	100.0%	100.0%	0.0%
Public Equity		\$209,059	52.0%	53.4%	1.4%
Domestic Equity		\$161,384	40.0%	41.2%	1.2%
Large Cap Equity					
Northern Trust	Large Cap Core	84,619	23.2%	21.6%	-1.6%
SSgA Russell 1000 Value	Large Cap Value	9,275	0.0%	2.4%	2.4%
SSgA Russell 1000 Growth	Large Cap Growth	10,951	0.0%	2.8%	2.8%
Mid Cap Equity					
Earnest Partners	Mid Cap Core	31,921	6.8%	8.2%	1.4%
Small Cap Equity					
NWQ	Small Cap Value	10,427	2.5%	2.7%	0.2%
Rice Hall James	Small Cap Growth	14,191	2.5%	3.6%	1.1%
International Equity		\$47,675	12.0%	12.2%	0.2%
SSgA	International	14,811	3.6%	3.8%	0.2%
Hansberger	International	16,355	4.2%	4.2%	0.0%
Fisher	International	16,509	4.2%	4.2%	0.0%
Fixed Income		\$90,217	31.0%	23.0%	-8.0%
Reams	Core Plus	22,435	12.0%	5.7%	-6.3%
Ramirez	Core	67,782	19.0%	17.3%	-1.7%
Credit		\$7,887	2.0%	2.0%	0.0%
DDJ	High Yield/Bank Loans	7,887	---	2.0%	---
Covered Calls		\$50,679	5.0%	12.9%	7.9%
Parametric (Eaton Vance)	Active/Replication	50,679	---	12.9%	---
Crisis Risk Offset		\$25,800	10.0%	6.6%	-3.4%
New/Current Manager	Long Duration	0	3.3%	0.0%	-3.3%
Parametric	Trend/Risk Premia	25,800	6.7%	6.6%	-0.1%
Total Cash²		\$7,858	0.0%	2.0%	2.0%

1. In aggregate, asset class allocations equal to 100% of total investment portfolio.

2. Preliminary estimated balance includes cash balance with City Treasury and Custodian Cash account as of 9/30/2018.

Date: October 31, 2018

To: Oakland Police and Fire Retirement System (OPFRS)

From: Pension Consulting Alliance, LLC (PCA)

CC: David Sancewich – PCA
Sean Copus, CFA – PCA
Teir Jenkins – OPFRS
Katano Kasaine - OPFRS

RE: Domestic Defensive Equity Manager Search – SPI Management Fee Agreement

Summary & Recommendation

In the second quarter of 2018, an RFP was issued by PCA on behalf of OPFRS for the purpose of selecting a portfolio manager for the Plan's new Domestic Defensive Equity allocation. In September 2018, as a result of the ensuing manager search process, the OPFRS Investment Committee selected SPI Strategies, LLC (SPI) to manage approximately \$20 million of OPFRS assets in SPI's ELROI Long Alpha Plus portfolio. SPI's original RFP response advertised a management fee of 70 basis points for the portfolio; however, the OPFRS Investment Committee stated that their selection of SPI to manage the Domestic Defensive Equity mandate was contingent on SPI agreeing to reduce its stated management fee to 50 basis points. SPI subsequently responded to PCA that it agrees to manage the Domestic Defensive Equity mandate for the reduced 50 basis point fee.

PCA recommends that OPFRS authorize a professional service agreement with SPI Strategies, LLC to serve as the investment manager for the Domestic Defensive Equity mandate at an annual fee rate of 0.5% (50 basis points).

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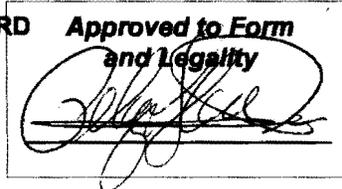
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OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

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RESOLUTION No. 7028

ON MOTION OF MEMBER _____ SECONDED BY MEMBER _____

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICE AGREEMENT WITH SPI STRATEGIES, LLC TO SERVE AS INVESTMENT MANAGER OF THE U.S./DOMESTIC DEFENSIVE EQUITY ASSET CLASS FOR THE OAKLAND POLICE AND FIRE RETIREMENT SYSTEM OVER THE TERM OF FIVE (5) YEARS AT A FEE RATE NOT TO EXCEED 0.5 PERCENT OF THE PORTFOLIO'S ASSETS VALUE EACH YEAR

WHEREAS, the Oakland City Charter section 2601(e) gives the Board of the Oakland Police and Fire Retirement System ("PFRS Board") power to make all necessary rules and regulation for its guidance and shall have exclusive control of the administration and investment of the funds established for the maintenance and operation of the system; and

WHEREAS, on June 28, 2017, the PFRS Board conducted an asset allocation review in 2017 and approved Resolution No. 6976, authorizing a new asset allocation called "U.S./Defensive Domestic Equity Asset Class" for the PFRS investment portfolio; and

WHEREAS, On October 25, 2017, the PFRS authorized the Request For Information for the new U.S./Defensive Domestic Equity Asset Class investment manager to manage approximately \$20 million of the PFRS Investment Portfolio; and

WHEREAS, the PFRS investment Committee reviewed the RFP respondents with PCA at its September 26, 2018 Committee meeting and agreed to the hire of SPI Strategies, LLC; now, therefore, be it

RESOLVED: that the PFRS Board authorizes the plan administrator to execute a professional service agreement with SPI strategies, LLC to serve as investment manager of the U.S./Domestic Defensive Equity Asset Class Investment for the Oakland Police and Fire Retirement System over the term of five (5) years through November 1, 2023 at a service fee not to exceed 0.5 percent of the Portfolio's asset value each year, paid quarterly; and be it

FURTHER RESOLVED: After the term of five (5) years, the contract, if still in effect, will be reviewed on an annual basis for fees and terms and subject to board approval; and be it

OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

FURTHER RESOLVED: that this resolution shall be effective immediate upon passage.

IN BOARD MEETING, CITY HALL, OAKLAND, CA _____ OCTOBER 31, 2018 _____

PASSED BY THE FOLLOWING VOTE:

AYES: GODFREY, KASAINÉ, MELIA, MUSZAR, SPEAKMAN, WILKINSON,
AND PRESIDENT JOHNSON

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
PRESIDENT

ATTEST: _____
SECRETARY

Date: October 18, 2018
To: Oakland Police and Fire Retirement System (OPFRS)
From: Pension Consulting Alliance, LLC (PCA)
CC: David Sancewich – PCA
Sean Copus, CFA – PCA
Teir Jenkins – OPFRS
Katano Kasaine – OPFRS
RE: Northern Trust – Contract Renewal

Recommendation:

PCA recommends that OPFRS renew its custodial contract with Northern Trust.

Summary and Discussion:

Due to the upcoming contract expiration of Northern Trust regarding its custodial services, PCA conducted an anonymous Request for Information (RFI) to review fees and services. This RFI was sent to four custodial providers, including Northern Trust. Two of the providers declined to respond due to the size of the OPFRS portfolio. An additional provider came back with fees that were higher than those of the current provider, Northern Trust.

Northern Trust submitted information for flat fee services that are equal to the current amount being charged, \$116,500. Additional information that was reviewed revealed no material changes in the organization or custodial services provided to OPFRS.

In making this recommendation, PCA considered performance/client service, litigation, and recent organizational/personnel issues. During the last contract period, Northern Trust exhibited acceptable performance and organizational stability; therefore, PCA believes that there are no issues that should prevent a contract extension for this provider. We will discuss further details at the upcoming October OPFRS Board meeting.

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OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

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RESOLUTION No. 7027

ON MOTION OF MEMBER _____ SECONDED BY MEMBER _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO EXTEND THE MASTER CUSTODY AGREEMENT WITH THE NORTHERN TRUST COMPANY TO PERFORM CUSTODIAN BANK SERVICES FOR PFRS FOR A THREE-YEAR PERIOD ENDING SEPTEMBER 30, 2021, AT ANNUAL FEES OF \$116,500

WHEREAS, the Oakland City Charter section 2601(e) gives the Board of the Oakland Police and Fire Retirement System ("PFRS Board") power to make all necessary rules and regulation for its guidance and shall have exclusive control of the administration and investment of the funds established for the maintenance and operation of the system; and

WHEREAS, pursuant to Resolution No. 6753, the System entered into a Master Custody Agreement with the Northern Trust Company effective October 1, 2013 to provide primary custodial services and securities lending, at annual fee rates of \$116,500 per year, with an initial term of three-years; and

WHEREAS, Resolution No. 6932 was approved by the PFRS Board at their August 31, 2016 meeting approving an extension to the Master Custody Agreement through September 30, 2018; and

WHEREAS, Pension Consulting Alliance ("PCA") issued a Request for Information ("RFI") for custodial services; and

WHEREAS, four (4) banking institutions – Bank of New York, State Street, U.S. Bank & The Northern Trust Company – responded to this RFI; and

WHEREAS, the Northern Trust Company has indicated that it can provide the currently required services for estimated annual fees of \$116,500; and

WHEREAS, an extension through September 30, 2021 of the current Master Custody Agreement with the Northern Trust Company to provide primary custodial services is recommended; now, therefore, it is

RESOLVED: That the Plan Administrator is hereby authorized to execute an amendment to extend by an additional three (3) years the October 1, 2013 Master Custody Agreement with the Northern Trust Company to perform Custodian Bank services for PFRS at annual fees of \$116,500 for the period of October 1, 2018 through September 30, 2021; and be it

OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

FURTHER RESOLVED: That this resolution shall be effective immediate upon passage.

IN BOARD MEETING, CITY HALL, OAKLAND, CA OCTOBER 31, 2018

PASSED BY THE FOLLOWING VOTE:

AYES: GODFREY, KASAIN, MELIA, MUSZAR, SPEAKMAN, WILKINSON,
AND PRESIDENT JOHNSON

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
PRESIDENT

ATTEST: _____
SECRETARY

Date: October 31, 2018

To: Oakland Police and Fire Retirement System (OPFRS)

From: Pension Consulting Alliance, LLC (PCA)

CC: David Sancewich – PCA
Sean Copus, CFA – PCA
Teir Jenkins – OPFRS
Katano Kasaine – OPFRS

RE: Hansberger Global Investors – Watch Recommendation

Manager: Hansberger Global Investors (Hansberger or HGI)

Inception Date:	January 2006	OPFRS AUM (9/30/18):	\$16.4 million
Product Name:	International Growth Equity	Management Fee:	75 bps (\$122.663)*
Investment Strategy:	International Growth Equity	Firm-wide AUM (9/30/18):	\$458.8 million
Benchmark:	MSCI ACWI ex-USA	Strategy AUM (9/30/18):	\$458.8 million

*Estimated \$ amount based on AUM as of 9/30/2018

Summary and Recommendation

In November 2017, Hansberger was placed on "Watch" status due to the departure of one of the firm's original portfolio managers and founding member of the firm, Barry Lockhart. Following an Onsite meeting at Hansberger's office in February 2018 it was also decided that the firm's increased reliance on a new proprietary quantitative research system represented a material change to the firm's investment process which warranted the possibility replacing Hansberger as one of Oakland PFRS's active international equity managers. Since these discussions were held, Hansberger's organizational issues have improved as evidenced by the lack of any additional turnover, as well as the recent acquisition of an additional ownership stake by Hansberger employees resulting in Hansberger now being 51% employee-owned.

While PCA views Hansberger's recent organizational changes as a positive, we recommend Hansberger remain on "Watch" status pending further discussion with the OPFRS Investment Committee on whether issuing a new active international equity RFP remains necessary.

Discussion

In reviewing Hansberger, PCA considered investment performance and recent organizational / personnel issues. These issues are discussed further on the following pages.

Performance

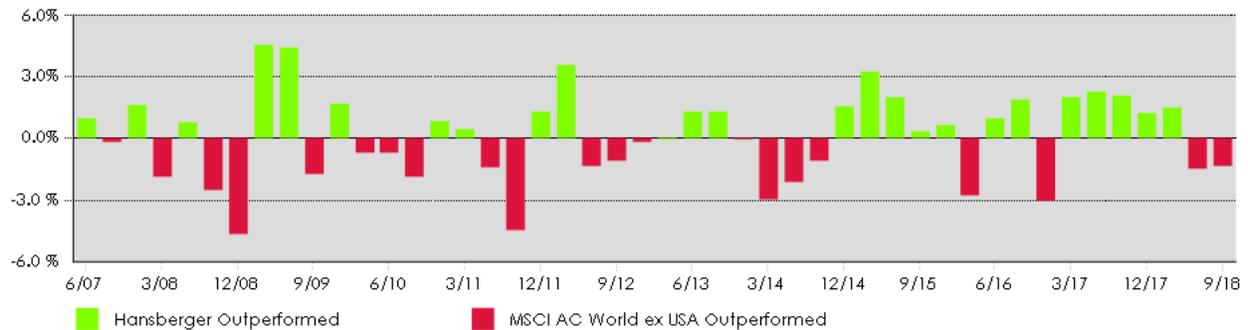
Annualized Returns (as of 9/30/2018)

Manager	Mkt Value (\$000)	Asset Class	Quarter	YTD	1 YR	3 YR	5 YR	Since Inception	Inception Date*
Hansberger (Gross)	16,355	International.	-0.4	-3.4	2.9	12.6	6.3	4.8	2/2006
Hansberger (Net)	---	---	-0.6	-4.0	2.1	11.8	5.5	4.0	---
MSCI ACWI ex-USA NR	---	---	0.8	-2.7	2.3	10.5	4.6	4.8	---
Excess Return (Net)	---	---	-1.4	-1.3	-0.2	1.3	0.9	-0.8	---
Intl Growth Peer % Rank	---	---	77	91	67	37	64	86	---

* Inception date reflects the first full month after portfolio received initial funding.

As one of OPFRS's active International Equity managers, Hansberger had enjoyed strong performance throughout 2017, however, 2018 has been a different story. Over the past 9-month period, Hansberger's International Growth portfolio has underperformed its MSCI ACWI ex-US benchmark by (1.3%) on a net of fee basis, placing the portfolio in the 91st percentile of its Lipper peer group. Hansberger is still outperforming its benchmark over the most recent 3- and 5-year periods by 1.3% and 0.9%, respectively, thanks to a strong run of performance between 4Q2014 and 1Q2018 where the portfolio outperformed over 12 of 14 quarters (as illustrated below).

Rolling Quarterly Excess Performance



Since it began managing an active international equity portfolio for Oakland PFRS in early 2006, Hansberger has essentially matched its benchmark on a gross of fees basis and underperformed its benchmark by (78) basis points, net of fees, on an annualized basis.

Product and Organization Review Summary

Hansberger Global Investors		Areas of Potential Impact			
	Level of Concern [^]	Investment process (client portfolio)	Investment Team	Performance Track Record	Team/ Firm Culture
Product					
Key people changes	None				
Changes to team structure/individuals' roles	None				
Product client gain/losses	None				
Changes to the investment process	Medium	X		X	
Personnel turnover	None				
Organization					
Ownership changes	None				
Key people changes	None				
Firm wide client gain/losses	None				
Recommended Action		None	Watch Status	Termination	

[^]None, low, medium, or high

Date	PCA Findings and Recommendation	Board of Retirement
10/2018	PCA recommends continuation of Watch status and possible reissue of an RFP	Pending
03/2018	PCA recommends continuation of Watch status and possible reissue of an RFP	Approved
11/2017	PCA recommends Watch Status due to organizational issues	Approved
09/2016	PCA recommends removal from Watch status	Approved
09/2015	PCA recommended continuation of Watch status	Approved
08/2015	PCA recommended continuation of Watch status	Approved
05/2015	PCA recommended continuation of Watch status or termination	Approved
05/2014	PCA recommended Watch status due to ownership changes	Approved
03/2014	PCA recommended removal from Watch status	Approved
01/2013	PCA recommended Watch status due to organizational changes	Approved
12/2010	PCA recommended removal from Watch status	Approved
02/2010	PCA recommended Watch status due to performance	Approved

Organizational Changes

As a reminder, Hansberger was most recently placed on “Watch” status at the end of November 2017 due to organization changes to both the firm and the portfolio management process. Specifically, one of the original portfolio managers and founding members of the firm, Barry Lockhart, left the firm at the end of October 2017. His departure corresponded with Hansberger’s years-long transition to a new, proprietary quantitative research system designed to modernize and augment the remaining investment team’s ability to access, organize, and interpret research

data in a more efficient manner. With the formal introduction of the new system, Hansberger announced that they did not plan to replace Mr. Lockhart or add any further individuals to the core investment management team.

Although Hansberger had stated confidence in their process and capabilities moving forward, PCA believed the departure of Mr. Lockhart and the changes to the investment process represented by Hansberger's increased dependence on quantitative systems qualified as a major organizational change that warranted "Watch" status.

Since being placed on Watch eleven months ago there have been no further changes to Hansberger's investment team. In June 2018, Hansberger entered into an agreement with its ownership partner, Madison Asset Management, that would allow Hansberger to increase its ownership share to 51%; this agreement was subsequently finalized in September 2018. While PCA views any change in ownership stake to be a material organizational change, we view the increase in employee ownership at Hansberger to be a positive development.

Overall, PCA views the stability of the portfolio management team since being placed on "Watch" status, and the firm's recent increase in employee-ownership as positives for the organization. However, PCA still views the introduction of the new quantitative system, and the changes to the management team's research process that it represents, as a concern. Due to this reason, PCA does not currently recommend the removal of Hansberger from "Watch" status and remains open to further discussions with the Investment Committee as to whether issuing an RFP for an active international equity manager, and inviting Hansberger to resubmit, remains necessary.

Investment Philosophy & Process, per manager

The philosophy of the international growth strategy is based on the belief that superior growth companies with attractive valuations provide the best opportunities for investment. The team seeks to identify companies that have consistently exhibited the ability to maintain a competitive market advantage through innovative product design, exceptional management, strong market share and superior profitability. Hansberger believes these companies have a true franchise with the potential to generate various degrees of economic rents while growing faster than the economy. Short term variations in results, expectations and capital markets produce numerous opportunities to acquire shares in these companies at valuations that HGI deems attractive relative to their forecast long-term prospects.

HGI's investment process is disciplined and stringently adhered to regardless of the investment environment. HGI starts with a universe of approximately 10,000 international companies. Their first step is to narrow this universe through a series of screens that identify those companies with superior growth characteristics; including:

- Superior profitability
- Secular growth

- Sustainable competitive advantage
- Strong capital structure

These screens are intended to identify those companies that have consistently been industry and market leaders or have this ability. The result is HGI's "Star List" of excellent companies. It is from this select group of superior companies that they draw stocks when they construct portfolios.

Companies in the Star List are rated based on their relative valuation and relative price momentum. HGI narrows the universe to the top 100 to 125 stocks in their ranking at this point. They then further examine these companies for inclusion in the portfolio. Due to the extensive use of computer power, each analyst has to follow only 25 to 30 stocks at one time.

At this stage HGI goes beyond a purely quantitative analysis to incorporate a rigorous fundamental analysis of each company. Their fundamental analysis is meant to identify those issues that purely quantitative approaches overlook – in other words, they are seeking information that the numbers alone will not tell them. They scrutinize a company's product line, management, market share, product distribution and other elements that are prerequisites to its success and staying power within the market. This is a purely bottom-up process. If the stocks do not fundamentally exhibit strong growth potential, they are dropped from further consideration.

HGI's fundamental analysis further distills their investment candidates. Ultimately, they narrow the candidate list to 45 to 65 stocks which they use to build their portfolio.

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Date: October 31, 2018

To: Oakland Police and Fire Retirement System (OPFRS)

From: Pension Consulting Alliance, LLC (PCA)

CC: David Sancewich – PCA
Sean Copus, CFA – PCA
Teir Jenkins – OPFRS
Katano Kasaine – OPFRS

RE: Reams Asset Management – Manager/Watch Update

Manager: Reams

Inception Date:	2/28/1998	OPFRS AUM (9/30/18):	\$22.4 million (5.7%)
Product Name:	Core Plus Fixed Income	Management Fee:	20 bps (\$44,870)*

Investment Strategy:	Core Plus Fixed Income	Firm-wide AUM (9/30/18):	\$20.7 billion
Benchmark:	Bbg. BC Universal	Strategy AUM (9/30/18):	\$6.3 billion

*Estimated based on AUM as of 9/30/2018

Summary & Recommendation

In May 2017, Reams was placed on “Watch” status due to the announced acquisition of its parent company, Scout Investments, by Carillion Towers Advisors, which is a subsidiary of Raymond James Financial. Following the ownership changes, Reams remained independent and autonomously run while making no changes to investment philosophy, process, or team. It has now been 16 months since Reams was originally placed on “Watch” and in that time there have not been any further organizational changes and there has been no turnover in Reams’s investment team. Due to the observed stability of Reams since the ownership change, it is PCA’s opinion that Reams no longer qualifies for “Watch” status due to organizational issues and PCA recommends that Reams be removed from “Watch” status.

Discussion

In reviewing Reams, PCA considered investment performance and recent organizational / personnel issues. These issues are discussed further on the following pages.

Performance

Annualized Investment Performance (as of 9/30/2018)

Manager	Mkt Value (\$000)	Asset Class	Quarter	1 YR	3 YR	5 YR	Since Inception	Inception Date*
Reams (Gross of Fees)	22,435	Core Plus F.I.	-0.4	-0.7	1.6	2.4	5.4	2/1998
Reams (Net of Fees)	---	---	-0.4	-0.9	1.4	2.2	5.2	---
<i>Bbg. Barclays Universal</i>	---	---	0.3	-1.0	2.0	2.5	4.8	---
Excess Return (Net of Fees)	---	---	-0.7	0.1	-0.6	-0.3	0.4	---
IM Core + Median (Gross)	---	---	0.5	-0.4	2.6	3.1	5.4	---
Reams Peer Group % Rank	---	---	99	76	93	93	56	

* Inception date reflects the first full month after portfolio received initial funding.

OPFRS's Reams portfolio underperformed its Bloomberg Barclays Universal benchmark over the most recent quarter by (66) basis points, net of fees, earning it a 99th percentile ranking among its Broad Market Core Plus Fixed Income peer group. Reams has been able to outperform its benchmark over the latest 1-year period by earning a (90)net basis point return compared to a benchmark return of (1.0%), but the portfolio's 76th percentile ranking still trails that of the median manager. Over the 3- and 5-year periods, the portfolio has trailed its benchmark by (56) and (36) basis points after fees, ranking it in the 93rd percentile over both periods. Reams has been able to add value over the roughly 20.5 years that it has been managing OPFRS's Core Plus fixed income portfolio by returning an annualized 5.2%, net of fees, compared to the benchmark return of 4.8%.

Calendar Year Investment Performance (ending December 31)

Manager	2010	2011	2012	2013	2014	2015	2016	2017
Reams (Gross of Fees)	9.2	7.6	8.6	-0.9	4.8	0.5	3.9	3.4
Reams (Net of Fees)	9.0	7.4	8.4	-1.1	4.6	0.3	3.7	3.2
<i>Bbg. Barclays Universal</i>	7.2	7.4	5.5	-1.3	5.6	0.4	3.9	4.1
Excess Return (Net of Fees)	0.8	0.0	2.9	0.2	-1.0	-0.1	-0.2	-0.9
IM Core + Median	9.1	7.4	8.2	-0.5	6.2	0.3	4.7	4.8

When looking at Reams' calendar year returns, a more detailed picture of the managers recent struggles appears. Reams performed well in the five years following the 2008 financial crisis, including an 18.4% excess return in 2009, but has but has failed to outperform its benchmark over the past four calendar year periods.

Watch Review Summary

Reams Asset Management		Areas of Potential Impact			
	Level of Concern^	Investment process (client portfolio)	Investment Team	Performance Track Record	Team/ Firm Culture
Product					
Key people changes	None				
Changes to team structure/individuals' roles	None				
Product client gain/losses	None				
Changes to the investment process	None				
Personnel turnover	None				
Organization					
Ownership changes	None				
Key people changes	None				
Firm wide client gain/losses	None				
Recommended Action		None	Watch Status		Termination

Review and Recommendation History

Date	PCA Findings and Recommendation	Board of Retirement
10/2018	PCA recommends removal from Watch Status	Pending
5/2018	PCA recommended extending Watch status due to org. issues	Approved
5/2017	PCA recommended Watch status due to organization issues	Approved
8/2011	PCA recommended removal for Watch status	Approved
9/2010	PCA recommended Watch status due to organization issues	Approved
3/2010	PCA recommended removal for Watch status	Approved
6/2009	PCA recommended Watch status due to performance	Approved

Organizational Changes

Reams was originally recommended for Watch status in May 2017 due to organizational changes resulting from Carillion Tower Advisors' acquisition of Scout Investments, Reams' parent company; Carillion Tower is itself a subsidiary of Raymond James Financial. At the time, PCA believed the changes in ownership structure could cause a distraction to Reams' management team and/or a change to the firm's culture. It has now been 16 months since Reams was formally placed on Watch status and in that time PCA has not encountered substantial evidence of any changes to the firm's operations or culture. Since our previous manager update in May 2018, Reams has not experienced any reported turnover to their investment team or further changes to their organizational structure. Despite the relatively recent organizational changes, Reams has managed to continue its tradition of extremely low turnover. As the table on the following page illustrates, Reams's total assets under management and number of client accounts has also remained stable despite the organizational changes and recent lackluster performance.

Reams Asset Management AUM

	Firm-wide		Core Plus Portfolio	
	Assets (millions)	Accounts	Assets (millions)	Accounts
2018-09	\$20,655	158	\$6,261	38
2017-09	\$22,288	162	\$6,430	35
2016-09	\$23,271	161	\$6,729	36
2015-09	\$21,298	158	\$6,756	38
2014-09	\$17,940	132	\$4,517	32

Investment Philosophy & Process, per manager

Reams’ investment philosophy is based on the premise that volatility is a key driver of performance in the fixed income market. Volatility is usually higher than commonly perceived and is often mispriced in the marketplace. This core belief leads the firm to: focus on long-term value and “total return,” employ macro and bottom-up strategies to uncover unique opportunities, and react opportunistically to valuation discrepancies and volatility in the bond market.

Reams manages portfolios using three basic steps, which are best described as a combination of top-down and bottom-up. The first step is to establish the portfolio's overall duration and yield curve characteristics, often referred to as the top-down or macro portfolio characteristics. Reams approaches the duration decision as a valuation problem, utilizing below-benchmark or short-duration portfolios when the market is unattractive or overvalued and above-benchmark or long-duration portfolios when the market is attractive or undervalued. The main tool used to establish value is the real or inflation-adjusted Treasury bond rate. Depending on Reams’ assessment of relative values along the yield curve, portfolios may be barbelled, bulleted, or laddered.

The second step of the investment process is to consider sector exposures. Sector exposure decisions are made on both a top-down and bottom-up basis. For most sectors, the bottom-up issue selection process is the major determinant of sector exposure. As securities are analyzed on a risk/return or upside/downside basis, attention is paid to which sectors are producing the most attractive securities. When a number of the most attractive securities are coming from a certain sector, this area will be researched further to determine whether the sector should be consciously overweighted. Conversely, underweighting might result from a predominance of relatively unattractive issues within a sector. In this manner, security selection will tend to determine sector selection, with top-down objectives used mostly for risk control to avoid over-concentration. However, for some more generic parts of the portfolio, such as mortgage pass-throughs or agencies, top-down considerations will drive the sector allocation process as overall sector measures of value, such as spreads or price levels, will be used to make sector decisions. This is more generally the case when credit quality is not an issue.

The third step of the investment process is individual security selection. Reams approaches security selection on a total return basis assuming that the market will exhibit a considerable degree of both interest rate and credit volatility. Therefore, the firm’s focus is generally on securities that will benefit from dynamic interest rate and credit environments. Pockets of the market that exhibit

good dynamic and structural characteristics may be used intensively, allowing Reams to take advantage of its relatively moderate size.

Reams relies primarily on internal research in the bond selection process. A great deal of emphasis is placed on using scenario analysis as an analytical tool, allowing Reams to determine how each security will perform in a variety of potential interest rate and credit environments. Value is determined based on the distribution of potential returns. The firm's outlook for interest rates, fundamental credit analysis, and option-adjusted spread analysis are the primary tools used when constructing these scenarios. This process identifies which bonds should perform the best under the most likely scenarios. Importantly, this process will also point out those bonds that, while attractive on the surface, are most vulnerable to risks in the bond market and inappropriate for the portfolio. Ultimately, investment opportunities are compared, and the bonds with the highest risk-adjusted return are selected.

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Date: October 31, 2018

To: Oakland Police and Fire Retirement System (OPFRS)

From: Pension Consulting Alliance, LLC. (PCA)

CC: David Sancewich - PCA
 Sean Copus – PCA
 Teir Jenkins – OPFRS
 Katano Kasaine - OPFRS

RE: 2018 Monthly Strategic Investment Agenda

On an ongoing basis, PCA and OPFRS staff will be updating the investment agenda for the remaining calendar year (see table below). In an attempt to coordinate the scheduling of these tasks, this memo details a Preliminary Investment Project Agenda by calendaring and prioritizing the expected tasks and deliverables that would be required to fulfill the Agenda.

Ongoing 2018 Preliminary Investment Project Agenda

Expected Completion Date	Task
November 2018	<ul style="list-style-type: none"> • PCA Performance report (3Q2018) • Potential International Equity Interviews • Investment Policy: Update and review • Cash Flow Report (4Q2018) • Manager Update: Ramirez
December 2018	<ul style="list-style-type: none"> • TBD: Depends on meeting schedule

Bold are priority strategic items.

This agenda includes only major strategic items. PCA also expects to work with the Staff and Board to complete more routine tasks and projects, as expected.

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All persons wishing to address the Board must complete a speaker's card, stating their name and the agenda item (including "Open Forum") they wish to address. The Board may take action on items not on the agenda only if findings pursuant to the Sunshine Ordinance and Brown Act are made that the matter is urgent or an emergency.

Oakland Police and Fire Retirement Board meetings are held in wheelchair accessible facilities. Contact Retirement Systems, 150 Frank Ogawa Plaza, Suite 3332 or call (510) 238-7295 for additional information.



Retirement Systems
150 Frank H. Ogawa Plaza
Oakland, California 94612

AGENDA

RETIREMENT BOARD MEMBERS

Walter L. Johnson, Sr.
President

Jaime T. Godfrey
Vice President

Katano Kasaine
Member

Martin J. Melia
Member

Robert J. Muszar
Member

John C. Speakman
Member

Steven Wilkinson
Member

REGULAR MEETING of the BOARD OF ADMINISTRATION of the OAKLAND POLICE AND FIRE RETIREMENT SYSTEM ("PFRS")

Wednesday, October 31, 2018 – 11:30 am
One Frank H. Ogawa Plaza, Hearing Room 1
Oakland, California 94612

- - - ORDER OF BUSINESS - - -

A. CLOSED SESSION

B. Report of PFRS Board Action from Closed Session (if any)

C. Subject: PFRS Board Meeting Minutes
From: Staff of the PFRS Board

Recommendation: APPROVE September 26, 2018 PFRS Board meeting minutes.

D. Subject: Appreciation of Service to James Cooper, Ronald Oznowicz, and Christine Daniel, Former PFRS Board Members; and Resolution No. 7032 – Appreciation for Board Service to Christine Daniel
From: Staff of the PFRS Board

Recommendation: RECOGNITION and appreciation of the service of James Cooper, Ronald Oznowicz, and Christine Daniel, former PFRS Board Members; and **APPROVE** Resolution No. 7032 – Resolution expressing appreciation to Christine Daniel for her dedication, loyalty, and invaluable service as a member of the Oakland Police and Fire Retirement System Board.

OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
REGULAR BOARD MEETING
OCTOBER 31, 2018

ORDER OF BUSINESS, continued

E. Subject: Report Regarding the Method of Calculating PFRS Police Retiree Holiday Pay for Ranks Below Captain; and a Resolution Adopting a Revised Method for Calculating Police Holiday Retirement Allowances for Ranks below Captain
From: PFRS Legal Counsel

Recommendation: **APPROVE** a Report Regarding the Method of Calculating PFRS Police Retiree Holiday Pay for Ranks Below Captain; and **APPROVE** a Resolution Adopting a Revised Method for Calculating Police Holiday Retirement Allowances for Ranks below Captain.

F. Subject: Report Regarding the Method of Calculating PFRS Police Retiree Holiday Pay for Captains and Deputy Chiefs; and a Resolution Adopting a Revised Method for Calculating Police Holiday Retirement Allowances for Captains and Deputy Chiefs
From: PFRS Legal Counsel

Recommendation: **APPROVE** a Report Regarding the Method of Calculating PFRS Police Retiree Holiday Pay for Captains and Deputy Chiefs; and **APPROVE** a Resolution Adopting a Revised Method for Calculating Police Holiday Retirement Allowances for Captains and Deputy Chiefs.

G. AUDIT AND OPERATIONS COMMITTEE AGENDA – OCTOBER 31, 2018

G1. Subject: Administrative Expenses Report
From: Staff of the PFRS Board

Recommendation: **ACCEPT** an informational report regarding PFRS administrative expenses from July 1, 2018 through August 31, 2018.

G2. Subject: PFRS Policy Governing the Overpayment or Underpayment of Member Benefits
From: Staff of the PFRS Board

Recommendation: **DISCUSSION** regarding PFRS Policy Governing the Overpayment or Underpayment of Member Benefits.

ORDER OF BUSINESS, continued

H. INVESTMENT & FINANCIAL MATTERS COMMITTEE AGENDA – OCTOBER 31, 2018

- H1. **Subject:** Investment Market Overview
From: Pension Consulting Alliance
-
- Recommendation:** **ACCEPT** an informational report on the global investment markets through October 2018.
- H2. **Subject:** Preliminary Investment Fund Performance Report for the Quarter Ending September 30, 2018
From: Pension Consulting Alliance
-
- Recommendation:** **ACCEPT** the Preliminary Investment Fund Performance Report for the Quarter Ending September 30, 2018.
- H3. **Subject:** Resolution No. 7028 – Hiring of a Domestic Defensive Equity Asset Class Investment Manager
From: Staff of the PFRS Board
-
- Recommendation:** **APPROVE** Resolution No. 7028 – Resolution authorizing a professional service agreement with SPI Strategies, LLC to serve as investment manager of the U.S./Domestic Defensive Equity asset class for the Oakland Police And Fire Retirement System over the term of five (5) years at a fee rate not to exceed 0.5 percent of the portfolio's assets value each year.
- H4. **Subject:** Resolution No. 7027 – Resolution authorizing the execution of an amendment to extend the Master Custody Agreement with the Northern Trust Company to perform Custodian Bank Services for PFRS for a three-year period ending September 30, 2021, at annual fees of \$116,500
From: Staff of the PFRS Board
-
- Recommendation:** **APPROVE** Resolution No. 7027 – Resolution authorizing the execution of an amendment to extend the Master Custody Agreement with the Northern Trust Company to perform Custodian Bank Services for PFRS for a three-year period ending September 30, 2021, at annual fees of \$116,500.

OAKLAND POLICE AND FIRE RETIREMENT SYSTEM
REGULAR BOARD MEETING
OCTOBER 31, 2018

ORDER OF BUSINESS, continued

H5. Subject: Follow-up review and recommendation of Board action regarding Hansberger Growth Investors, a PFRS International Equity Investment Manager
From: Staff of the PFRS Board and PCA

Recommendation: **APPROVE** PCA follow-up review and recommendation of Board action regarding Hansberger Growth Investors, a PFRS International Equity Investment Manager.

H6. Subject: Follow-up review and recommendation of Board action regarding Reams Asset Management, a PFRS Core Plus Fixed Income Investment Manager
From: Staff of the PFRS Board and PCA

Recommendation: **APPROVE** PCA follow-up review and recommendation of Board action regarding Reams Asset Management, a PFRS Core Plus Fixed Income Investment Manager.

I. Subject: **Member Resolution(s) No. 7031**
From: Staff of the PFRS Board

Recommendation: **APPROVE** Member Resolution(s) No. 7031

I1. Resolution No. 7031 Resolution approving death benefit payments and directing warrants thereunder in the total sum of \$1,000.00 payable to the beneficiaries of deceased members as follows: (1) Brian W. Anderson, (2) Sandra Bourasa and Scott A. Spenser, and (3) Gregory Gain.

J. Subject: **New Business**
From: Robert Muszar, PFRS Board Member

Recommendation: **APPROVE** addition of the following agenda item to a future PFRS Board or Committee agenda:

- Exploration of the potential benefits to the City and PFRS of having the City voluntarily increase its contributions to the System to a level that would either mitigate or eliminate the System's need to draw down investments in order to pay monthly pension benefits.

K. OPEN FORUM

L. FUTURE SCHEDULING

A BOARD MEETING of the Oakland Police and Fire Retirement System (“PFRS”) was held on September 26, 2018 in Hearing Room 3, One Frank Ogawa Plaza, Oakland, California.

Board Members Present:

- Walter L. Johnson, President
- Jaime T. Godfrey, Vice President
- R. Steven Wilkinson, Member
- John C. Speakman, Member
- Robert J. Muszar, Member
- Martin J. Melia, Member

Board Members Absent:

- One Board Vacancy, Mayor’s Designee

Additional Attendees:

- Pelayo Llamas, Jr., PFRS Legal Counsel
- David Low & Teir Jenkins, Staff Member
- David Sancewich, Kristen Chase & Sean Copus, Pension Consulting Alliance

The meeting was called to order at 12:20 pm.

1. **Closed Session** – With no public speakers scheduled, the PFRS Board entered closed session at 12:20 pm.
 2. **Report of Board Actions from Closed Session** – The PFRS Board reconvened the PFRS Board meeting following the conclusion of Closed Session at 1:02 pm. No reportable action by the Board was announced.
- A. Approval of PFRS Board Meeting Minutes** – Member Godfrey made a motion to approve the August 29, 2018 PFRS Board meeting minutes, second by Member Muszar. Motion Passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

- B. Election of Board President and Vice President** – Following brief Board discussion, Member Speakman made a motion to nominate Walter L. Johnson, Sr. and Jaime T. Godfrey as the Board President and Vice President, respectively, for the upcoming year, second by member Melia. Member Godfrey noted that he would like the Board members to consider a new member be nominated for Vice President for the future election for Board officers. The nominations were accepted and there were no other nominations. Having no additional nominations, the passage of the motion of nomination approved the election of PFRS Board officers. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

C. Non – Finance Committee Items – September 26, 2018

The Audit Committee did not meet due to lack of a quorum. The board directly considered the action items on the Audit Agenda.

C1. Administrative Expenses Report – Investment Officer Teir Jenkins presented the administrative expenses report from July 1, 2018 through July 31, 2018. Member Muszar made a motion to accept the administrative expenses report, second by member Melia. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

C2. Resolution No. 7023 – Travel authorization for PFRS Board Member R. Steven Wilkinson – Member Muszar made a motion to approve Resolution No. 7023 – Travel authorization for PFRS Board Member R. Steven Wilkinson to travel to and attend the 2018 GCM Grosvenor Small + Emerging Managers Conference (“2018 GCM SEM Conference”) from October 9, 2018 through October 10, 2018 in Chicago, IL with an estimated budget of One Thousand Nine Hundred Dollars (\$1,900.00), second by member Melia. Motion passed

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – ABSTAIN]
(AYES: 5 / NOES: 0 / ABSTAIN: 1)

C3. Resolution No. 7024 – Travel authorization for PFRS Legal Counsel Pelayo Llamas – Member Speakman made a motion to approve Resolution No. 7024 – Travel authorization for PFRS Legal Counsel Pelayo Llamas for travel to and attendance at the 2018 CALAPRS Attorneys' Roundtable Conference (“2018 CALAPRS Conference”) on September 21, 2018 in Glendale, CA with an estimated budget of Seven Hundred dollars (\$700.00), second by member Muszar. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

C4. PFRS Policy Governing the Overpayment or Underpayment of Member Benefits – President Johnson reported this matter would be brought back to the next PFRS Audit Committee for further discussion.

D. PFRS INVESTMENT COMMITTEE MEETING – AUGUST 29, 2018

D1. Investment Manager Interviews – Candidates for Domestic Defensive Equity Asset Class Investment Manager – Sean Copus from PCA reported the results of the Investment Manager interviews and the Investment Committee discussion that followed. Mr. Copus reported that the Investment Committee recommended that the Board hire SPI Strategies if their fees could be adjusted to an amount not to exceed 50 basis points. Mr. Copus confirmed that, through contact with SPI Strategies, their request to lower their fees to 50 basis points was accepted. Mr. Copus reported that Board action to hire SPI Strategies would be completed at the next Board meeting. Member Godfrey made a motion to accept the informational report from PCA regarding the interviews for hiring of a new

Domestic Defensive Equity Asset Class Investment Manager, second by member Melia. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

D2. Investment Market Overview – Mr. Copus reported on the global economic factors affecting the PFRS Fund. Member Godfrey made a motion to accept the informational report from PCA regarding the Investment Market Overview, second by member Melia. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

D3. \$14.2 million 4th Quarter 2018 Member Benefits Drawdown – Sean Copus from Pension Consulting Alliance (PCA) reported to the Board from which investment accounts that drawdowns would be made to pay for Member Benefits for the period of October 2018 through December 2018. Chairman Godfrey made a motion to recommend Board approval of the PCA recommendation for \$14.2 million member Benefits Drawdowns to pay for Member Benefits for the period of October 2018 through December 2018, second by member Speakman. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

D4. Updated List of Thermal Coal Companies Prohibited from the PFRS Investment Portfolio – Mr. Copus reported that PCA is required to provide to the PFRS board a list that identifies companies with which the PFRS investment portfolio is not permitted to make investments which are not part of any commingled account. Following Board discussion with PCA about the impact of the prohibition of thermal coal companies on the PFRS investment portfolio, member Godfrey made a motion to approve the updated list of thermal coal companies prohibited from the PFRS investment portfolio, second by member Speakman. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

F. Resolutions No. 7025-26 – The PFRS Board reviewed and approved Resolution No. 7025-26:

F1. Approval of Resolutions No. 7025 – Member Muszar made a motion to approve the Resolution fixing the monthly allowance of Virginia M. Wolfe, spouse of Kenneth Wolfe; and Rebecca E. Stewart, spouse of Murry M. Stewart, retired members of the Police and Fire Retirement System, second by member Speakman. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

F2. Approval of Resolutions No. 7026 – Member Muszar made a motion to approve the Resolution approving death benefit payments and directing warrants

thereunder in the total sum of \$1,000.00 payable to the beneficiaries of deceased members as follows: (1) Suzanne M. Anderson, and (2) Judith E. Massetti, second by member Speakman. Motion passed.

[GODFREY – Y / JOHNSON – Y / MELIA – Y / MUSZAR – Y / SPEAKMAN – Y / WILKINSON – Y]
(AYES: 6 / NOES: 0 / ABSTAIN: 0)

- G. NEW BUSINESS** – Member Godfrey requested staff review and report back to the Board about considerations to modify the PFRS Board and Committee meeting schedules from a monthly to a quarterly or bi-monthly meeting schedule in the interest of greater efficiency. Member Muszar noted that the City Charter requires the Board meets on a monthly basis and, following board discussion, suggested that, if a charter amendment regarding the 2026 full funding date is brought to the voters, other amendments to the Charter can be addressed at that time.
- H. OPEN FORUM** – Member Muszar reported that the meeting of the special ad-hoc committee to address the future 2026 full funding date was scheduled for 4:00 pm on October 10.
- I. FUTURE SCHEDULING** – The next PFRS Board meeting was scheduled for Wednesday, October 31, 2018.

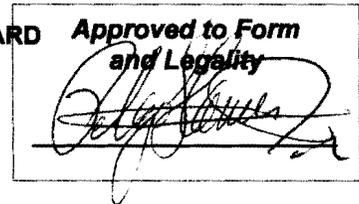
The meeting adjourned at 1:24 pm.

KATANO KASAINÉ, BOARD SECRETARY

DATE

OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

RESOLUTION No. 7032



ON MOTION OF MEMBER _____ SECONDED BY MEMBER _____

RESOLUTION EXPRESSING APPRECIATION TO CHRISTINE DANIEL FOR HER DEDICATION, LOYALTY AND INVALUABLE SERVICE AS A MEMBER OF THE OAKLAND POLICE AND FIRE RETIREMENT SYSTEM BOARD

WHEREAS, Christine Daniel was appointed to the Board of the Oakland Police and Fire Retirement System (PFRS) as the Mayoral Representative in accordance with Section 2601 of the Oakland City Charter commencing on August 19, 2015; and

WHEREAS, Christine Daniel served as a member of the PFRS Audit Committee during her entire term and assisted the Board with the governance of the Retirement System with distinction; and

WHEREAS, on August 29, 2018, Christine Daniel announced her departure from the Board of the Oakland Police and Fire Retirement System; now, therefore, be it

RESOLVED: that the Board of the Oakland Police and Fire Retirement System does hereby commend Christine Daniel for her loyal service from August 19, 2015 to August 29, 2018 and expresses appreciation for her dedication and invaluable contribution as a member of the Board of the Oakland Police and Fire Retirement System; and be it

FURTHER RESOLVED: that the members of the Board of the Oakland Police and Fire Retirement System express their sincere best wishes to Christine Daniel for a healthy and prosperous future.

IN BOARD MEETING, CITY HALL, OAKLAND, CA _____ **OCTOBER 31, 2018**

PASSED BY THE FOLLOWING VOTE:

AYES: GODFREY, KASAIN, MELIA, MUSZAR, SPEAKMAN, WILKINSON,
AND PRESIDENT JOHNSON

NOES:

ABSENT:

ATTEST: _____
PRESIDENT

ATTEST: _____
SECRETARY



AGENDA REPORT

TO: Oakland Police and Fire
Retirement Board

FROM: David Jones
Plan Administrator

SUBJECT: A Report Regarding The Method of
Calculating PFRS Police Retiree Holiday
Pay for Ranks Below Captain; and A
Resolution Adopting A Revised Method
for Calculating Police Holiday Retirement
Allowances for Ranks Below Captain

DATE: October 24, 2018

I. EXECUTIVE SUMMARY

This report supplements the agenda reports on this subject for the PFRS Board Meetings of October 25, 2017 (**Attachment 1** hereto) and November 29, 2017 (**Attachment 2** hereto). The purpose of this report is to provide information so that the Board may determine the correct method to calculate the number of holiday hours to be included in the retirement allowances of PFRS police retirees classified in ranks below captain. Generally, this report explains the significant changes in the labor agreements governing active police in these lower ranks since 2006, and summarizes payroll data illustrating the holiday work behavior of active police to determine if there is parity in compensation between the retired and active police in the lower ranks.

This report contains PFRS staff's conclusions and recommended findings on two topics raised in the October 25, 2017 PFRS Board meeting as follows:

- A. Contrary to case law and the Charter, the current method of calculating the holiday portion of PFRS police retiree allowances credits retirees with higher relative pay and more holiday pay than the vast majority of active police officers below the rank of captain receive. There is no underpayment. Rather there is an overpayment which the PFRS Board should address.
- B. The Floating Holiday benefit is not compensation attached to the rank for any PFRS police retirees classified below the rank of captain, because it is awarded as compensatory time that is not payable in cash and is forfeited if not used in the year in which it is granted.

For discussion and action, staff proposes a resolution for the Board to adopt a revised method for calculating the holiday pay component of the retirement allowances of PFRS police members who retired at ranks below captain. The method would be applied going forward in calculating the total combined (holiday and other compensation attached to rank) annual rate of police retirement allowances for the ranks below captain.

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II. PROCEDURAL BACKGROUND

As of this October 31, 2018 meeting, the Board's consideration of police holiday pay methodology has been divided into separate legislative items for the lower ranks (below captain) and the upper ranks of captain and deputy chief. This report also introduces additional payroll data from the 2017-2018 fiscal year.

The PFRS Board has considered this matter during its October and November 2017 meetings. It also previously received a report at its August 2015 Board Meeting in which PFRS Staff concluded that PFRS police retirees were not being underpaid holiday benefits. The reports dated May 24, 2018 (published for the cancelled May 30, 2018 PFRS Board meeting) and June 21 (item was not called for discussion at the June 27, 2018 Board meeting) were never considered by the Board, and are not part of the record of this discussion.

For the report received by the PFRS Board on October 25, 2017 (**Appendix 1** attached to this report), Staff analyzed payroll records for active police officers in ranks below captain for fiscal years (July through June) 2014/2015, 2015/2016 and 2016/2017, to determine how much holiday pay active police were typically credited, and the combined number of hours of base and holiday pay active police officers in those ranks are typically credited, and compared them to the number of base pay and holiday hours that PFRS police retirees and beneficiaries are credited under the current method of calculating police retiree holiday benefits. The results are summarized in **Tables 1, 2, 3**, (attached to **Appendix 1** (the Agenda Report for October 2017)) and **Table 4**, (attached hereto as **Exhibit I**). Further discussion on this matter was continued to 2018, and the Board invited written comment to be submitted during the November 29, 2017 Board meeting.

At the November 29, 2017 Board meeting (see **Appendix 2** attached to this report), the PFRS Board received written statements on the issues submitted by PFRS Board Member Muszar (the elected Police Retiree Representative) and by the ROPOA (through its attorneys). Following oral statements from Member Muszar and the ROPOA's attorney, the Board voted to accept the statements into the record of this matter.

PFRS Staff received the following documents (attached hereto) in June 2018, and they are attached to this report for consideration by the Board:

- Exhibit J** – June 15, 2018 Report by Professor Stephen Raphael (provided in relation to the pending lawsuit Retired Oakland Police Officers Association v. Oakland Police and Fire Retirement System et al, Alameda County Superior Court Action No. RG16838274);
- Exhibit K** - Letter dated June 20, 2018 from ROPOA Secretary Mr. Robert W. Nichelini on behalf of the Retired Oakland Police Officers Association.

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III. APPLICABLE PRINCIPLES AND HISTORY

In order to facilitate the Board's understanding of the claims, data, and issues in this report, the fundamental principles applicable to PFRS police retiree compensation and the history of police holiday pay for retirees are summarized in this section.

A. THE PFRS FLUCTUATING BENEFIT RETIREMENT SYSTEM

PFRS retirees receive a monthly allowance based on a fraction of the compensation attached to the average rank held by each retiree during his final three years of active service. (City Charter section 2607 and 2608) By tying a retiree's benefits to the compensation "attached" to the rank of active duty police officers holding the same rank, the Charter established a fluctuating pension system in which pension benefits increase or decrease as the compensation paid to active employees increases or decreases. This fluctuation maintains a direct linkage between retirement allowances and active duty police officer pay. The primary purpose of a fluctuating pension plan is to guarantee the pensioner a fairly constant standard of living despite inflation, and to maintain equality of position between the retired member and the person (or persons) currently holding the rank the pensioner attained before his retirement. (Kreeft v. City of Oakland (1998) 68 Cal.App.4th 46, 54.) (emphasis added)

City Charter section 2607 provides:

The following words and phrases, as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," "Death allowance," or "allowance" shall mean equal monthly payments, beginning to accrue upon the date of retirement, or upon the day following the date of death, as the case may be, and continuing for life, unless a different term of payment is definitely provided by the context.

"Compensation" as distinguished from benefits under the Labor Code of the State of California, shall mean the monthly remuneration payable in cash, by the City, without deduction, for time during which the individual receiving such remuneration is a member of the Police or Fire Department, but excluding remuneration paid for overtime and for special details or assignments as provided in Sections 91 and 97* of the Charter.

"Compensation attached to the average rank held" shall mean the compensation attached to the lowest rank held during the three years immediately preceding retirement plus one thirty-sixth (1/36) of the difference between it and the compensation attached to any higher rank held during that period of each month, and fraction thereof, the higher rank was held.

* This reference is to the Section or Article so designated in the former Charter.

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Police pay for active officers generally includes a number of components such as regular pay, overtime pay, holiday pay, vacation pay, uniform pay, longevity pay, and premium pay (fractional increases above base pay that vary depending on assignment or obtaining special educational certificates). These components vary with each periodic agreement negotiated between the City of Oakland and the OPOA (Oakland Police Officers Association) or OPMA (Oakland Police Management Association) unions, and memorialized in Memoranda of Understanding (“MOU”). Some pay components are expressly excluded by section 2607 from being classified as compensation attached to rank for PFRS retirement purposes (overtime and special details or assignments).

There have been a multitude of lawsuits about whether certain of these pay components are compensation attached to rank, and if so how they should be included in the calculation of the retirement allowance of PFRS members. In Kreeft v. City of Oakland (1998) 68 Cal.App.4th 46, 55, the First District Court of Appeal interpreted Charter section 2607 and held that for an element of compensation to be “attached” to rank, “the compensation must ‘adhere to’ the rank ‘as an appertaining quality or circumstance.’ That is, the employee must be entitled to the compensation by virtue of the rank, and not his individual efforts over and above what are required to obtain the rank.” Kreeft at p. 58. (emphasis added.)

Over the years, courts have determined that many types of premium pay are not compensation attached to rank (shift differential pay, self-improvement pay, voluntary day off for pay, motorcycle premium pay, aerial patrol premium pay, standby pay, field training officers’ premium, and meal allowance pay). Courts have also found that holiday pay is a category of compensation that is attached to rank for PFRS retirees, and that is discussed below in section III.B.

B. HOLIDAY PAY OF PFRS POLICE RETIREES

The most recent court decision on the subject of PFRS police holiday pay was rendered in City of Oakland v. Oakland Police and Fire Retirement System (2014) 224 Cal. App. 4th 210 (“City v. OPFRS”), which is discussed in detail in section III.C. below. The Court of Appeal recounted the history of MOUs between the City of Oakland, the active police officers, and the treatment of holiday pay for PFRS police retirees:

The City and the Oakland Police Officer's Association (OPOA) adopted the first MOU setting Department compensation in 1973. . . . In 1974, a more comprehensive MOU was adopted which designated 11 holidays and indicated that premium pay for holidays was to be “computed at the regular hourly base rate of pay for an employee's classification, rather than at the [overtime] rate of time and one-half.” Thus . . . members of the Department received eight hours of holiday premium pay. Similar language was carried over into the 1975 MOU. During this timeframe, the extra eight hours of compensation received by members of the Department as holiday premium pay was included in the calculation of PFRS retirement benefits.

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In 1976, the City and OPOA adopted an MOU increasing holiday premium pay from the straight-time rate (8 hours) to a rate based on “time and one-half the regular base rate of pay for an employee's classification” (12 hours). The 1976 MOU, however, contained the following language impacting the calculation of PFRS retirement benefits: “City and [OPOA] agree that premium pay shall not be subject to retirement except for the straight time portion of holiday pay.” Although the record does not contain MOU's covering the period from 1988 through 1994, it appears that similar limiting language continued from 1976 up through the 1995–1998 MOU. Based on the language of the MOU's, PFRS retirees only received credit for 8 hours of holiday premium pay in the calculation of their retirement benefits from 1976 through 1996. In contrast, active members of the Department received 12 hours of holiday pay during this same period. At some point between 1986 and 1995, the number of paid holidays increased from 11 to 12.

Holiday premium pay was again the subject of litigation in 1996. (See Oakland Police & Fire Retirement Assn. v. City of Oakland (Super. Ct. Alameda County, 1996, No. 763859) (Arca II).) Arca II was a class action lawsuit filed on behalf of PFRS retirees and their beneficiaries challenging the MOU language that excluded retirees from receiving credit for the additional four hours of holiday pay that was being paid to active members of the Department. In that case, the City . . . argued that the additional four hours of holiday pay was “overtime” pay and therefore expressly excluded from the calculation of PFRS retirement benefits. (See Charter, art. XVI, § 2607 [“‘compensation’ ” defined as monthly remuneration excluding overtime].) The trial court disagreed, granting a writ of mandate in favor of PFRS retirees with the following instructions: “Respondents are compelled in determining and computing the amount of the retirement allowances due to Petitioners and the class they seek to represent to take all actions necessary to include as ‘compensation’ and ‘compensation attached to the average rank held’ the full twelve hours holiday pay received by current Oakland Police Officers” (italics added). . . .

In accordance with Arca II and the related settlement agreement, the 1998–2001 MOU between the City and OPOA deleted the language limiting holiday pay for PFRS retirees, stating simply that premium pay for holidays would be “computed at time and one-half the regular base rate of pay for an employee's classification.” Identical language appeared in the 2001–2006 MOU. In practice, however, the application of holiday premium pay to the various shifts worked by active members of the Department was becoming more complex. In 2000, the Department issued Departmental General Order 8 (DGO 8) interpreting the MOU provisions in light of these changes. Pursuant to DGO 8, a member that took holiday time off was paid at the straight-time rate of 8 or 10 hours, depending on the length of that member's usual shift. A member of the Department who worked on a holiday received regular base pay (of either 8 or 10 hours) plus 1.5 times that base pay in holiday premium pay. When a holiday fell on a member's regular day off, that member was allotted 12 hours of holiday pay, regardless of whether he/she usually worked an 8 or 10-hour shift. Finally, a member who was required to work on a holiday that was his/her regular day off was granted 12 hours in base pay, plus 1.5 times base pay in holiday premium pay. Thus, while all members were entitled to holiday pay for each holiday, the amount actually received on a

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particular holiday varied from 8 to 18 hours, depending on scheduling and length of shift. During this same time period, PFRS retirees continued to receive credit for 12 hours of holiday pay for each holiday in accordance with the terms of Arca II.

Upon expiration of the 2001–2006 MOU, the City and OPOA reached an impasse in negotiations and thus the terms of the successor MOU were determined through an arbitration process conducted by Arbitrator Barry Winograd. The resulting 2006–2010 MOU states expressly that it was entered into pursuant to the terms of this arbitration decision and award, which is attached to the MOU and incorporated as Appendix A (Winograd Decision). With respect to holiday pay, the 2006–2010 MOU designated 12 holidays and one “floating” holiday and provided for base pay¹ for any regularly scheduled shift worked on a designated holiday. In addition: “[I]f the holiday is worked, the employee shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off, or by employer request, employee will be paid holiday pay² at the straight time rate.” The Winograd Decision did not alter the holiday pay structure set forth in the body of the MOU and—with respect to the number of designated holidays —stated simply “[s]tatus quo.”

As a result of additional negotiations between the City and OPOA, the 2006–2010 MOU was subsequently extended into 2013. This amended and extended MOU temporarily changed the structure of holiday pay for active members of the Department. Specifically, for the 2009, 2010, and 2011 fiscal years, only seven of the regular holidays were paid in accordance with the customary policy established by the MOU. For the other six holidays, active members received no holiday pay for holidays that were not worked and “straight time pay” for holidays that were worked. Currently, holiday pay for active members of the Department is governed by the 2006–2013 MOU, which has been extended a second time into 2015.³ No additional changes have been made with respect to the provisions governing holiday premium pay except that, for the 2012, 2013, and 2014 fiscal years, active members are not entitled to any holiday pay for Admission Day. Members who work on Admission Day will still receive their regular base pay for that shift.

City v PFRS (2014) at pp. 219-221.

C. CITY OF OAKLAND v. OPFRS (2014) COURT OF APPEAL DECISION – CALCULATION OF HOLIDAYS FOR PFRS POLICE RETIREES.

In August 2012, the trial court overruled the PFRS Board’s February 2010 decision in which the Board decided not to reduce the holiday pay component of PFRS police retirees

¹ The Court of Appeal’s use of the term “base pay” here does not reflect the City’s actual practice; City payroll codes these hours as HDP (straight time holiday pay falling in an officer’s regular schedule), in place of REG pay (a day worked inside of regular schedule). Moreover the Court here, and elsewhere in its opinion, uses the term “base pay” to refer to the straight time 1.0x rate of pay.

² City payroll practice is to code these hours as HOL (straight time) holiday pay falling outside of an officer’s regular schedule.

³ It expired and was replaced by the current 2015-2019 MOU.

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despite a reduction in holidays negotiated (between the City of Oakland and the OPOA) for active police during the 2010, 2011 and 2012 fiscal years. “Based on the plain language of the Charter and the 2006–2013 MOU, the trial court held that the reduction in holiday pay experienced by active members should have been reflected in PFRS benefits for the years in question.” (*City v PFRS* (2014) at p. 247.) Intervenor the ROPOA⁴ did not appeal the trial court’s ruling on this issue, so it is binding on the parties.

On other issues, the Court of Appeal provided significant guidance on how a correct holiday calculation should be made. The Court of Appeal’s key holdings on holiday pay were:

1. The Court rejected the City’s contention that because PFRS retirees do not work, they are not entitled to any Holiday Pay above base pay (2080 hours/year or 40 hours x 52 weeks). The Court found that the 1971 decision in *Buck v City of Oakland* had already decided the same issue in favor of the retirees, and the City did not show any “material change” in circumstances since *Buck* with respect to the holiday pay issue. Namely, the limited record before the court showed that PFRS police members regularly worked holidays when they were active and “active members of the department currently work most holidays that fall during their regular work schedule and earn premium pay for doing so.” However, evidence demonstrating a meaningful change in the holiday work patterns may form the basis of changing the retiree holiday calculation method. (*City v. OPFRS* (2014) at p. 231.)
2. An examination of payroll data which represents the “typical experience of most department members for most holidays” (*City v. OPFRS* (2014) at p. 231, fn11) and an average figure which represents a “meaningful predictor of the experience of most” officers (*City v. OPFRS* (2014) at p. 233, fn12) can form the basis for calculating the amount of holiday pay that should be credited to PFRS police retirees.
3. Holiday Pay is compensation attached to the rank for PFRS police retirees, which the Court defined as “pay in excess of the regular or base pay to which a member of the Department may be entitled due to the occurrence of a holiday. Thus, holiday pay includes the extra compensation payable to a police officer who works on a holiday (over and above base pay), as well as the compensation due to an officer who has a regular day off or takes vacation on a holiday and therefore does not work.” (*City v. OPFRS* (2014) at p. 217.)

Most notably, in its decision, the Court of Appeal did not specify exactly how the Board should calculate the number of holiday hours to be credited to PFRS retirees. However, the Court stated that: “Were a proper analysis to be done, we would not be surprised to find that the 12 hours of holiday pay currently used in the calculation of PFRS retirement benefits pursuant to *Buck* represents an average that is a ‘meaningful predictor of the experience of most’ Department

⁴ That lawsuit ultimately focused on the OPOA MOU, and there was no determination from the trial court or Court of Appeal with regard to the ranks of captain and higher. (*City of Oakland v. OPFRS* (2014) at p. 224 and fn6.)

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members.” City v. OPFRS (2014) at p. 233, fn12. (emphasis added)

Until now, the PFRS Board has not examined the broader effect of the Court of Appeal’s 2014 decision and the trial court’s judgment with regard to the post-2006 OPOA MOUs to calculate the proper amount of holiday pay to be credited to the lower ranks of police retirees.

D. POLICE RANKS, UNIONS, AND SHIFTS

Current ranks within the police department are officer, sergeant, lieutenant, captain, deputy chief, assistant-chief and chief of police.⁵ Prior to 2006, all Oakland Police sworn members, with the exception of the chief of police, were in the same union (the OPOA) and subject to the same MOU. However, the City Council and City Administrator separated⁶ captains and deputy chiefs into a distinct bargaining unit which is governed by its own MOU starting July 1, 2006.⁷

Police are paid every two weeks (a “payroll period”), 26 times per year. The most common work schedules for police ranks of officer, sergeant, and lieutenant are either five days per week x eight hours per shift (the “5x8 shift schedule”), or four days per week x 10 hours per shift (the “4x10 shift schedule”), both of which result in 80 hours per payroll period and 2080 hours per year. Some police members work seven days per payroll period x 12 hours (“84 hour schedule”) resulting in 2184 hours per year. The various shifts schedules do not pertain to any particular rank, and police sworn employees holding the ranks of officer, sergeant and lieutenant could be assigned to work any of them. However, captains and deputy chiefs normally have a 5x8 shift schedule from Monday through Friday.

The various labor MOU’s specify the official paid holidays for employees. City employees who work a Monday-Friday 40-hour schedule receive a paid day off⁸ at straight time pay rate in lieu of their regular pay for each holiday that falls on a regular work day. The holiday provisions of the OPOA MOUs are discussed below.

IV. ANALYSIS

There has been a material change in the circumstances affecting how much holiday pay is credited to active police in the ranks below captain, compared to the circumstances at the time

⁵ PFRS still has retirees classified in discontinued ranks. Police Inspector was a rank between Sergeant and Lieutenant. Agency Director was equivalent to the Chief of Police.

⁶ The City Council passed Resolution No. 80211 on October 17, 2006 providing a mechanism for removing sworn police management employees from the OPOA. This was followed by a November 20, 2006 letter from the City Administrator to the president of the OPOA, stating her decision to place captain and deputy chief into a separate bargaining unit (referred to as “UN2” in the MOUs).

⁷ The 2006-2010 (later extended to 2015) MOU was approved by the City Council and ratified by the OPOA in 2009, with retroactive effect to July 1, 2006.

⁸ One relevant exception to the normal practice exists for a subset of OPOA ranked police who are assigned to patrol duties; these individuals are compelled to work on holidays that occur on their regularly scheduled work day. This is discussed in more detail below. If an OPOA member is not assigned to patrol (such as to training division, to investigations division, or to administration), he or she normally has the holiday off when it falls during the regular work schedule.

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when the current holiday pay methodology was implemented prior to 2006. Most significantly, the holiday pay provisions of the OPOA MOUs since 2006 are considerably different and lesser compared to the OPOA MOU before 2006. Second, the holiday work behavior of active police below the rank of captain shows that they do not work every holiday, and therefore do not receive credit for 144 hours of holiday pay above their 2080 regular hours. Consequently, the current methodology which credits police retirees classified at ranks below captain with 144 holiday hours per year causes police retirees in these lower ranks to receive higher relative pay than active police holding the same ranks. The current method is inconsistent with MOUs and the objective of PFRS' fluctuating benefit approach which seeks to achieve parity, between the active and retired police of the same rank. Staff recommends that the Board take action to conform the holiday calculation method to achieve relative equality in the level of compensation between active and retired police in these ranks.

A. CURRENT METHOD COMPARED TO 2006 AND LATER OPOA MOU HOLIDAY PROVISIONS – 1.5X HOLIDAY PREMIUM PAY ONLY FOR HOLIDAYS ACTUALLY WORKED

The Agenda Report for October 25, 2017 (**Appendix 1**) summarized the current holiday benefit methodology for PFRS police retirees of all ranks from officer through deputy chief. i.e.: Base Pay⁹ of 2080 hours (40 hours x 52 weeks). In addition to the 2080 hours, police retirees are credited with 144 hours (12 days x 8 hours@1.5x rate) as Holiday Pay, for a total of 2224 hours. The current practice is not consistent with the terms of the OPOA MOUs since 2006. In short, under the current OPOA MOU, active police below the rank of captains must work a holiday on their normal scheduled work day to receive additional Holiday Premium Pay at 1.5x rate, yet all retirees in these ranks are currently being compensated at 1.5x rate for every one of the 12 MOU holidays, without regard to the actual holiday work behavior of active members, which ignores the fundamental changes implemented after the 2001-2006 MOU.

1. 144 Holiday Hours Per Year Under the 2001-2006 OPOA MOU and DGO D-8

The 144 hours of Holiday Pay currently being credited and paid to PFRS police retirees is a holdover from the 2001-2006 era. The 2001-2006 OPOA MOU (see **Exhibit H** attached hereto) simply stated at section II.F.2. "Holiday Pay – Compensation for holidays shall be computed at time and one-half the regular base rate of pay for an employee's classification." Section V.I. identified 12 specific holidays. However, the MOU contained no details about how holidays would be paid when they were worked or not worked, and when they fell inside or outside of an officer's usual work schedule. Those details were set forth in prior Department General Order (DGO) D-8¹⁰. Under DGO D-8, active police were paid at a Holiday Premium Pay rate of 1.5X (8 hours X 1.5 = 12 hours) per holiday in addition to their Base Pay, regardless of whether they actually worked the holiday. Thus, because there were 12 paid holidays in the

⁹ These base pay hours are a combination of REG regular hours and HDP holiday hours (paid at straight time holiday falling inside a regular work schedule) totaling 2080 hours.

¹⁰ See Department General Order D-8 Holidays, section II.B.5., 6., and 7., attached as **Exhibit A** to the October 25, 2017 Agenda Report. It was rescinded after ratification of the 2006-2015 MOUs with the OPOA and the OPMA.

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2001-2006 OPOA MOU active police received 144 hours (12 holidays X 12 hours) in Holiday Premium Pay each year. However, since 2006 the way holidays are to be credited to active police is set forth within the MOUs themselves, and DGO D-8 was rescinded.

2. Variable Holiday Pay Under the OPOA MOUs Since 2006 For Ranks Below Captain.

Holiday pay provisions have significantly changed since 2006. Most notably, there is no longer a provision granting holiday pay at 1.5x rate, whether or not a holiday is worked. There is a large amount of variation between the amount of straight 1.0x rate and 1.5x rate holiday pay that active officers below the rank of captain can be credited each year.

a. Straight Time Holiday Pay

Under the 2006-2015 and 2016-2019 OPOA MOUs, police below the rank of captain can receive a day off and straight time (1.0x rate) holiday pay for the duration of their normal shift (8, 10, or 12 hours) for each of the 12 designated holidays recognized in the MOUs. This is a reduction from the 1.5x holiday pay rate granted by the 2001-2006 OPOA MOU. However, the amount credited each year varies person to person depending on the officer's assignment, work schedule, and what calendar date a holiday happens to occur.

When a holiday falls on an officer's regularly scheduled work day, he enters the time as 8, 10, or 12 hours HDP (Holiday Paid) instead of REG (Regular Pay) for that day, and it does not increase the assumed 2080/2184 annual hours for full-time employees. When a holiday falls outside of an officer's regularly scheduled work day, he enters it as 8, 10, or 12 HOL/HCT (Holiday) hours and it is in addition to the 2080/2184 assumed annual hours.¹¹

b. 1.5x Holiday Pay – variable and available to a limited group

In addition to the straight time holiday pay described above, an officer who works on a holiday that falls on his normally scheduled work day¹² is entitled to be paid 1.5x rate for the duration of that day's shift (8, 10, or 12 hours). However, working on holidays is normally not required for police of any rank. Only an officer ranked below captain who is "assigned to Patrol" is required to work on a holiday that falls on his regularly scheduled work day, and assignments can change annually. See OPOA MOU section VI.1-3 which reads:

The Chief or designee shall determine which positions shall be filled on each designated holiday. However, all officers assigned to Patrol shall report to work

¹¹ Officers assigned to the 84-hour schedule are assumed to work 2184 hours per year if employed full time for 12 months. For the lower ranks, the assumed annual 2080/2184 worked hours are not salary. Lower ranked officers are non-exempt employees. If an officer doesn't work a day, he must use available sick, vacation, or other pay if he is to reach 2080/2184 hours credit per year.

¹² Additionally, if an officer works on any day, including a holiday, that is outside of his regular schedule, he is paid 1.5x rate as "overtime," which is not holiday pay, and it excluded from compensation attached to rank for the purposes of calculating PFRS retirement allowances (Charter section 2607.)

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*on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw. (emphasis added.)*¹³

The duration of a work shift of lower ranked officers varies depending on schedule and assignment (8, 10, or 12 hours) and the number of days worked per week also varies (5, 4, or 3 days). Consequently, the number of additional holiday hours worked (above 2080/2184 hours) credited to active lower ranked OPD officers who are “assigned to Patrol” is greatly varied.

In summary, compared to the 2001-2006 MOU, there is a reduction in the rate of holiday pay from 1.5x to 1.0x. There is also a potential reduction in the number of holidays which an officer might work because those working 10 or 12 hour shifts will be required to work on fewer days per year. There is a reduction in the number of police entitled to be paid for each holiday because only the officers who are “assigned to patrol” are compelled to work on a holiday falling in their normal schedule, while the other police have the day off. On the other hand, there is a possible increase in the number of hours to be credited per holiday depending on work schedule and length of shift.

B. WHAT AMOUNT OF HOLIDAY HOURS IS ATTACHED TO RANK?

The PFRS Board has the benefit of the decisions issued by the trial court and Court of Appeal to guide its analysis of what amount of holiday pay is attached to the rank for PFRS police retirees below the rank of captain. The Court of Appeal stated that a proper analysis to determine the amount of holiday hours attached to rank for PFRS police retirees can be made by applying “an average that is a ‘meaningful predictor of the experience of *most*’ Department members” (*City v. OPFRS* (2014) at p. 233, fn12.) Consequently, staff proposes that the PFRS Board adopt a holiday calculation methodology which is based on the average number of holiday hours above 2080 hours that are credited to active police holding a rank below captain each year.

In light of the demonstrated variability in holiday hours worked by active police in the lower ranks, applying an average of annual holiday hours credited to active officers is a practical and reasonable method of identifying the experience of most officers, and a fair way to provide retirees with relative parity and equality of position with active officers. Applying an average will avoid applying a rigid calculation method that does not recognize and compensate for the fact that some officers “assigned to Patrol” are compelled to work on some holidays, and that some officers work 10 and 12 hour shifts, while others are entitled to holidays off, and work 8 hour shifts.

The number of worked holiday hours that is credited to individual active police in the lower ranks is highly varied, and is not is not tied to any rank.¹⁴ Rather, the amount of hours

¹³ OPOA MOUs. See **Exhibit D** to the October 25, 2017 report at page 23 and **Exhibit F** to the October 25, 2017 report at page 21.)

¹⁴ There is no legal basis to support recognizing a subgroup of officers who assert that their retirement status is “patrol officer,” “patrol sergeant,” or “patrol lieutenant” and that they are thereby entitled to different or greater benefits. Charter section 2607 does not recognize subranks. It also excludes compensation based on special details or assignments. Applying the legal test set forth by the Court of Appeal in *Kreeft*, the trial court in *City of Oakland v OPFRS* held that PFRS retirees who alleged to have

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credited fluctuates based on an officers' work schedule, shift length, assignment, and the ever changing nature of which date a particular holiday falls on each year. Under the test set forth in Kreeft, the amount of holiday pay that is attached to the rank for PFRS retirees is limited to the amount the active employee is entitled to "by virtue of rank and not his individual efforts over and above what are required to obtain the rank." Kreeft at p. 58.

Given the opinion of many court decisions that the goal of PFRS's fluctuating retirement system is to provide parity between active and retired members, and to maintain equality of position between the retired member and his active counterpart, (Kreeft v. City of Oakland (1998) 68 Cal.App.4th 46, 54), staff analyzed payroll data to identify the total number of hours of Base Pay and Holiday Pay active police below the rank of captain have been credited with in the last four fiscal years, in order to compare that to the total number of hours of Base Pay and Holiday Pay (2224 hours) that PFRS Police Retirees are credited with.¹⁵

C. ANALYSIS OF HOLIDAY PAYROLL DATA – ACTIVE OPOA OFFICERS BELOW THE RANK OF CAPTAIN

Staff analyzed hourly Base Pay as well as all Holiday Pay payroll data for active Oakland Police Officers below the rank of captain for the past four years (FY 2014/2015 through FY 2017 /2018). The results of the analysis are included in **Tables 1, 2, 3** (see attachments to the Agenda Report for October 25, 2017) and **Table 4** (attached hereto as **EXHIBIT H**).

Tables 1, 2, 3, and 4 show the total hours credited for each active Oakland sworn OPOA police member (below the rank of captain) who worked an 80-hour bi-weekly schedule or who worked a combination of an 80-hour schedule for part of the year and an 84-hour schedule the other part of the year. We did not include the relatively small number of officers (approximately 10% of the force over four years) who worked an 84-hour schedule exclusively for the entire year. The tables include hours worked at straight time 1.0x for each eligible payroll element, excluding Workers Compensation hours and Leave Without Pay elements. The tables reflect 1.0x rate HOL Holiday hours credited to active police for any holiday that fell outside of an officer's regular work schedule, and also reflect hours at the Holiday Premium Pay rate of 1.5x rate for each holiday that fell during an active sworn officer's regular schedule that the active OPOA police officer worked.

Table 5 (below) summarizes **Tables 1, 2, 3, and 4**, and compares the annual tallies of active offices to the 2224 hours (2080 base pay hours + 144 holiday hours) that is currently being credited to PFRS police retirees below the rank of captain as holiday retirement benefits. Staff's

worked their final three years of active service in a "patrol" division were not entitled to an extra 7.25% "shift differential" pay available to active officers who worked swing or night shifts. Such pay was variable and not received by all or substantially all active members. (City of Oakland v PFRS (2014) at p. 234.) Intervenor the ROPOA did not appeal the trial court's ruling on this issue, so it is binding on the parties. The 1984 trial court decision in Arca v. City of Oakland (Alameda County Superior Court Action No. 579832-8) aka "ARCA I") regarding "line-up" pay for "patrol" officers is inapposite. The legal effect of ARCA I is limited to its facts, and line-up pay was eliminated starting with the 2001-2006 OPOA MOU. (see City of Oakland v. OPFRS at page 221-222.)

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analysis shows that for these active sworn OPOA rank officers working 80-hour schedules: (1) the average number of hours credited (2186) was less than 2224 each year; and (2) the clear majority (75%) of these active officers were credited on average less than 2224 hours.

Fiscal Year	Officer Count	Base Hours	Avg Total Hours Credited to Actives	Percentage of Active Officers credited less than Retiree 2224 Hours	Average Holiday Hours credited to Actives above 2080
FY 2014/2015	316	2080	2176	79.40%	96
FY 2015/2016	450	2080	2198	66.70%	118
FY 2016/2017	443	2080	2191	75.80%	111
FY 2017-2018	532	2080	2177	78.60%	97
Averages	435	2080	2186	75.00%	105 hours

This four-year data shows that, instead of being paid on a par with active members, PFRS police retirees below the rank of captain are currently being credited on average more hours of combined base and holiday pay each year than active members of similar ranks received during the same period. This data shows that holiday pay being credited to PFRS retirees in OPOA ranks should be decreased, rather than increased. Under the proposed methodology, PFRS retirees in the ranks below captain would receive credit in fiscal year 2018-2019, the average holiday hours received by active police in the same ranks in fiscal year 2017-2018. Therefor the retirees would receive **97** hours (2,177 avg. total hours - 2080 base pay hours) of holiday pay for fiscal year 2018-2019 instead of the 144 hours per year currently being paid as shown in **Table 6** below:

	Current Avg. Holiday Hours/Pay Monthly	Proposed Avg. Holiday Hours/Pay Monthly	Decrease in Monthly Hours/Pay	Percentage Decrease in Total Monthly Hours/Pay
Hours	12 x 12 = 144 hours	8 x 12 = 97 hours	4 hours	2.1%
Gross Pay (a)	\$5,061	\$4,951	(\$109)	2.1%

(a) The average monthly gross pension payment for PFRS members in all ranks (below Captain) covered by the OPOA MOU.

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D. FLOATING HOLIDAY PAY

Staff presented in the Agenda Report for October 25, 2017, the relevant portions of the City Charter, the OPOA MOUs since 2006, AI 520, and DGO D-8. Staff’s conclusion and recommended finding is that the Floating Holiday is not compensation because it is not payable in cash (except in one narrow circumstance) and does not increase an employees’ annual take-home compensation. The Floating Holiday can only be used in place of a regular workday, so it supplants regular pay for that day. Below are a few additional facts that may further assist the PFRS Board in determining this issue.

To quote AI 520, which governs Floating Holidays, “it must be taken in the fiscal year in which it is earned . . .” and “is eliminated from the employee’s record if it is not used within the allowable period.” (See **Exhibit B** to the October 25, 2017 Agenda Report at section II.1 and II.2). Accordingly, it is clear that the Floating Holiday is lost if it is not used.

For reasons that are not clear, the adjective “holiday” was attached to this form of compensatory time. It should be noted that the 2001-2006 OPOA MOU included an identical benefit called “Compensatory Leave.” (See **Exhibit I** attached hereto, at sections V.G.) Had the MOU not used the “holiday” nomenclature, there would be no question that this is Comp Time.

2001-2006 OPOA MOU	2006-2015 OPOA MOU and 2015-2019 OPOA MOU
<p>V. Leaves and Holidays</p> <p>G. <u>Compensatory Leave</u>. In addition to such compensatory leave as may be earned by an employee pursuant to Article II, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee’s record at the beginning of the fiscal year. An Employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.</p> <p>(see Exhibit I attached hereto at sections V.G)</p>	<p>VI. G.2. <u>Floating Holiday</u> - In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.</p> <p>(See Exhibits D and F to the Agenda Report for October 25, 2017.)</p>

Juxtaposed in this manner, it is apparent that the “Floating Holiday” is just another form of compensatory time. Moreover, the MOUs, DGO D-8, and AI No. 520 make clear that this compensatory leave is forfeited if not taken in the year it is credited. Also of note, the 2008 Interest Arbitration Decision by Barry Winograd reviewed that pay element and concluded it is compensatory time.

“23. Holiday – Floating Birthday

Status quo (that is, paid in comp time).”

Because compensation attached to rank under Charter section 2607 must be “payable in cash” and the “floating holiday” is generally not payable in cash, it is

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not compensation attached to the rank for PFRS police retirees. Furthermore, because the floating holiday hours are simply a substitute for regular work hours, they do not serve to expand compensation beyond the typical 2080 hours of annual compensation.

V. PROPOSED REVISION TO HOLIDAY CALCULATION METHOD

The PFRS Board has not reexamined or adjusted the general holiday calculation methodology for PFRS retirees since the Court decisions were rendered in City v. OPFRS in 2014. The PFRS Board has a fiduciary duty to administer the System for the benefit of all members and to take corrective action when reasonably appropriate in the best interest of Plan participants (see generally McMahon v McDowell (3rd Cir. 1986) 794 Fed 2d 100, 110). Now that the Board is aware of apparent overpayments of Holiday Pay since 2006 to all PFRS retirees classified with ranks below captain, and has further guidance from the 2014 Court decisions, it is incumbent upon the PFRS Board to consider taking corrective action.

Staff recommends that Board cease the current holiday calculation methodology of crediting each police retiree with 144 holiday hours above 2080 hours of regular pay. Staff also recommends that going forward, the Board adopt the following method for calculating annual police retiree allowances, including holiday hours credits. The method stated below is intended to be consistent with the objective of providing police retirement allowances which include an amount of holiday pay that maintains an equality of position between the retired members and the active members currently holding the same rank.

For police retirees who retired at a rank below captain, retirement allowances could be based on crediting the retirees with the average total hours (including both base and holiday pay) active officers received for the prior fiscal year. This average would be calculated using the assumptions set forth in **Exhibit C** (attached to the Agenda Report for October 25, 2017 Board Meeting), which specifies the universe of officers that are to be included and the Pay Elements that are to be included in the calculation. Each July, staff will examine the prior 12 months of sworn police payroll entries to identify the Average Total Hours Credited (in the manner shown on **Tables 1 through 4**) to active officers in the ranks below captain. Staff will then annualize this amount and pay it to retirees commencing in the current fiscal year (July payroll). Holiday credit will be apportioned for retirees classified in split ranks.

VI. CONCLUSION

The annual 2224 hours currently being credited to PFRS police retirees in ranks below captain for combined Base Pay and Holiday Pay is higher than the average number of hours worked that full-time active police are credited with for combined Base Pay and Holiday Pay. Analysis of payroll data shows that during the past four fiscal years, an overwhelming majority of these active police officers (75%) were credited with less than the 2224 hours of combined Base Pay and Holiday Pay being credited to PFRS retirees in the same ranks. Staff recommends that the PFRS Board replace its holiday calculation methodology for PFRS police retirees in ranks below captain to provide relative parity between the annual allowance paid to retirees and the annual compensation (including average holiday compensation) for active officers in these

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ranks. Staff proposes using an average from the prior fiscal year to pay the retirees. Under this methodology, the impacted retirees would receive holiday pay of 97 hours for fiscal year 2018-2019 instead of the 144 hours per year currently being paid to them. Therefor the retirees would receive 8.01 hours per month (97 hours ÷ 12 months), instead of the current 12 hours (144 hours ÷ 12 months) per month.

Staff also recommends that the Board direct staff to return and provide a future report calculating the overpaid holiday amounts and that the Board exercise its discretion to consider recovery of the overpayments. It is the Board's fiduciary duty to consider whether and how to address this issue.

The Board should find that the Floating Holiday benefit is not compensation attached to the rank for any PFRS police retirees, because it is compensatory leave that does not increase base pay, is not payable in cash, and is forfeited if not taken each year. When taken, it supplants regular pay, and does not increase an officer's 2080 annual hours.

Respectfully submitted,



David Jones, Plan Administrator
Oakland Police and Fire Retirement System

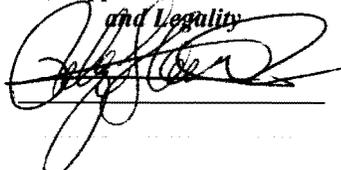
For questions please contact Teir Jenkins, Investment Officer, at 510-238-6481.

Attachments (6):

1. **Exhibit H:** Table 4 – Analysis of Active Police Actual Hours Credited Fiscal Year 2017-2018.
2. **Exhibit I:** OPOA MOU “Compensatory Leave” – Effective July 1, 2001 through June 30, 2006.
3. **Exhibit J:** June 15, 2018 Report by Professor Steven Raphael (provided in relation to the pending lawsuit Retired Oakland Police Officers Association v. Oakland Police and Fire Retirement System et al, Alameda County Superior Court Action No. RG16838274
4. **Exhibit K:** Letter dated June 20, 2018 from ROPOA Secretary Mr. Robert W. Nichelini on behalf of the Retired Oakland Police Officers Association.
5. **APPENDIX 1:** Agenda Report from October 25, 2017 of an Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Received by Active Police Officers During The Last Three Fiscal Years [includes Tables 1, 2, & 3 and Exhibits A through G]
6. **APPENDIX 2:** Agenda Report from November 29, 2017; received written responses to October 25, 2017 Agenda Report [includes 11/15/17 responses from ROPOA and PFRS Board Member Robert Muszar regarding PFRS October 25, 2017 Agenda Report and PFRS report on holiday pay]

PFRS Board Meeting
October 31, 2018

OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

Approved to Form
and Legality


RESOLUTION No. 7029

ON MOTION OF MEMBER _____ SECONDED BY MEMBER _____

**RESOLUTION SETTING THE METHOD FOR CALCULATING HOLIDAY
PAY TO BE CREDITED TO POLICE RETIREE ALLOWANCES FOR
THOSE CLASSIFIED WITH THE AVERAGE RANK BELOW CAPTAIN
OF POLICE**

WHEREAS, the Retired Police Officers' Association ("ROPOA") and its members have asserted (since October 2014) that police retirees of the Oakland Police and Fire Retirement System ("PFRS") they are entitled to more credit for holidays as a part of their Retirement Allowances since the change in the labor Memorandum of Understanding (MOU) between the Oakland Police Officers' Association (OPOA) and the City of Oakland ("City") going back to approximately 2006; and

WHEREAS, the City Charter at section 2607, 2608, 2610, 2611, and 2619 states that PFRS retirement allowances shall be based on "compensation attached to average rank held"; and

WHEREAS, upon retirement, each police officer's "average rank held" was calculated by referring to his last three years of active service as specified in Charter section 2607 and elsewhere in Charter Article XXVI; and

WHEREAS, the City Charter at section 2607 defines "compensation" as "the monthly remuneration payable in cash"; and

WHEREAS, in City of Oakland v. Oakland Police and Fire Retirement System (2014) 244 Cal.App.4th 210, and Alameda County Superior Court Action No. RG11580626, the Court of Appeal and Trial Court recognized that PFRS is a fluctuating benefits system, and that "[t]he primary purpose of a fluctuating pension plan such as PFRS 'is to guarantee the pensioner a fairly constant standard of living despite inflation, and to maintain equality of position between the retired member and the person (or persons) currently holding the rank the pensioner attained before his retirement.'"; and

WHEREAS, in September 2012, the Superior Court entered judgment in favor of the City of Oakland, declaring, among other things, that the retirees are not entitled to retirement benefits based on holiday pay exceeding those stated in the relevant labor Memorandum of Understanding (MOU), and directed the PFRS Board to prepare a plan to recover any overpayments; and

WHEREAS, on February 28, 2014, the Court of Appeal issued its decision partially affirming the Superior Court's judgment, finding that the PFRS retirees and beneficiaries are subject to the negotiated reduction in holidays in the July 1, 2006 OPOA MOU and were overcompensated to the extent they received retirement benefits

exceeding seven holidays in each allowed in the labor MOU and that said excess holidays are not attached to the rank; and

WHEREAS, Under California Constitution Article XVI, section 17, the PFRS Board has the sole and exclusive fiduciary responsibility over the assets of the System, while concurrently having the responsibility to discharge its duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries (with the duty to its participants and their beneficiaries taking precedence over any other duty), minimizing employer contributions thereto, and defraying reasonable expenses of administering the system; and

WHEREAS, the current method used by PFRS to calculate police retiree retirement allowances includes crediting 2,080 base or regular hours for each PFRS police retiree per year, based on the assumption that the employee worked 40 hours per week for 52 weeks per year; and

WHEREAS, when a holiday occurs within an OPOA employee's regular schedule, his or her base or regular hours for that day are recognized as holiday pay (payroll code HDP) instead of regular pay thereby reducing the assumed 2,080 hours; and when a holiday occurs on a regular day off, the hours for that day are recognized as holiday pay coded HOL/HCT in addition to the 2,080 base or regular hours; and

WHEREAS, in addition to the 2,080 base/straight time holiday hours, the PFRS police retirees are currently credited 144 hours for holiday pay each year, calculated as 12 holidays recognized in the OPOA MOU, at 8 hours per day at the rate of time and one half 1.5x ((8x1.5) x 12 =144) for the year; this results in a combined total of 2,224 hours per year; and

WHEREAS, the fixed 144 hours of holiday pay currently being credited to retired PFRS police below the rank of captain is not consistent with the provisions of Article VI. Section G. 3. of the 2006-2015 and the 2015-2019 OPOA MOUs; and

WHEREAS, PFRS staff performed analysis of four years of payroll data covering fiscal years 2014-2015 through 2017-2018 to identify active police classified in ranks below captain of police who were credited at least 2,080 hours of regular and holiday pay (falling inside their work schedule) in a year applying the assumptions stated in **Exhibit C** to the October 2017 agenda report; and

WHEREAS, for the group of active police mentioned immediately above, PFRS staff's further data analysis identified the amount of hours above 2,080 that such persons were credited for straight-time holidays falling outside of an officers' regular work week (payroll code HOL/HCT), and for 1.5 x holiday pay that officers actually worked during their regular work week (payroll code HDS/SOH) each year; and

WHEREAS, PFRS staff's analysis (appearing in **Table 5** of the October 31, 2018 agenda report) shows that an average of 75% of active police in these ranks were credited less than 144 hours of such holiday pay in the preceding four years period as

follows: 48 hours less for 2014-2015, 26 hours less for 2015-2016, 33 hours less for 2016-2017, and 47 hours less for 2017-2018; and

WHEREAS, the data shows that current method of crediting the holiday portion of PFRS police retirees below the rank of captain is resulting in said retirees receiving more holiday hours and overall relative compensation than what active police of the same ranks are being paid, which is contrary to the objective of PFRS fluctuating benefit system and results in an overpayment; and

WHEREAS, the PFRS Board is under a fiduciary duty to avoid and terminate overpayments in order to preserve fund assets to pay benefits to all members of the System, which includes retired Fire Department members; and

WHEREAS, it is the duty of the PFRS Board to credit holidays to retired police in a way which achieves a relative "equality of position" between retired and active police of the same ranks; and

WHEREAS, the PFRS Board finds that given the varied work schedules (hours per shift, shifts per pay period, days of the week, and assignment to patrol duties) of active police below the rank of captain, and the ever shifting days of the week on which a number holidays fall each year, it is reasonable to achieve the "equality of position" between active and retired police compensation by calculating holiday credits for PFRS police retirees below the rank of captain through use of an annual average (based on actual payroll data) of holidays hours credited to active police in the same ranks; and

WHEREAS, the terms of the relevant MOUs and City of Oakland policies demonstrate that the benefit called "floating holiday" does not increase overall annual pay and is not compensable in cash except as part of terminal pay; and

WHEREAS, The PFRS Board, in light of its constitutional duties, now exercises its discretion and powers in good faith; now therefore be it

RESOLVED: That the benefit described as a "floating holiday" in the OPOA MOUs dated 2006-2015 and 2015-2019 is not compensation attached to rank for PFRS police retirees, and shall not be used in calculating the holiday pay portion of retirement allowances; and be it

FURTHER RESOLVED: that effective immediately, monthly allowances, including the holiday credit portion of retirement allowances for all PFRS police retiree ranks below the rank of captain, shall be calculated as follows:

- (1) In July of each year, a calculation shall be performed of police sworn payroll data for the preceding fiscal year to identify (a) all members below the rank of captain who were credited at least 2,080 hours of time in the categories REG, HDP, and all other paid leaves (See **Exhibit C** in the October 2017 Agenda Report); and then (b) for said

persons, identify the total annual average hours credited in the categories HOL/HCT representing a straight time holiday falling outside of work schedule and HDS/SOH representing 1.5x holiday for hours worked inside of regular schedule.

- (2) The average identified by the calculation from step (1) above, plus 2,080 hours, shall be credited to all PFRS police retirees classified in ranks below captain, annualized into 12 equal monthly installments commencing on July 1 of the following fiscal year.
- (3) Any applicable longevity and uniform pay shall be added to the above.
- (4) For the fiscal year 2018-2019, the average annual number of holiday hours above 2,080 to be paid to PFRS police retirees below the rank of captain shall be 97 hours (instead of 144 hours), and the adjustment shall be implemented in the December 1, 2018 payroll (to be paid on January 1, 2019); and
- (5) The holiday credit of police retirees whose allowance is calculated using a split rank shall be apportioned.

IN BOARD MEETING, CITY HALL, OAKLAND, CA _____ OCTOBER 31, 2018

PASSED BY THE FOLLOWING VOTE:

AYES: GODFREY, KASAIN, MELIA, MUSZAR, SPEAKMAN, WILKINSON,
AND PRESIDENT JOHNSON

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
PRESIDENT

ATTEST: _____
SECRETARY

EXHIBIT H

TABLE 4

**ANALYSIS OF ACTIVE POLICE HOURS CREDITED
FISCAL YEAR 2017 - 2018**

Table 4

Oakland Police and Fire Retirement System

Analysis of Active Police Actual Hours Credited

Key Data Summary

Fiscal Year 2017-2018

Officers who worked 80 Hr Schedule Only During Fiscal Year				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than or Equal to 2224 Hrs
685	532	2,177	114	78.6%

Officers who worked 80 and 84 Hr Schedules During Fiscal Year ¹				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than or Equal to 2224 Hrs
63	53	2,245	37	30.2%

Note: Analysis does not include Officers who worked 84 hour shift the entire year (2184 hours)

¹Includes Sworn Officers who worked both an 80 Hr schedule with a total of 2080 hours and an 84 Hr schedule with a total of 2184 hours during the fiscal year

² PFRS Current Rate: 2224 Hrs = 2080 + 144 (12 Holidays @ 8 x 1.5)

EXHIBIT I

**OAKLAND POLICE OFFICERS ASSOCIATION
MEMORANDUM OF UNDERSTANDING
EFFECTIVE JULY 1, 2001 THROUGH JUNE 30, 2006
(EXCERPT)**

MEMORANDUM OF UNDERSTANDING

Between

CITY OF OAKLAND

and

OAKLAND POLICE OFFICERS' ASSOCIATION

Effective July 1, 2001 through June 30, 2006

(1) Except as provided in subsection (3) below, employees will have the option to receive overtime in cash or compensatory leave. However, notwithstanding this provision, the City may elect to buy any overtime worked (OTW) credit in excess of ninety-six (96) hours.

(2) Employees who are exempt from the provisions of FLSA choosing cash compensation for direct charge overtime pursuant to II.E, (a)(3) above may defer payment for a later date. Employees covered under the provisions of FLSA choosing cash compensation for overtime may defer payment for a later date on overtime hours earned up to the 171 hour FLSA work period limit. Employees shall receive deferred overtime pay a maximum of twice each fiscal year, payable in the months of December and July. Deferred overtime payment requests for December must be made in writing by November 1 on a form, which shall be provided by the Department. Payments for such requests will be by separate check payable on the first Friday, in the month of December, which is not a payday. Any remaining or unclaimed deferred overtime will be paid at the end of each fiscal year by separate check on the first Friday, in the month of July, which is not a payday. Deferred overtime cannot be accumulated from one fiscal year to the next and it will be paid at the salary level at which it was earned.

(3) Compensatory Time. Any compensatory time earned beginning April 5, 1986 shall be accrued in a compensatory time bank separate from any compensatory time accrued by employees prior to April 5, 1986. The maximum amount of compensatory time which may be accrued in the April 5, 1986 compensatory time bank shall be four hundred and eighty (480) hours. Any employee who has a balance of four hundred and eighty (480) hours in his/her April 5, 1986 compensatory time bank shall receive any subsequent overtime earned in cash, until the balance once again drops below four hundred and eighty (480) hours. Use of time from compensatory time banks shall be on a last-in first-out (LIFO) basis, beginning with the April 5, 1986 time bank. If no compensatory time is left in the April 5, 1986 time bank, the employee's pre-April 5, 1986 time banks may be used.

(d) Canine Handlers. Each employee regularly assigned as a Canine Handler is authorized to spend and shall be deemed to have spent fifteen (15) hours per month, over and above his/her regularly scheduled hours of work, in ordinary care and informal training of the assigned dog for such ordinary care and training that cannot be performed during regularly scheduled work hours. For those

hired on or after July 1, 1974, who has a signed contract of fixed duration upon his/her appointment to the Department for the duration of such contract.

F. Organization Leave.

(1) Except as provided below, no employee shall conduct Association business during his/her normal working hours.

(a) An Association representative processing a grievance shall be allowed a reasonable period of release time to do so, provided that no more than one such representative will be granted such release time to process each grievance.

(b) A reasonable number of Association representatives shall be allowed reasonable release time to engage in meet and confer discussions, or other discussions, with representatives of the City.

(2) Up to fifty (50) working days paid leave of absence shall be granted collectively to employees designated by the Association during each year of the term of this Memorandum, subject to approval of the department head, to attend seminars, conferences, or conventions at the local, state, and national level. The time is to be utilized by such persons when said seminars, conferences, or conventions are held at a time or location, which precludes attendance in addition to the performance of his/her regular duties.

(3) Association representatives who are designated by an authorized official of the Association may take Association Overtime Allowed (AOTA), subject to advance approval by the Chief of Police or his designated representative.

To establish a fund of Association Overtime Allowed (AOTA) for use as defined above, a represented employee may contribute his/her accumulated overtime to the Association, subject to the following conditions:

(a) An individual employee may contribute a maximum of eight (8) hours from his/her overtime account during each contract year.

(b) The AOTA account shall be contributed to, and drawn from, on an hour-for-hour basis, without regard for the rank of the person contributing to or using the time.

G. Compensatory Leave. In addition to such compensatory leave as may be earned by an employee pursuant to Article II, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this

Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.

H. Family Care Leave. Employees are entitled to Family Care Leave in accordance with terms and conditions mandated by Government Code Section 12945.2.

I. Holidays. The following days are designated as City holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September.

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th.

ARTICLE VI ALLOWANCES

A. Uniform Allowance.

1. Initial Uniform Allowance. City agrees to provide to an employee covered by this Memorandum, at the time of employment, an initial uniform allowance of two hundred and fifty dollars (\$250.00).

A new employee shall receive the annual uniform allowance payable at the time of employment; provided, however, that the annual uniform allowance at the beginning of the first full year of employment shall be prorated on the basis of service from the date of employment up to and immediately preceding the first full fiscal year, to the extent that such service period is less than a full fiscal year.

The annual allowance shall be paid in combination with Longevity Premium Pay. Such payment shall be by separate check, payable on the first Friday, in the month of July, which is not a payday.

EXHIBIT J

**JUNE 15, 2018 REPORT BY PROFESSOR STEVEN RAPHAEL
(PROVIDED IN RELATION TO THE PENDING LAWSUIT RETIRED
OAKLAND POLICE OFFICERS ASSOCIATION V. OAKLAND POLICE
AND FIRE RETIREMENT SYSTEM ET AL, ALAMEDA COUNTY
SUPERIOR COURT ACTION NO. RG16838274**

Analysis of Holiday Compensation Hours for the Oakland Police Department

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1. Introduction

This report analyzes compensation for designated holidays made to Oakland police officers. I analyze data for three fiscal years (FY2014-2015, FY2015-2016, FY2016-2017), the first of which was covered by the prior memorandum of understanding ("MOU") between the City of Oakland and the Oakland Police Officers' Association, while the latter two years are governed by the most recent MOU.

The principal goal of this report is to estimate the number of additional hours of compensation that accrue to officers due to the occurrence of holidays designated in the MOUs. Note, this holiday compensation is in excess of the officer's regular base pay. For an officer who usually works a 10 hour day and who is employed the full year, additional annual compensation for holidays can theoretically range from 120 hours to 180 hours. Extra compensation depends on the number of holidays that fall on a regularly-scheduled workday and the number of such holidays on which the officer actually works. Holiday hours accrue through several channels. For hours worked on a holiday that falls on a regularly scheduled workday, the officer earns the usual compensation for hours worked at the standard hourly rate as well as an addition 1.5 hours of compensation for each holiday-day hour worked. For example, an officer who usually works on Thursdays and works 10 hours on Thanksgiving earns pay for 15 additional hours above standard compensation for the day worked. An officer for whom all holidays fall on a scheduled work day and who works on all twelve holidays will accrue an additional 180 hours of compensation (15 hours times twelve holidays).

Holiday hours also accrue to officers that do not work on a scheduled holiday. This may occur either when the holiday falls on a day that the officer usually does not work or when the holiday falls on a day when the officer works but the officer takes the day off. In these instances, officers' holiday compensation comes in the form of straight time. To use the Thanksgiving example once again, an officer who usually works Thursdays but takes the day off on Thanksgiving will earn 10 holiday hours of compensation. An officer who does not usually work on Thursdays and who does not work on Thanksgiving also earns 10 additional hours of holiday pay. An officer who usually works 10 hours a day and who does not work on a single holiday that falls on a regularly scheduled work day will earn 120 hours of additional compensation for holiday hours. Note, an officer working on a holiday that does not fall on his or her regularly scheduled day still earns straight time holiday hours for the day in addition to the overtime pay they receive for additional work hours outside of their normal schedule.

I employ several alternative strategies to estimate the average number of additional hours of compensation received by police officers due to the occurrence of a holiday. I also estimate key percentiles of the distribution of annual holiday hours across all officers.

My analysis concludes that the average number of additional hours of compensation attributable to holidays is at most roughly 140, with roughly 60 percent of officers receiving additional holiday compensation of 144 hours or fewer in FY2015-2016 and 80 percent of officers receiving additional holiday compensation of 144 hours or fewer in FY2016-2017. My estimate of the average annual holiday hours for all officers below the rank of captain is summarized in Figure 1 by fiscal year. Figure 2 presents separate estimates by officer rank.

The main result can be alternatively stated in terms of the number of holidays that fall on the average officer's scheduled work day where the officer actually works. During the 2015-2016 fiscal year, an officer employed for the full year worked 3.5 holidays on average on a regularly scheduled workday. During the 2016-2017 fiscal year, the average officer employed for the full year worked approximately two holidays on a regularly scheduled workday. There are some differences by rank, with higher ranking officers compensated for fewer holiday hours (and in turn working on fewer holidays) than officers of lower rank. Using officers for whom I observe a complete year of continuous employment, roughly 65 percent work four or fewer holidays on regularly scheduled workdays during the 2015-2016 fiscal year. The comparable percentage for fiscal year 2016-2017 was 93 percent.

This report proceeds as follows. I begin by describing how holiday compensation is calculated. I then present a detailed descriptive analysis of the patterns that I observe in payroll records pertaining to holiday payments for FY2015-2016. I describe two strategies that I employ to estimate holiday compensation, making adjustments for officers that work only part of the year, and then use these strategies to estimate average annual holiday compensation hours and the distribution of holiday hours across officers for FY2015-2016. I then reproduce the analysis for FY2014-2015 and FY2016-2017 to assess whether my conclusions are sensitive to the year analyzed. Finally, I present results from an alternative estimation strategy that incorporates the small number of payroll records where earnings dates are omitted. While there are slight differences in estimates across years and across methods, the general conclusion that additional average holiday hours is at most 140 and that the average officer works at most three to four holidays per year on a regularly scheduled workday is robust to these specification checks.

2. How police officers are compensated for designated holidays

The MOU between the City of Oakland and the Oakland Police Officers' Association ("OPOA")¹ covering July 1, 2015 through June 30, 2019 specifies twelve holidays for which police officers are eligible for additional compensation.² To qualify for holiday compensation for a specific designated holiday, an officer has to be in paid status the work day before and the work day after the given holiday. Hence, an officer who is employed for the full year without a period of leave without pay should qualify for holiday compensation for all twelve holidays.

To understand the additional annual compensation that these designated holidays generate ("holiday pay"), it is helpful to briefly discuss how officers typically report their hours for work on non-

¹ Note, a separate MOU governs the employment contract for sworn employees at the rank of Captain or higher.

² The twelve holidays are January 1, the third Monday in January (Martin Luther King Day), February 12 (Lincoln Day), the third Monday in February, the last Monday in May, July 4, the first Monday in September (Labor Day), September 9 (Admissions Day), November 11 (Veteran's Day), Thanksgiving day, the Friday after Thanksgiving, and December 25.

holiday dates. Officers fill out detailed online timesheets that document their regularly scheduled and overtime work hours. For a regularly scheduled work day with no overtime hours, an officer receives compensation for the regularly scheduled hours and any premium pay for which the officer may be eligible (for example, additional pay associated with working a specific shift, being bilingual, being on a special assignment, etc). Regular hours are recorded under the pay element "REG Sworn Earnings." For regularly scheduled work days with overtime, the officer would claim compensation for the regularly scheduled work hours under the "REG Sworn Earnings" category and the overtime hours using one of several possible overtime categories. For overtime work that does not occur on a regularly scheduled work day (for example, for court appearances, parades, Raider's games, etc.), the officer would not claim hours under the "REG Sworn Earnings" category but would claim all hours in one or several of the overtime categories.

How compensation is claimed for the designated holidays depends on (a) whether the officer is scheduled to work on the specific holiday, and (b) whether the officer actually works that day. For many of the holidays, staffing levels are lower than usual (for example, on Thanksgiving Day and December 25th), and hence, many of the officers for whom the holiday falls on their regularly scheduled work day actually take the day off.

If the officer is scheduled to work on the holiday and works, the officer fills out the time card for this day in the following manner. Rather than claiming regularly scheduled hours using the "REG Sworn Earnings" category, the officer would claim the straight time hours under the pay category "HDP Holiday Hours" ("HDP"). These hours are compensated at the straight time pay rate. In addition, the officer would claim the same number of hours using the pay category "HDS Holiday Sworn" ("HDS"). Payment for these hours is at time and a half. Hence, an officer who works a regularly scheduled 10 hours shift would receive his or her regular straight time pay for 10 hours under the HDP pay category in lieu of "REG Sworn Earnings," as well as payment for the equivalent of an additional 15 hours (10 hours at time and a half under the HDS pay category). The premium pay for working the holiday can be taken as either cash or comp time credits that can be banked and used at a later date. Irrespective of how the officer decides to be compensated for these premium hours, the additional compensation created by the occurrence of the holiday equals 15 hours. Note that the straight time payment for 10 hours in the HDP pay category displaces the 10 hours that would have normally been claimed for that day under the REG Sworn Earnings category; thus, in this case the HDP hours are in lieu of, not in addition to, the officer's regular base pay.

If the officer is scheduled to work on the holiday but takes the day off through the holiday draw, the officer claims hours under the "HDP Holiday" category only. In this instance, the officer is compensated at straight time despite the fact that the officer doesn't work that day. Hence, for a regularly scheduled 10 hours shift, the additional compensation associated with the holiday is 10 hours. Note, in this scenario HDP hours do not displace regular sworn earnings because the officer does not actually work on the day in question; thus, in this case the HDP hours are in addition to the officer's regular base pay.

If the officer is not scheduled to work on the holiday and does not work, the officer claims straight time hours for the holiday equal to the number of hours that they usually work on a shift under the pay category "HOL Holiday Police" ("HOL"). Hence, an officer who usually works a 10 hours shift

receives additional straight time compensation for 10 hours as a result of the day being designated a holiday. Again, the officer can claim these additional hours as pay or as banked comp time.

Finally, an officer who is not scheduled to work but works on a designated holiday would claim straight time hours equal to his or her usual shift length under the HOL pay category and then submit for overtime compensation for hours actually worked on the holiday. Hence, the additional payment for the day being designated a holiday amounts to the straight time hours claimed under the HOL pay category (or the hours claimed as comp time in lieu of a cash payment). The overtime would have been accrued regardless of the holiday, since the officer would be working on a regularly scheduled day off. Hence, there are no premium hours accrued as a result of the holiday, but the officer does accrue straight time compensation due to the holiday.

Given the four possible scenarios of holiday compensation discussed above, the total number of additional holiday hours compensation for a given fiscal year for an officer that is eligible for all twelve holiday payments can be summarized with a simple equation. Specifically, additional holiday hours compensation will be equal to the number of straight time hours claimed for each holiday, minus the number of regular-sworn-earnings hours displaced by the holiday straight time hours on days actually worked, plus 1.5 times the number of premium hours claimed³, or

Holiday hours = Holiday straight time hours – displaced regular sworn hours + 1.5 x premium hours.⁴

It is helpful to consider a few examples of the annual holiday hour tabulations under alternative scenarios for an officer who works a 10 hours shift.⁵

- **An officer for whom all 12 holidays fall on a scheduled day off:** This officer would claim 10 hours of straight time on each holiday under the HOL pay category, resulting in 120 hours. Since none of the 12 holidays fell on the officer's regular work schedule, none of his/her regular base pay was displaced; and since the officer did not work any holiday, he/she has no premium hours. Using the equation above, Holiday hours = $120 - 0 + 1.5 \times 0 = \underline{120}$.

³ Note, the number of regular sworn earnings hours displaced will exactly equal the number of premium hours earned. For example, an officer that usually works a 10-hour shift who works on two holidays would have twenty hours of regular sworn earnings displaced by 20 HDP hours that would in turn generate 20 hours of premium pay. That being said, total HDP hours do not equal total displaced regular-sworn-earnings hours because total HDP hours includes both hours worked on regularly scheduled holidays as well as holiday hours that fall on regularly scheduled work days when the officer takes the day off.

⁴ Since the number of displaced regular sworn hours exactly equals the number of premium hours claimed, this formula can also be written as follows: Holiday hours = Holiday straight time hours + 0.5 x premium hours.

⁵ Most officers work 10-hour shifts. However, there are some officers that regularly work 12-hour shifts and others that regularly work 8-hour shifts. Calculating annual hours for officers working these alternative shift lengths simply requires substituting either 8 or 12 for 10 in the calculation of holiday straight time, displaced regular sworn earnings hours, and premium hours.

- An officer for whom all holidays fall on a scheduled work day, and who works all 12 holidays:** The officer would claim 10 hours of straight time pay under HDP for each holiday, which would be offset by not claiming 10 hours under “REG Sworn Earnings.” Hence in this instance HDP hours and REG hours completely offset one another. However, since the officer worked all 12 holidays, he/she would also claim 10 hours (compensated at time and a half) for each holiday either under the HDS pay category for cash payment or under a comp time category. Using the equation above, Holiday hours = $120 - 120 + 1.5 \times 120 = \underline{180}$.⁶
- An officer for whom four of the 12 holidays fall on a scheduled work day, and the officer works all four:** The officer would claim straight time for all twelve holidays, to give 120 straight time hours (40 hours under the HDP pay category for the 4 holidays that fall on a scheduled work day and 80 hours under the HOL pay category for the 8 holidays that fall on the officer’s day off). This would be offset by 40 hours of displaced Regular Sworn Earnings for the four days worked. The officer would also claim 40 hours (compensated at time and a half) either under the HDS pay category or as comp time for the four holidays worked. Hence, Holiday hours would be $120 - 40 + 1.5 \times 40 = \underline{140}$.
- An officer for whom six of the 12 holidays fall on a scheduled work day, and the officer works three of those six:** The officer claims 120 hours of holiday straight time (60 hours of HDP for the 6 holidays that fall on a scheduled work day and 60 hours of HOL for the 6 holidays that fall on the officer’s day off). This would be offset by a reduction of 30 hours of Regular Sworn Earnings for the three days actually worked. For the 3 worked holidays, the officer would claim 30 hours (compensated at time and a half) either as HDS or comp time. Hence, Holiday hours would be $120 - 30 + 1.5 \times 30 = \underline{135}$.

I use this formula to calculate annual holiday hour compensation for each officer below the rank of captain employed by the Oakland Police Department during fiscal years 2014-2015, 2015-2016, and 2016-2017.

3. Description of the payroll data and basic descriptive patterns pertaining to observed holiday compensation

I was provided with payroll data for all Oakland Police Department employees for three fiscal years. The payroll records have one record per pay element per date earned. For example, an officer working on September 30, 2016 who reports regular sworn hours, overtime hours, claims premium pay for working a specific shift and premium pay for being bilingual will have four separate records for that date for each payment. Each record has information on the amount earned, hours worked if relevant (no hours are reported for many premium payment categories), and most importantly the date earned.

⁶ For the fiscal years that I analyze below with 12 designated holidays, I do not observe any officers claiming premium hours on all twelve holidays. For officers employed the full year in FY 2015-2016, no officers submit premium hours on all twelve holidays and only 0.19% submit premium hours for 11 holidays. Similarly, I do not observe any officers submitting premium pay claims on all twelve holidays for Fiscal Year 2016-2017. During FY2014-2015 (the one year for which the governing MOU authorizes eleven holidays), I observe only one officer with 11 payments for premium hours on each holiday.

I first restrict the data to payments made to employees with the titles “Police Officer,” “Sergeant of Police,” and “Lieutenant of Police” to filter out non-sworn employees and higher level sworn officers not covered by the OPOA MOU. Next, I restricted the data to the payments occurring on the twelve pre-designated holiday dates (which by necessity, require dropping payments without earnings date information, an issue I return to in the final section of the study). I then restructured the data so that all elements associated with a holiday payment were flattened into one record. Hence, the end data set has one record per holiday per officer with separate fields showing the various information for each possible payment.

To illustrate the organization and structure of the analysis, here I present a detailed description of the data for FY2015-2016 (the first year covered by the most recent MOU). For FY2015-2016 there are 8,421 holiday payments to officers in the payroll records. [Table 1](#) shows the sources of straight time hours claimed for these 8,421 payments. In roughly 57 percent of cases the straight time hours are claimed as HDP holiday hours while approximately 31 percent are claimed as HOL holiday hours. I find 8 percent of straight time claims as holiday comp time and a relatively small number of observations (under 2 percent) claimed by officers on workers comp (the category “ICHWC Holiday Sworn”). There are a small number of payments where the officers claimed hours under Regular Sworn Earnings rather than the HDP category (116 observations or 1.4 percent). In total, 98.8 percent have straight time claims for holiday payment that generally conform to the payment procedures laid out in the previous section. A small number of observations (100 of the 8,421 or 1.19 percent) deviate in ways that suggest that the time card may have been erroneously completed. In these instances I infer straight time hours claimed from the existing information on the actual recorded payment.⁷

I observe payments made to 821 separate individuals during the fiscal year. [Table 2](#) shows the distribution of individual officers in the data by their rank as of the first observed payment in the fiscal year and their rank as of the last observed payment in the year. Hence, there are 653 officers that begin the year as an officer and end the year as an officer, 23 that begin as an officer and end as a sergeant, and so on. In the main analysis, I estimate average holiday hours by rank. Given the small number of moves between rank (only 23 officers are promoted to sergeant and only three sergeants are promoted to lieutenant), I use rank as of the first payment to classify the officers.

⁷ Specifically, there are 51 observations where I observe an HDS payment for premium hours but no straight time claimed. Here I assume that that the straight time hours were omitted and code the person’s straight time as the number of HDS hours reported (though note times 1.5). There are 41 observations where the individual claims “SOH sworn holiday comp time” but no other element. My understanding is that this pay category is used by officers who claim their premium hours as comp time. These entries suggest that in these 41 instances the officer erroneously claimed SOH sworn holidays hours when they should have claimed HCT comp time HOL straight. Hence, I assume that their straight time hours equals the hours reported under SOH sworn. Note, I also tabulated results assuming these 41 observations actually worked on the holiday and forgot to claim straight-time. Allocating these 41 observations in this alternative manner increase average annual holiday hours by only two-tenths of an hour. Thus, the main conclusions of this study are not sensitive to this specification choice. There are 5 observations where hours are reported under SOH holiday comp time and premium hours under HDS holiday sworn. Here I assume that the officer meant to take their straight time payment as comp time and their premium hours payment as cash. Finally there is one observation where the individual claims military sworn leave pay hours. I count these hours as straight time. Note, these atypical observations are small in number and thus these imputations have little effect on the analysis that follows.

The OPOA MOU states that eligibility for holiday hours requires that the officer be in paid status the day before and the day after the holiday. To provide a rough estimate of the number of officers who should have been eligible for all holidays, I flagged officers with a first observed earnings date in the fiscal year preceding the first holiday and a last observed earnings date coming after the holiday. In total, 648 officers meet this standard and 173 do not. Using OPD monthly staffing reports,⁸ I estimate that attrition over the fiscal year was 66 officers and that new hiring out of academies was 129, giving a total for officers who should have been paid for only part of the year of 195.⁹

Of those whose earnings dates span all twelve holidays, there are 119 officers for whom we observe fewer than 12 holiday payments. Table 3 shows the distribution of officers by the number of holiday payments received and by whether their observed earnings time line spans all twelve holidays. Not surprisingly, officers who work a partial year are compensated for fewer than twelve holidays, with the range of compensation days spanning one to eleven. For those working the full year, I observe holiday payments on all twelve holiday dates for 529 officers, eleven payments for 95 officers, ten payments for 22 officers, and nine payments for 2 officers.

There are several possible reasons for observing fewer than twelve payments for some officers who approximately work the full year. First, the officer may have forgot to claim straight hours for a day off, an omission that could be remedied with a retroactive claim at a later date. In fact, I do observe claims for holiday payments on dates that follow actual scheduled holidays. Moreover, for all payment categories, there are records with negative hours and negative payments, likely reflecting corrections for prior mistakes on a submitted time sheet and consequent incorrect payments. The final section of this study addresses this issue. Second, the officer may have claimed holiday hours on the wrong day (indeed we observe a few instances where an HOL claim is made on a day near the holiday). Third, the officer may have been ineligible to claim the holiday due to being on leave without pay. In the next section, I discuss how I incorporate the records for officers that claim fewer than twelve holidays in the annual holiday-hours tabulation. To facilitate that discussion, here I document the relationship between claimed straight hours, claimed premium hours, whether the earnings records for an individual officer span all twelve holidays, and the number of holiday payments observed.

Table 4 shows the average number of annual straight time hours for groups of officers defined by the number of holiday payments made to the officer and by whether the officer works for the full year. The figures pertain to fiscal year 2015-2016. The averages appear to increase by roughly eight to ten hours with each additional claimed holiday. This makes sense as straight time hours will increase

⁸ Attrition is taken from table 9 of the September 23, 2016 monthly staffing report (<http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak061700.pdf>) and Table 9 of the March 30, 2016 Monthly staff report (<http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak058491.pdf>). Estimates of new hires from the number of individuals who complete academies comes from Table 5 of the June 14, 2017 30 Day Monthly Staffing Report. This report can be viewed here <https://oakland.legistar.com/LegislationDetail.aspx?ID=3093460&GUID=F1A377B1-669C-46D0-A7A9-5C0C6A2A49DD&Options=ID%7CText%7C&Search=opd+monthly+staffing>

⁹ Some of these officers may not have been eligible for all twelve holiday payments. For example, if the officer was on administrative leave without pay during the year and a time interval that spans a holiday, they would not have been eligible for pay on that day.

with each holiday payment made, and since officers work eight, ten, or twelve hour shifts (with the majority in ten hour shifts).

Table 5 shows the same tabulation for premium hours earned for FY 2015-2016. For officers working a partial year, claimed premium hours increases with the number of holiday hours worked. For officers working a full year, premium hours are roughly similar for those compensated for 9 and 10 holidays and are discretely higher (by 12 to 14 hours) yet similar for officers compensated for 11 or 12 holidays.

Finally, I document the number of holidays actually worked by officers on a regularly scheduled day during the fiscal year. Note, premium hours (holiday hours for which officer are paid time and a half) accrue only if the officer works on a regularly scheduled holiday. Table 6 shows the percent distribution of officers by the number of holidays actually worked on a scheduled day for FY2015-2016. The first column shows the distribution for all officers while the second column of figures shows this distribution for officers that have observable holiday payment records for all twelve holidays. In both instances, the median officer (the officer that works more holidays than roughly half of all other officers) worked three holidays on a regularly scheduled day. The average officer worked slightly more than three holidays on a regularly scheduled day when we calculate the average for all officers, while the average officer worked 3.5 holidays on a regularly scheduled day if we calculate the average using only officers with twelve observed holiday payments.

4. Strategy for estimating the average number of holiday hours for FY 2015-2016

To calculate average holiday hours, we first sum across all holiday dates the observed straight time hours for each officer over the full year using the straight time hours categories defined and discussed in Table 1. To calculate total observed premium hours, I define premium hours as the following:

- All HDS hours claimed
- For the small number of observations where both HDP and HOL hours are claimed, I assume the HOL hours are actually HDS hours
- For observations where both HDP hours are claimed and SOH holiday comp time hours are claimed, I define the SOH holiday comp time hours as premium hours
- For observations where both HDP hours are claimed and “HCT holiday comp time straight” hours are claimed, I assume that the officer meant to claim SOH comp time and thus define the HCT hours as premium hours.¹⁰

¹⁰ Of the 8,241 holiday payments made in FY 2015-2016, 2,527 (or 30.6 percent) involve a payment for premium hours. Of these 2,527 payments, 2,055 (81.3 percent) claimed HDS hours, 77 (3.0 percent) involved records where HDS and HOL hours are claimed, 387 (15.3 percent) were records where HDP hours were claimed in conjunction with SOH holiday comp time hours, and 8 (0.3 percent) were records where HDP hours were claimed in conjunction with “HCT holiday comp time straight.”

I sum these categories across all holiday payments for each officer to arrive at total holiday premium hours, i.e., hours that are compensated at time and a half.

With the tabulated straight time hours and premium hours for each officer, I calculate two different estimates of the average number of holiday hours as well as key aspects of the distribution of annual holiday compensation hours across officers.

A. Estimation strategy 1: Only use data for officers with twelve holiday payments

To avoid the complications associated with officers that work a partial year or that work a full year but are paid for less than twelve holidays, my first strategy is to estimate average annual holiday hours using only the 529 officers receiving twelve holiday payments. For each of these officers annual holiday hours is given by

Holiday hours = straight time holiday hours – displaced regular sworn hours +1.5 X premium hours earned

B. Estimation strategy 2: Inflate straight time hours and premium hours for officers compensated for less than twelve holidays

My second strategy annualizes straight time and premium hours for officers with fewer than twelve payments. To do so, I first tabulate the number of days that an officer is on the force by subtracting the earliest observed earnings date from the latest observed earning date and then adding one.¹¹ Next I calculate the scaling factor $S = \text{days worked} / 365$. S gives the fraction of the year worked. For each officer, I then define annual straight time hours as (a) actual straight time hours if the officer is paid for all twelve holidays, or (b) actual straight time hours divided by S if the officer is compensated for less than twelve holidays. Note that dividing by S inflates the number up to the annual level. For example, an officer that works a quarter of the year would have $S=0.25$. Dividing by S effectively multiplies observed straight time hours by four. I similarly adjust premium hours for officers paid for fewer than twelve holidays. For those officers for whom straight time and premium hours are inflated, I cap both hours categories at 144, since this is the maximum number of straight time and premium hours that an officer on a 12-hour shift can earn.

With these adjusted hours totals I then calculate annual holiday hours for all 821 officers in the data using the formula

Holiday hours = straight time holiday hours – displaced regular sworn hours +1.5 X premium hours earned

5. Results for FY2015-2016

Table 7 presents the two sets of estimates of the average number of additional holiday hours compensation earned by officers over the course of FY 2015-2016. Again, annual holiday hours include

¹¹ I add one to ensure that the first earnings date is included in total days worked. For example, someone with the first and last date on the last day of the fiscal year would have a value of zero without adding one.

all straight time holiday hours less displaced regular-sworn-earnings hours, plus one and a half times premium hours earned. Panel A presents estimates when we focus only on officers that received twelve holiday payments. Panel B presents results where we use all officers and annualize holiday hours for officers that are paid for fewer than twelve holidays. Within each panel, the first row presents results for all ranks combined while the second through fourth rows present results by rank. In each row, the table reports the average, the lower and upper bound of the margin of error of the estimate¹², and finally the number of officers used to calculate the average.

Beginning with the results in Panel A, average holiday hours for all officers is 138.13. For an officer that usually works a 10 hour shift, 138 hours of holiday pay would require working roughly 36 hours on designated holidays that fall on a regularly scheduled work day (using our formula, the officer would get 120 hours of holiday straight time, minus 36 hours of displaced regular sworn earnings hours plus 1.5x36 for premium hours earned, that is, $120 - 36 + 1.5 \times 36 = 138$).¹³ Hence, this average for holiday hours across all officers is roughly equivalent to the average officer working approximately four holidays on regularly scheduled workdays. Note, this lines up with our finding above that the average officer with twelve holiday payments worked roughly 3.5 holidays per year in FY 2015-2016 that fall on a regularly scheduled day. The average is higher for police officers (140.13) than for sergeants (132.50) and lieutenants (120.67). The lower bound and upper bounds estimates are fairly close to the average for all officers and for those with the title “police officer.” The upper and lower bounds are further away from the averages for sergeants and lieutenants, reflecting the smaller sample size used to calculate the average. For all tabulations, the upper bound estimate is less than 144 hours. Panel B present estimates where I annualize holiday hours for officers with observed holiday pay days of eleven or fewer. These tabulations use all 821 officers to calculate the average, and thus are the most precise (i.e., the difference between the lower and upper bound estimates are the smallest in the table). The average in Panel B for all ranks combined is larger by roughly half an hour. The remaining findings by rank are qualitatively similar.

¹² To be specific, the lower and upper bound values are the end points of the 95 percent confidence interval of my estimate of the average. The tighter the interval the more precise the estimate of the average. A relatively wide interval may result from either high variance in the hours distribution or small sample size. The confidence interval shrinks (i.e., the estimate is more precise) the greater the number of observations used to calculate the average. The 95 percent confidence interval is usually interpreted as the range of estimates within which we believe with 95 percent certainty the true value of the average lies. To calculate a confidence interval of a sample average, one first must calculate the standard error of the sample average (equal to the standard deviation of the sampling distribution of the average). Doing so requires first calculating an estimate of the variable’s standard deviation (equal to the square root of the sum of squared deviations of each observation from the sample mean divided by the sample size minus one, or $S = \sqrt{\frac{\sum_{i=1}^N (x_i - \text{sample average})^2}{N-1}}$) and then dividing the estimated standard deviation by the square root of the sample size. Next, one finds the critical value from the t distribution with N-1 degrees of freedom (where N is the sample size) below which 97.5 percent of the distribution lies. For samples with 100 or more observations this value roughly equals 1.96. For smaller samples, this critical value will be somewhat larger. The final step involves multiplying the sample standard error of the average by the critical value from the relevant t-distribution and adding and subtracting this product from the sample average. Subtracting from the average gives the lower bound of the confidence interval while adding the product gives the upper bound.

¹³ As noted in footnote 4, the formula can also be stated as Holiday Hours = Holiday straight time hours + 0.5 x premium hours. The result is the same: $120 + 0.5 \times 36 = 138$.

In summary, the estimated averages are consistent across methods. At most, average hours for all officers is approximately 140 hours (equivalent to roughly four holidays worked on regularly scheduled days), with the higher value (at most 141) for officers with the title “Police Officer” and lower values for sergeants (at most 133) and lieutenants (at most approximately 124).

Table 8 presents estimates of the percent of officers (all officers combined and by rank) that received 144 hours or less of additional holiday pay compensation over the fiscal year FY2015-2016. The two rows correspond to the two different estimation strategies laid out in the previous section. Roughly 60 percent of all officers received 144 or fewer holiday compensation hours. This value is lower for police officers (with estimates ranging from 56.1 percent to 57.4 percent), higher for sergeants (estimates ranging from 71.1 percent to 71.2 percent), and the highest for lieutenants (estimates ranging from 74.1 percent to 84.2 percent).

Table 9 presents the final set of results for FY2015-2016. Here I only present results for the estimation method that uses all observations and annualizes holiday hours for officers who are paid for fewer than twelve holidays. Results for the other estimation method are quite close. The table presents the decile value of the holiday hours distribution. The deciles measure the number of holiday hours for which ten percent of officers receive that value or less, for which twenty percent of officers receive that value or less, for which thirty percent of officers receive the value or less, and so on. The median is the value at the fifth decile for which fifty percent of officers receive holiday compensation at that value or less. The first column presents estimates for all officers combined while the second through fourth columns presents separate estimates by rank.

6. Estimates for FY2014-2015 and FY2016-2017

Table 10 presents average annual holiday hours for the 2014-2015 fiscal year. Similar to the analysis of FY2015-2016, the table presents two sets of estimates using the alternative imputation strategies for officers that do not work a full year. One key difference for FY2014-2015 concerns the fact that the MOU governing holiday pay for that year specifies only 11 designated holidays for that year (Admissions Day in September is explicitly omitted).

In Table 10 we see average holiday hours for all officers that range from 124 to 126. With eleven designated holidays, an officer who works a 10 hours shift would have to work approximately 30 hours on designated holidays that fall on a regularly scheduled workday (or three days) to earn this level of holiday compensation.¹⁴ Again, we see lower average hours for officers of higher rank.

Since FY2016-2017 occurs under the current MOU, I present a more extensive set of results comparable to those presented for FY2015-2016. Table 11 show the number of officers in FY 2016-2017 by the number of holiday payments received and by whether we observe pay records that span all twelve holiday dates. Similar to FY 2015-2016, a fraction of officers claims fewer than twelve holidays (roughly 36 percent of the 809 officer I observe being paid for a holiday). In addition, we again see a large group of officers who are employed for the full year with only eleven observed holiday payments.

¹⁴ Recall, the formula for holiday hours is given by $\text{Holiday hours} = \text{straight time holiday hours} - \text{displaced regular sworn hours} + 1.5 \times \text{premium hours earned}$. An officer who works ten hours shifts, claims payment for all holidays, and works three actual holidays in fiscal year 2014-2015 would earn $110 - 30 + 1.5 \times 30 = 125$ hours.

There are also a few full-year officers with ten or fewer payments. The number of officers paid on eleven or more holidays is 663 for fiscal year 2016-2017, compared with 634 for FY 2015-2016.

Table 12 presents average premium hours by observed holiday payments and by whether I observe pay dates for the officer that span all twelve holidays. Similar to our analysis of the data for FY2015-2016, full-year officers with eleven observed holiday payments have similar average premium hours as full-year officers with twelve observed holiday payments. Recall, that I make use of this fact in the second strategy to impute missing holiday hours for these officers.

Table 13 presents the percent distribution of officers by the number of holidays that they actually work on regularly scheduled days. The first column of results presents this distribution for all officers in FY 2016-2017 while the second column of results presents this distribution for officers who received twelve holiday payments. Officers are working fewer holidays in FY 2016-2017 relative to FY2015-2016. The median number of days worked drops from three in FY2015-2016 to one in FY 2016-2017 when I use all observed officers, and from three in FY2015-2016 to two in FY 2016-2017 when I focus on officers that receive payment for twelve holidays. As we will soon see, this decline in days worked translates directly into fewer average holiday compensation hours.

Table 14 presents estimates of average annual holiday hours for all officers and by rank for FY2016-2017. Again, I present separate estimates using only officers with twelve observed holiday payments (panel A), and estimates using all officers after annualizing holiday hours for officers with fewer than twelve observed payments (panel B). Here we see average holiday hours of roughly 130 hours for all officers, and again, somewhat lower averages for officers of higher rank. In this fiscal year, there were twelve pre-designated holidays. Hence, to earn 130 hours of holiday pay an officer who works a ten hours shift would have to work two holidays.¹⁵ Note, two is the median number of holidays worked by officers on regularly scheduled workdays that claim all twelve holidays (the mean number of days for this group equals 1.93 in FY 2016-2017).

Table 15 presents the final set of results for FY2016-2017. The table presents the decile values of the holiday-hours distribution using the distribution of hours for all officers after annualizing hours for officers that are paid for fewer than twelve holidays. Recall, the deciles measure the number of holiday hours for which ten percent of officers receive that value or less, for which twenty percent of officers receive that value or less, for which thirty percent of officers receive the value or less, and so on. For all officers, the median number of holiday hours is 130. For FY 2016-2017, 80 percent of officers received 144 or fewer holiday hours of additional compensation for the year.

7. Tabulating Holiday Hours Using Holiday Pay Elements Regardless of the Earnings Date

The main analysis presented above analyzed pay elements with earnings dates that occur on one of the twelve pre-designated holidays. As noted above, we observe a few pay transactions that do not fit within the prescribed manner in which officers are instructed to fill out time sheets on holidays (for example, we see officers claiming pay for regular sworn hours as well as some dates where the

¹⁵ Since Holiday hours = straight time holiday hours – displaced regular sworn hours +1.5 X premium hours earned, an officer who works ten hours shifts, claims payment for all holidays, and works two actual holidays in fiscal year 2016-2017 would earn $120 - 20 + 1.5 \times 20 = 130$ hours.

same officer claims HDP and HOL hours). For the small number of cases that appear atypical, I made assumptions regarding intent (as outlined above) that err on the side of overstating premium hours.

In the data that I was provided, there are some holiday pay transactions that either (1) have earnings dates that are not a pre-designated holiday date, or (2) do not have a date-earned attached to the specific transaction. Many of the transactions without dates have negative values for hours and pay amounts, likely reflecting subsequent corrections for incorrectly filled out time sheets.¹⁶ For example, a case where an officer who works a holiday and who correctly claims 10 hours of HDP hours but incorrectly claims 10 hours of HOL hours, a subsequent correction would require a pay transaction for 10 hours of HDS (at time and a half) and a negative pay transaction for 10 hours of HOL. In this section I present a series of alternative estimates that takes into account these additional pay transactions that either are missing an earnings date or are dated on days that are not holidays.

To do so, I ignore the date on which the holiday hours are earned and simply sum the payments and hours within each holiday payment category over the whole year for each officer. Note, payment transactions with negative hours that are likely corrections for past incorrect payments subtract from total hours for each category while payments with positive hours and dollar amounts will add to holiday hours totals. Thus for each officer I tabulate totals for HDP hours, HOL hours, straight time comp time hours, HDS premium hours, and comp time premium hours regardless of the specific date earned. With these totals I calculate total holiday hours for each officer as the sum of straight time holiday hours earned (the sum of HDP, HOL and straight comp time), minus premium hours worked (the sum of HDS and premium comp time hours), plus 1.5 times premium hours. Again, I use the two alternative strategies to incorporate imputation of the hour totals for officers that do not work a full year in the manner that I outlined above.¹⁷

Table 16 presents these alternative estimates for FY 2015-2016. The overall average for officers ranges from 138 to 139 hours per year (again consistent with officers working roughly four holidays on average during this particular fiscal year). Again we see higher average hours for police officers and lower average hours for officers of higher ranks. The figures in Table 16 are consistent and quite close to the estimates in Table 7 that are based on pay transactions associated with the specific twelve holiday dates. Hence, the main conclusion does not depend on which method is used to tabulate annual holiday hours.

¹⁶ Note, I also observe many pay elements for regular sworn earnings that have negative hours and amounts. I believe that this must reflect corrections associated with reporting too many hours in a given category or not recording hours in an appropriate category.

¹⁷ Note, since some of these transactions do not have specific earnings dates, I cannot use the earnings date to tabulate the fraction of the year worked. To address this issue, I calculate time on the force for the fiscal year using the pay date of the first observed pay period minus 14 (officers are paid every two weeks) as the earliest earnings date and the pay date of the last observed pay period as the latest work date. Counting the straight time holiday pay claims (HDP, HOL, or straight comp time) with positive hours minus the claims with negative hours provides an estimate of the number of holidays worked. For a few officers we observe more than 12 holiday claims using this method. I assume that these officers worked the full year. I also top code straight time hours at 144 for the fiscal year, since this is the most an officer on a twelve hours shift can earn over the course of the year. There are a few officers where the sum of the straight time hours categories exceeds 144.

Figure 1: Maximum Estimate of Average Holiday Hours for Sworn Officers below the Rank of Captain by Fiscal Year

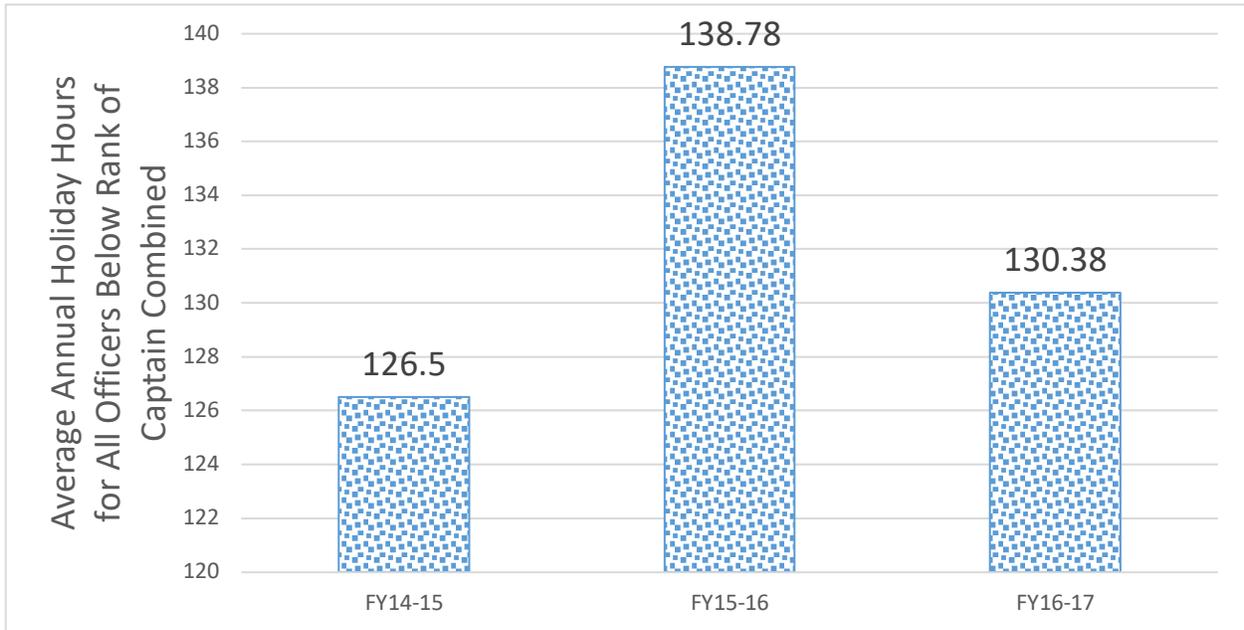


Figure 2: Maximum Estimate of Average Holiday Hours for Sworn Officers below the Rank of Captain by Rank and Fiscal Year

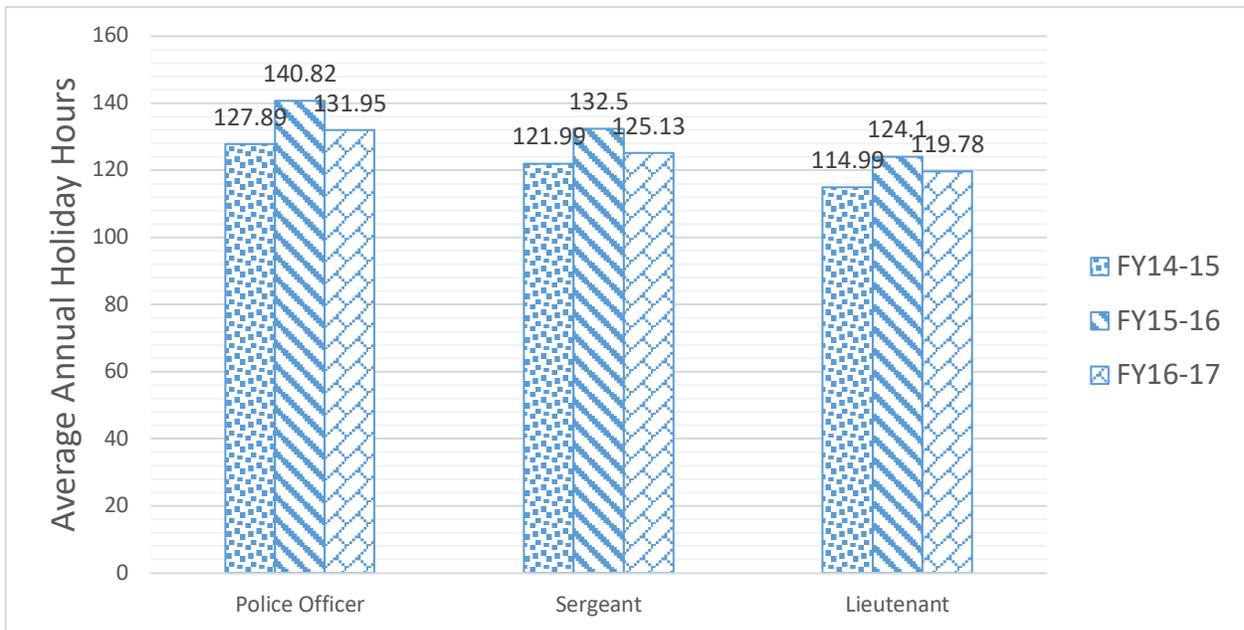


Table 1**Source of Straight Time Holiday Hours for Observed Holiday Payment Dates in FY2015/2016: All Officers with Titles of Police Officer, Sergeant of Police, or Lieutenant of Police**

Source of claimed straight time hours	Number of observations	Percent of observations	Cumulative percent of observations
HDP holiday hours	4,795	56.94%	56.94%
HOL holiday hours	2,585	30.70%	87.64%
HCT comp time HOL straight	672	7.89%	95.62%
ICHWC Holiday Sworn	153	1.82%	97.43%
Claimed Regular Sworn Earnings	116	1.38%	98.81%
Claimed HDS holiday sworn and no other elements	51	0.61%	99.42%
Claimed SOH holiday comp time sworn but no other elements	41	0.49%	99.90%
Claims SOH holiday comp time sworn and HDS holiday sworn	5	0.06%	99.96%
Claims comp time holiday earned hours only	2	0.02%	99.99%
Claimed MIL sworn military leave	1	0.01%	100.00%
Total	8,421	100%	-

Table 2
Count of Officers Observed During the Pay Period by Job Title at the Beginning of the Pay Period
and Job Title at the End of the Pay Period for FY2015/2016

Title at the beginning of the pay period	Title at the end of the pay period		
	Police Officer	Sergeant	Lieutenant
Police Officer	653	23	0
Sergeant	0	115	3
Lieutenant	0	0	27

Entries in the table are the number of officers in each category.

Table 3
The Number of Officers by the Number of Observed Holiday Payment Dates for Officers with Pay Dates that Span all Twelve Holidays and Officers for Whom Either the First Observed Pay Date is After the First Holiday or the Last Observed Pay Date is Before the Last Holiday for FY2015/2016

Number of holidays claimed	Either first day of earnings after first holiday or last day of earnings before last holiday	First day of earnings before first holiday and last day of earnings after last holiday	Total
1	57	0	57
2	3	0	3
3	22	0	22
4	29	0	29
5	1	0	1
6	8	0	8
7	1	0	1
8	7	0	7
9	31	2	33
10	4	22	26
11	10	95	105
12	0	529	529

Entries in the table are the number of officers in each category.

Table 4

Average Observed Annual Straight Time Hours Paid Over Fiscal Year 2015/2016 by Number of Observed Holiday Payments and by Whether Time Span between the Earliest and Latest Payment Period Includes all Twelve Holidays

Number of holidays claimed	Either first day of earnings after first holiday or last day of earnings before last holiday	First day of earnings before first holiday and last day of earnings after last holiday
1	10.35	-
2	19.33	-
3	29.60	-
4	39.63	-
5	60.00	-
6	57.90	-
7	64.80	-
8	83.43	-
9	94.65	90.00
10	98.50	102.45
11	102.20	110.11
12	-	119.76

Entries in the table are average annual straight time hours for officers in the given category.

Table 5
Average Observed Annual Premium Hours Paid Over Fiscal Year 2015/2016 by Number of Observed Holiday Payments and by Whether Time Span between the Earliest and Latest Payment Period Includes all Twelve Holidays

Number of holidays claimed	Either first day of earnings after first holiday or last day of earnings before last holiday	First day of earnings before first holiday and last day of earnings after last holiday
1	3.40	-
2	3.33	-
3	9.09	-
4	10.21	-
5	60.00	-
6	17.75	-
7	12.00	-
8	51.43	-
9	42.19	20.00
10	23.50	22.64
11	24.00	34.57
12	-	36.74

Entries in the table are average annual premium holiday hours for officers in the given category.

Table 6
The Percent Distribution of Officers by the Number of Holidays on Regularly Scheduled Days
Actually Worked During Fiscal Year 2015-2016

Number of holidays falling on regularly scheduled workdays and actually worked	Percent distribution of all officers by actual holidays worked on regularly scheduled workdays	Percent distribution of officers with twelve holiday compensation payments by actual holidays worked on regularly scheduled workdays
0	17.90%	12.29%
1	16.81%	12.85%
2	14.49%	15.12%
3	11.21%	12.67%
4	10.23%	11.91%
5	9.87%	11.53%
6	7.67%	8.70%
7	5.48%	6.05%
8	4.02%	5.48%
9	1.71%	2.65%
10	0.49%	0.57%
11	0.12%	0.19%
12	0.00%	0.00%

Median value highlight in grey. For both distribution, the median officer works three holidays.

Table 7**Alternative Estimates of Total Holiday Compensation Hours (Straight Time Plus Compensation for Premium Hours at Time and a Half) for FY2015/2016 Using Two Alternative Methods: Tabulations for All Officers and Officers by Starting Rank****Panel A: Officers with Observed Hours on All Twelve Holidays**

	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	138.13	136.20	140.06	529
Police Officer	140.13	138.03	142.22	420
Sergeant	132.50	127.70	137.35	90
Lieutenant	120.67	108.21	133.13	19

Panel B: All Officers, Imputing Straight time and Premium Hours for Those Officers with Fewer than Twelve Observed Holiday Payments

	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	138.78	137.09	140.47	821
Police Officer	140.82	138.99	142.64	676
Sergeant	130.47	126.17	134.77	118
Lieutenant	124.10	112.50	135.71	27

- a. The lower bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.
- b. The upper bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.

Table 8
Percent of Officers that Accrue 144 Hours or Fewer of Holiday Hours (Inclusive of Time and a Half Compensation for Premium Hours) During Fiscal Year 2015/2016 Using Two Alternative Estimation Methods: All Officers and Officers by Starting Rank

Estimation Method	All Officers	Police Officer	Sergeant	Lieutenant
Officers with Observed Hours on All Twelve Holidays	59.7%	56.1%	71.1%	84.2%
All Officers, Imputing Straight time and Premium Hours for Those Officers with Fewer than Twelve Observed Holiday Payments	59.9%	57.4%	71.2%	74.1%

Table 9

Key Percentile Values for the Distribution of Annual Holiday Hours (Inclusive of Time and a Half Compensation for Premium Hours) for FY2015/2016 for All Officers and by Rank based on the Hours Distribution Imputing Hours for Officers that Work a Partial Year

Percentile	All Officers	Police Officer	Sergeant	Lieutenant
10 th	104	111	101	98
20 th	120	123	112	100
30 th	125	130	120	100
40 th	130	135	125	104
Median	137	140	130	116
60 th	144	145	135	125
70 th	150	150	144	133
80 th	159	160	150	156
90 th	167	168	165	168

The percentile value measures the proportion of officers with hours equal to or less than the given value. For example, the results in the first column reveal that 10 percent of officers receive 104 or fewer holiday hours, 20 percent received 120 or fewer, and so on.

Table 10
Alternative Estimates of Total Holiday Compensation Hours (Straight Time Plus Compensation for Premium Hours at Time and a Half) Using Two Alternative Methods for FY 2014/2015: Tabulations for All Officers and Officers by Starting Rank

Panel A: Officers with Observed Hours on All Eleven Holidays				
	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	124.53	122.52	126.54	432
Police Officer	125.81	123.57	128.06	334
Sergeant	121.68	116.96	126.40	83
Lieutenant	111.70	98.03	125.36	15
Panel B: All Officers, Imputing Straight time and Premium Hours for Those Officers with Fewer than Eleven Observed Holiday Payments				
	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	126.50	124.87	128.12	764
Police Officer	127.89	126.14	129.65	614
Sergeant	121.99	117.57	126.43	124
Lieutenant	114.99	104.79	125.20	26

- a. The lower bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.
- b. The upper bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.

Table 11
The Number of Officers by the Number of Observed Holiday Payment Dates for Officers with Pay Dates that Span all Twelve Holidays and Officers for Whom Either the First Observed Pay Date is After the First Holiday or the Last Observed Pay Date is Before the Last Holiday for FY2016/2017

Number of holidays claimed	Either first day of earnings after first holiday or last day of earnings before last holiday	First day of earnings before first holiday and last day of earnings after last holiday	Total
1	23	1	24
2	6	0	6
3	40	0	40
4	4	0	4
5	2	1	3
6	8	0	8
7	5	1	6
8	3	2	5
9	6	7	13
10	2	35	37
11	14	129	143
12	0	520	520

Entries in the table are the number of officers in each category.

Table 12
Average Observed Annual Premium Hours Paid Over Fiscal Year 2016/2017 by Number of Observed Holiday Payments and by Whether Time Span between the Earliest and Latest Payment Period
Includes all Twelve Holidays

Number of holidays claimed	Either first day of earnings after first holiday or last day of earnings before last holiday	First day of earnings before first holiday and last day of earnings after last holiday
1	0.00	0.00
2	1.66	-
3	4.35	-
4	3.00	-
5	0.00	12.00
6	7.75	-
7	16.4	36.00
8	0.00	28.75
9	7.33	17.42
10	21.00	12.97
11	8.14	18.95
12	-	19.92

Entries in the table are average annual premium holiday hours for officers in the given category.

Table 13
The Percent Distribution of Officers by the Number of Holidays Actually Worked on Regularly Scheduled Workdays During Fiscal Year 2016-2017

Number of holidays falling on regularly scheduled workdays and actually worked	Percent distribution of all officers by actual holidays worked on regularly scheduled workdays	Percent distribution of officers with twelve holiday compensation payments by actual holidays worked on regularly scheduled workdays
0	32.39%	25.38%
1	17.80%	16.92%
2	20.89%	23.85%
3	12.98%	14.62%
4	11.62%	13.08%
5	3.71%	5.19%
6	0.49%	0.77%
7	0.12%	0.19%
8	0.00%	0.00%
9	0.00%	0.00%
10	0.00%	0.00%
11	0.00%	0.00%
12	0.00%	0.00%

Median value highlight in grey.

Table 14
Alternative Estimates of Total Holiday Compensation Hours (Straight Time Plus Compensation for Premium Hours at Time and a Half) Using Two Alternative Methods for FY2016/2017: Tabulations for All Officers and Officers by Starting Rank

Panel A: Officers with Observed Hours on All Twelve Holidays				
	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	130.38	128.95	131.81	520
Police Officer	131.95	130.44	133.46	420
Sergeant	124.44	120.69	128.19	86
Lieutenant	119.78	106.58	132.99	14
Panel B: All Officers, Imputing Straight time and Premium Hours for Those Officers with Fewer than Twelve Observed Holiday Payments				
	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	129.76	128.59	130.94	809
Police Officer	131.04	129.82	132.27	659
Sergeant	125.13	121.74	128.53	124
Lieutenant	119.61	110.64	128.56	26

- a. The lower bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.
- b. The upper bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.

Table 15

Key Percentile Values for the Distribution of Annual Holiday Hours (Inclusive of Time and a Half Compensation for Premium Hours) for FY2016/2017 for All Officers and by Rank based on the Hours Distribution Imputing Hours for Officers that Work a Partial Year

Percentile	All Officers	Police Officer	Sergeant	Lieutenant
10 th	104	112	96	96
20 th	120	120	114	100
30 th	124	125	120	104
40 th	125	130	120	105
Median	130	130	125	112
60 th	135	135	130	120
70 th	140	140	131	125
80 th	144	145	140	144
90 th	153	154	145	156

The percentile value measures the proportion of officers with hours equal to or less than the given value. For example, the results in the first column reveal that 10 percent of officers receive 104 or fewer holiday hours, 20 percent received 120 or fewer, and so on.

Table 16

Alternative Estimates of Holiday Hours Summing Hours Within Pay Categories Regardless of Date Claimed (Straight Time Plus Compensation for Premium Hours at Time and a Half) Using Two Alternative Methods to Impute for Officer Working Partial Years for FY2015/2016: Tabulations for All Officers and Officers by Starting Rank

Panel A: Officers with Observed Hours on All Twelve Holidays				
	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	139.18	137.19	141.17	523
Police Officer	140.84	138.69	142.99	419
Sergeant	133.70	128.48	138.92	86
Lieutenant	126.89	112.37	141.41	18
Panel B: All Officers, Imputing Straight time and Premium Hours for Those Officers with Fewer than Twelve Observed Holiday Payments				
	Average	Lower Bound ^a	Upper Bound ^b	Number of Officers
All Officers	138.27	136.67	139.87	824
Police Officer	140.16	138.44	141.87	679
Sergeant	130.70	126.44	134.96	118
Lieutenant	123.86	112.57	135.13	27

- a. The lower bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.
- b. The upper bound value is the lower bound of the 95 percent confidence interval for the estimate of the average number of holiday hours per officer.

EXHIBIT K

**LETTER DATED JUNE 20, 2018 FROM ROPOA SECRETARY
MR. ROBERT W. NICHELINI ON BEHALF OF THE
RETIRED OAKLAND POLICE OFFICERS ASSOCIATION**

RETIRED OAKLAND POLICE OFFICERS ASSOCIATION

8 Yorkshire Drive
Oakland, CA 94618-2022
707 333-6071

June 20, 2018

Members of the Oakland Police and Fire Retirement Board
c/o David Low
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Dear Members of the Oakland Police and Fire Retirement Board:

Holiday Pay/Holiday Premium Pay for Members of the
Oakland Police and Fire Retirement System

Set forth below is the Retired Oakland Police Officers Association's (ROPOA) response to Item D, which was scheduled for the May 30, 2018 meeting of the Police and Fire Retirement System (PFRS) Board, before that meeting was moved to the June 27, 2018 meeting -- A Supplemental Report Comparing the Current Method of Calculating PFRS Police Retiree Holiday Pay Against the Holiday Pay Received by Active Officers During the Last Three Fiscal Years.¹ This response is meant to supplement the November 15, 2017 Response from Retired Oakland Police Officers Association & Petitioners to October 16, 2017 PFRS Agenda Report on Holiday Pay previously submitted to the PFRS Board (see attached).

BACKGROUND

For more than 45 years, the holiday premium pay earned by Oakland police officers for working on holidays has been held to be "compensation attached to the rank" under the City's Charter and must therefore be included in calculating retirees' pensions. (*City of Oakland v. Oakland Police & Fire Retirement Sys.* (2014) 224 Cal.App.4th 210, 222, 231-33, fn.1 [*OPFRS*]; *Buck v. City of Oakland* (Cal.Ct.App. 1971, No. 1-Civ-28402) [nonpub. Opn.]; *Oakland Police & Fire Retirement Association v. City of Oakland* (Alameda Sup. Ct. 1996, No. 763859-O) [nonpub. opn.])

All officers in all ranks, Police Officer through Deputy Chief, receive holiday pay. The July 1, 2006-June 30, 2015 MOU provided that active officers in patrol could

¹ After the submission of this response, if the agenda report is subsequently modified or the agenda changed, ROPOA will supplement the record as necessary.

no longer work an 8-hour day: they were required to work at least 10-hour days. Accordingly, their holiday pay (for working or not working on a holiday) was calculated based on a 10-hour day or 12-hour day. Similarly, the 2015-19 MOU also requires officers in patrol to work at least a 10-hour day; again, holiday pay for active officers in patrol and others working 10- or 12-hour shifts is also calculated based on a 10- or 12-hour day. At issue in the current litigation brought by ROPA is the PFRS Board's failure to include holiday premium pay in retirement allowances paid to all similarly-situated retirees based on a 10-hour day.

In response, on October 25, 2017, the Plan Administrator submitted an agenda report which was subsequently supplemented by the item scheduled for the May and then for the June 27, 2018, meeting. Unfortunately, this report is fundamentally flawed.

- **Retired PFRS police members are entitled to holiday pay/holiday premium pay as if the retiree worked every available holiday.**

It was never argued in *Buck* (or any subsequent litigation) that active officers worked every available holiday. The number of holidays actually worked by active officers is not dispositive to retirement allowance calculations.

By its nature, police work does not pause for holidays— “[b]eing subject to working on holidays as regular work days is normal for police officers.” (*City of Fremont v. Bd. of Admin. of the PERS* (1989) 214 Cal.App.4th 1026, 1031.) When officers are scheduled to work on a holiday, they do not have discretion on whether to work or not. If they want the day off, they are required to request and receive permission from their superior officer—and such permission is rarely granted. Retired police officers who are now collecting pensions regularly worked holidays while they were active and made contributions to PFRS based on the premium pay they received for this hardship. Current, active police officers regularly work holidays and earn premium pay for doing so. They also receive holiday pay when they do not work on holidays. (See 2006-15 & 2015-19 MOUs, art. VI.G.3.)

The Board is required to liberally construe ambiguous language in favor of retirees. Given the consistent, forty-five year practice of paying holiday premium pay as if retirees *worked* the holiday, the Board is obligated to interpret the phrase in a manner favorable to the pensioners.

It is particularly egregious that the Administrator's retirement reduction proposal comes at a time are already litigating these issues and exploring settlement. ROPOA will have to take all immediate legal action necessary to protect the interests of its members if the Board adopts the Administrator's proposal.

AGENDA REPORT

The Plan Administrator's Agenda Report:

- Ignores the basic premise that the majority of active officers work and are compensated for 10 or 12-hour holidays with a combination of holiday pay and holiday premium pay resulting in significant retirement allowance underpayments. Even though the Board determined 12-hour holidays are “compensation attached to the rank” for one retired member, other similarly situated retirees have not been paid.
- Fails to recognize the number of holidays actually worked by active officers is not dispositive to the calculation of retirement allowances. No one as far back as *Buck* has alleged all active officers worked all holidays. Rather, it is undisputed all active officers are required to work holidays unless relieved from duty and receive additional holiday pay whenever a holiday falls on their regular day off.
- Fails to analyze holiday pay separately and attempts to attack the number of hours that retired members are currently credited with by comparing averages of the combined base pay and holiday pay of active officers. This deeply flawed methodological approach ignores the fact that retired members are entitled to be compensated for 2080 hours of base pay and compounds this issue by excluding a subset of active officers with higher relative base pay. Similarly, it is unclear if active officers that did not work the full year or were on unpaid leave were wrongly included.
- Does not attempt to answer the simple question of how many holidays active officers work (even if this were to be dispositive). If, based on a 10-hour shift, an active officer worked just *half* of the holidays, they would receive **158 hours** of holiday pay, rather than the 144 hours received by retired members.
- Fails to address the inconsistencies in the self-reported payroll data, which the City has admitted is the source of great confusion among active officers with respect to how holiday pay is supposed to be reported.
- Fails to address inherent flaws in calculating retirement allowances based on averages: such averages would be a moving target depending on available staffing, the day of the week the holiday falls on, anticipated or unanticipated workloads, emergency situations, and other factors. The averages would need to be re-computed on a regular basis – maybe even monthly. This is why, construing the Charter liberally in favor of retirees, Courts have held for over 45 years that compensation should be based on an assumption that retirees worked all holidays.

- Attempts to “cherry-pick” Police Management Association holiday benefits that favor the Plan Administrator’s recommendation while ignoring new benefits (e.g., additional compensation for POST Management Certificates, Management Leave, and Vacation Buy Back) that favor the retired member.
- Fails to acknowledge “floating holiday” hours are “posted” to each active member’s compensatory time bank and can be converted to cash payments. It is simply untrue that “floating holiday” hours are lost if not used.
- Does not provide a plan to fairly compensate members who retired with “split ranks” represented by both to OPOA and the OPMA.
- Does not consider the result of “deferred payment” or holidays worked in exchange for compensatory time (that may be “cashed out” at some later date). This fact alone renders the City’s data flawed and incomplete.

The Plan Administrator’s agenda report claims Oakland Police Department shift schedule modifications resulted in changed circumstances requiring a reevaluation of holiday pay/holiday premium pay calculations. However, the Plan Administrator likely does not know and/or cannot determine the number of holidays worked by active officers when holiday pay/holiday premium pay issues were previously litigated. Accordingly, the Plan Administrator has articulated no basis (or starting point) from which to determine the number of holidays worked by active members has “changed.”

CAPTAINS AND DEPUTY CHIEFS

It is important to recognize no retired member holding the rank of Captain or Deputy Chief was ever a member of or represented by the OPMA and his or her compensation and benefits were always attached to the OPOA MOU.

In approximately 1990, a similar situation had the potential to adversely affect pensions for retired Chiefs of Police. In order to avoid such an outcome, a determination was made that pension allowances for retired Chiefs would henceforth be attached to the OPOA MOU (and likewise, retired Fire Chiefs are attached to the Local 55 MOU). There is no logical reason retired Captains and Deputy Chief should not be treated in the same manner.

Reviving Prior Arguments Rejected by the Court of Appeal

The Plan Administrator is attempting to revive the City's 2010 assertion that the 2006-2010 MOU changed how holidays are paid. The Board thoroughly reviewed that claim with a series of hearings running from October 2010 through about January 2011. After these hearings, and following the receipt of a 13-page legal

opinion from the Board's independent counsel, the Board concluded that holidays were being paid correctly and in accordance with *Buck*. Then the City sued in 2011 on the same issue, using the same argument. The appellate court rejected that claim with very clear language in *OPFRS*. Now, the Plan Administrator is making related arguments without offering any logical explanation as to why the Board is not precluded from adopting the report's recommendations by that prior litigation. Previous court decisions over the past 47 years clearly preclude the Board from pursuing this issue again. By contrast, the issue of active officers working ten-hour days was not part of the Board's hearings or Court decision in *OPFRS*. Retirees are entitled to relief from this continuing failure to pay holidays in accordance with the length of days worked by retirees.

CONCLUSION

The Board should reject the Plan Administrator's recommendations. The Plan Administrator's proposal is a disguised attempt to reduce retirees' base pay from 2080 hours to less than 2080 hours.

ROPOA is, however, remains willing to discuss settlement of the present litigation and is willing to discuss representation unit and/or revision of retirement benefits for Captains and Deputy Chiefs based on the "compensation attached to the rank" elements included in the OPMA MOU.

/s/ Robert W. Nichelini

Robert W. Nichelini
Secretary

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November 15, 2017

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Via E-Mail (DLow@oaklandnet.com) and U.S. Mail

Oakland Police and Fire Retirement System Board
c/o David Low
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Re: Response from Retired Oakland Police Officers Association & Petitioners to October 16, 2017 PFRS Agenda Report on Holiday Pay

Dear Oakland Police and Fire Retirement System Board:

Retired Oakland Police Officers Association (“ROPOA”), Ronald B. Gunar, Ned S. Ubben, Raymond T. Miller, Robert L. Aven, and Nita G. Balousek (“Petitioners”), hereby submit this response to the PFRS Staff Report from October 16, 2017.

Summary of Material Facts

1. Compensation Attached to the Rank

As you know, PFRS is a fluctuating pension system: under the Charter, retirement benefits are calculated as a fraction of the amount of compensation paid to *active* police officers of the same rank—known as compensation “attached to the rank.” The purpose of a fluctuating system is to maintain a standard of living and equality of position between the retired and active officers.

The Charter sets PFRS pensions at a fixed fraction of “compensation attached to the average rank held.” (Charter § 2608.) Compensation, as defined in the Charter, is the “monthly remuneration payable in cash, by the City, . . . but excluding remuneration paid for overtime and for special details or assignments” (Charter § 2607.) Whether compensation is “attached to the average rank” is based on the compensation paid to active sworn peace officers (“actives”), and is determined by the City’s actual pay practices for actives, including but not limited to as provided for in the Memoranda of Understanding (“MOUs”) between the City and the Oakland Police Officers Association. (*City of Oakland v. Oakland Police & Fire Retirement Sys.* (2014) 224 Cal.App.4th 210, 231, 217 [“OPFRS”].)

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2. Holiday Pay Based on 10-Hour Days

All officers in all ranks, Police Officer through Deputy Chief, receive holiday pay. The July 1, 2006-June 30, 2015 MOU provided that active officers in patrol could no longer work an 8-hour day: they were required to work at least 10-hour days. Accordingly, their holiday pay (for working or not working on a holiday) was calculated based on a 10-hour day or 12-hour day. Similarly, the 2015-19 MOU also requires officers to work at least a 10-hour day; again, holiday pay for active officers in patrol and others working 10- or 12-hour shifts is also calculated based on a 10- or 12-hour day. At issue in the court case is the PFRS Board's ("Board's") failure to include holiday premium pay in retirement allowances paid to all similarly-situated retirees based on a 10-hour day.

The MOUs require that all officers be paid for twelve holidays per year at "straight time" (their regular rate of pay or regular holiday pay) regardless of whether or not they are working. (2006-15 & 20 15-19 MOUs, art. VI.G.3.) This pay is referred to as "holiday pay." Active officers are also paid holiday premium pay in addition to their regular holiday pay. When an active officer works on a holiday, holiday premium pay is paid in addition to the regular pay at the rate of time-and-one-half. (2006-15 & 2015-19 MOUs, art. VI.G.3.) The 2015-19 MOU describe this practice as follows: "in addition to the straight-time holiday pay, if the holiday is worked, the officer shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off; or by employer request, the officer will be paid holiday pay at the straight time rate. In the event that a holiday falls on an officer's day off, the officer may take the holiday in pay or comp time at straight time, at his/her election." (2015-19 MOU, art. VI.G.3.) The 2006-15 MOU uses identical language, except that it uses the words "employee" or "member" in place of "officer." (2006-15 MOU, art. VI.G.3.)

3. Board Determination that Holiday Pay Based on 12-Hour Day Attached to Rank for One Retiree

In November 2013, the Board determined that holiday pay based on a 12-hour day *was* compensation "attached to the rank" for one active PFRS member who was in the process of retiring, and determined that holiday pay based on a 12-hour day should be included in calculating that retiree's benefits. A resolution was adopted by the Board that held, in a 6-0 vote, with one abstention, that "Holiday Pay retirement allowance shall be based on ... twelve hours per holiday." (PFRS Resolution No. 6776, Nov. 13, 2013.)

Despite requests from ROPOA on behalf of Petitioners and other retirees, the Board refused to award holiday pay based on a 10- or 12-hour day to all other similarly-situated PFRS retirees and beneficiaries. Indeed, the Board flatly refused to address the issue.

Legal Analysis

A. Pension provisions must be liberally construed in favor of pensioners.

Retirees have contractual rights in their pensions, which are protected by the California Constitution, and benefits may not be changed to their detriment. Under the California Constitution, “the duty of a public retirement board ‘to its participants and their beneficiaries shall take precedence over any other duty,’ including minimizing employment contributions and defraying administrative costs.” (*Id.* [citing Cal. Const., art. XVI, § 17, subd. (b)].) Pension provisions must be liberally construed in favor of the pensioners, and benefits provisions must be applied “fairly and broadly.” (*Eichelberger v. City of Berkeley* (1956) 46 Cal.2d 182, 188.) A “retired employee has a contractual right, protected by constitutional guarantees, in a pension ...’ and such benefits ‘may not be changed to [that employee’s] detriment.’” (*OPFRS*, 224 Cal.App.4th at pp. 226-27 [alteration in original] [citing *Dunham v. City of Berkeley* (1970) 7 Cal.App.3d 508, 513].)

Although fluctuating pension plans like PFRS are not static, their purpose is to “guarantee the pensioner a fairly constant standard of living despite inflation,” (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 54) and to “maintain equality of position between the retired member and the members currently holding the rank the pensioner attained before retirement.” (*OPFRS*, *supra*, 224 Cal.App.4th at p. 227.) Accordingly, California courts have repeatedly held that cities with fluctuating retirement systems, such as Oakland’s PFRS, may not escape from their promises to pay retirement benefits.

B. Where a court can determine whether a retiree met the criteria necessary to receive premium pay, that pay attaches to the rank.

Construing the Oakland City Charter, courts have repeatedly determined that where a “court [can] determine whether the retired plaintiff met the criteria necessary to receive the additional pay,” that pay attaches to the rank. (*Kreeft*, *supra*, 68 Cal.App.4th at pp. 60-61; see also *OPFRS*, *supra*, 224 Cal.App.4th at pp. 231-33 & fn. 12 [PFRS holiday premium pay attached to the rank] [citing *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. op.) (same)]; *OPFRS*, *supra*, 224 Cal.App.4th at pp. 222 & 240 [PFRS “line-up pay,” extra pay for working in patrol, was judicially determined to be attached to the rank; “any PFRS retiree who had been assigned to patrol ... at any time during the final three years of employment was given credit for ‘the amount of line-up pay received by active police officers similarly assigned.’”] [citing *Arca v. City of Oakland* (Super. Ct. Alameda County, 1984, No. 579832-8) (“*Arca I*”)].

Retirement systems must pass along pay increases to retirees even when those increases are based on new, non-rank-specific criteria. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 214-15 [“merit” and “longevity” bonuses attached to

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the rank]; *City of Long Beach v. Allen* (1956) 143 Cal.App.2d 35 [new salary ordinance providing for “merit” increases to be given only on recommendation of the chief of police must be awarded to retirees even though they had retired prior to the adoption of the ordinance and could not comply with the merit evaluation]; *Estes v. City of Richmond* (1967) 249 Cal.App.2d 538, 541, 546 [“hazardous duty pay” for completing one “tour of duty” each month was attached to the rank]; *Dunham, supra*, 7 Cal.App.3d at pp. 512, 515 [new incentive program for training was a “system of general pay raises” and thus compensation attached to the rank, because retirees “performed the services, including training, required of them; they are entitled to their deferred compensation ... based on the benefits now received by their active counterparts”].) To provide otherwise would allow municipalities to escape their promises to pay retirees based on the compensation due to actives.

C. Holiday premium pay is attached to the rank.

For more than 45 years, the holiday premium pay earned by Oakland police officers for working on holidays has been held to be “compensation attached to the rank” under the City’s Charter and must therefore be included in calculating retirees’ pensions. (*OPFRS*, 224 Cal.App.4th at pp. 222, 231-33, fn. 1 *Buck v. City of Oakland* (Cal.Ct.App. 1971, No. 1-Civ-28402) [nonpub. Opn.]; *Oakland Police & Fire Retirement Association v. City of Oakland* (Alameda Sup. Ct. 1996, No. 763859-O) [nonpub. opn.] .)

By its nature, police work does not pause for holidays— “[b]eing subject to working on holidays as regular work days is normal for police officers.” (*City of Fremont v. Bd. of Admin. of the PERS* (1989) 214 Cal.App.4th 1026, 1031.) When officers are scheduled to work on a holiday, they do not have discretion on whether to work or not. If they want the day off, they are required to request and receive permission from their superior officer—and such permission is rarely granted. Retired police officers who are now collecting pensions regularly worked holidays while they were active and made contributions to PFRS based on the premium pay they received for this hardship. Current, active police officers regularly work holidays and earn premium pay for doing so. They also receive holiday pay when they do not work on holidays. (See 2006-15 & 2015-19 MOUs, art. art. VI.G.3.)

Because active police officers are regularly scheduled to work on holidays—and have no discretion on whether to take those days off—the holiday premium pay that they receive for this hardship is “compensation attached to the rank.” It “adhere[s] to the rank, as an appertaining quality or circumstance.” (*Kreeft, supra*, 68 Cal.App.4th at p. 57.) An active police officer is entitled to holiday premium pay not based on “his individual efforts over and above what are required to obtain the rank” but rather in the normal course of his scheduled work. Holiday premium pay is no different from other forms of variable pay that courts have held to “attach” to a rank for pension purposes. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 213-214 [longevity and merit pay attached to the rank, even

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though not all members of the rank were entitled to them, and even though retirees entitled to varying amounts of the pay].)

As this Court recognized in *Kreeft*, the term “compensation attached to the rank” is ambiguous. Given the Charter’s ambiguous language—and the consistent, forty-five year practice of paying holiday premium pay as if retirees *worked* the holiday, the Board is obligated to interpret the phrase in the manner most favorable to the pensioners. (*Rose, supra*, 126 Cal.App.3d at p. 940 [“If an ambiguity or uncertainty exists, the foregoing statutory provisions are to be construed in favor of the pensioner.”]; *City of Oakland, supra*, 95 Cal.App.4th at p. 39 [pension “laws are to be interpreted in favor of the employee or beneficiary when a semantic ambiguity is presented by the statute at issue”].)

The Court of Appeal in *OPFRS*, 224 Cal.App.4th 212, recently described the long history of holiday premium pay being attached to the rank:

The question of whether holiday pay is “compensation attached to rank” for purposes of calculating PFRS retirement benefits was first addressed by Division Four of the First Appellate District in 1971 in the case of *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. opn.) (*Buck*). When *Buck* was decided, the compensation payable to active members of the Department was set by salary ordinance. (See Oakland Ord. No. 4817, amending § 1.19 of Oakland Ord. No. 4727 (the 1971 Ordinance).) With respect to holiday pay, the 1971 Ordinance provided in relevant part: “Time worked by any officer or member of the Police Department ... in excess of 40 hours during any one-week period shall be deemed overtime work; provided, however, that ... whenever any legal holiday, as herein designated, shall fall within any such one-week period, the said officer or member of the Police Department shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” (*Ibid.*)

...

The court went on to determine that remuneration for holiday work did not constitute overtime and therefore was not excluded from the Charter's definition of “compensation.” (*Buck, supra*, 1 Civ. 28402; see Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

OPFRS, 224 Cal.App.4th at pp. 217-18. The Court in *Buck* held that retirees must be compensated as if they worked each holiday. The Court explained that after *Buck*, the City tried to avoid paying holiday pay to retirees by providing compensatory time off in lieu of actual holiday pay:

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In the wake of *Buck*, the City reportedly tried to avoid the inclusion of holiday pay in PFRS retirement benefits by altering the holiday pay structure for active members of the Department. Specifically, the Department began giving active officers compensatory time off in lieu of actual holiday pay. In response to this change, lawsuits were filed and eventually the City was permanently enjoined from enforcing any “ordinance, resolution or directive which decreases or attempts to decrease the holiday pay ... received by Oakland police officers or firemen as ‘monthly compensation comprising salary.’” (*Doan v. City of Oakland* (Super. Ct. Alameda County, 1972, No. 426926) (*Doan*)). In addition, the City was ordered to pay active members retroactively for any lost holiday pay and was directed “to pay the increased retirement allowances based thereon pursuant to the [*Buck*] decision.” (*Ibid.*)

Id. at pp. 218-19. The Court went on to explain that subsequent litigation in *Arca II* was initiated because retirees were being compensated based on 8 hours of premium pay, while actives were being credited with 12 hours of pay:

Based on the language of the MOU’s, PFRS retirees only received credit for eight hours of holiday premium pay in the calculation of their retirement benefits from 1976 through 1996. In contrast, active members of the Department received 12 hours of holiday pay during this same period. ... Holiday premium pay was again the subject of litigation in 1996. (See *Oakland Police & Fire Retirement Assn. v. City of Oakland* (Super. Ct. Alameda County, 1996, No. 763859) (*Arca II*)). *Arca II* was a class action lawsuit filed on behalf of PFRS retirees and their beneficiaries challenging the MOU language that excluded retirees from receiving credit for the additional four hours of holiday pay that was being paid to active members of the Department. In that case, the City did not contest the holding in *Buck*, but argued that the additional four hours of holiday pay was “overtime” pay and therefore expressly excluded from the calculation of PFRS retirement benefits. (See Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

Id. at pp. 219-20. After reviewing the relevant case history, the Court of Appeal again held in 2014 that retirees had to be paid as if they worked the holidays:

Similarly, the inclusion in the 2006-2015 MOU of express language defining the rights of active members to certain holiday pay when they *do not* work on a holiday has no bearing on active members' continuing entitlement to receive extra compensation when they do. Although the amount of remuneration has changed over the years, for over four decades active members of the Department have possessed an unbroken right to holiday pay for working on

holidays. And, based on *Buck*, PFRS retirees have been entitled — during that same period — to have such holiday pay included in the calculation of their retirement allowance.

Id. at p. 229.

Accordingly, retirees and beneficiaries must be compensated as if they worked the holidays.

D. Compensating retirees as if they worked the holiday, as required by *Buck*, entitles them to 188 hours of holiday pay rather than the current 144 hours they are receiving.

1. Retirees' holiday pay should be based on the 10-hour and 12-hour shifts worked by actives.

Active officers working in patrol are *required* to work a 4/10 schedule, meaning that they work at least 10 hours per shift rather than 8 hours per shift. A substantial number of officers, including patrol officers, work 12-hour shifts.¹ Accordingly, when actives receive holiday premium pay for working on a holiday, they receive 10 hours at 1.5x pay, or 15 hours of pay, or 12 hours at 1.5x, or 18 hours of pay, respectively. (When they do not work on a holiday, they receive 10-12 hours of holiday pay.)²

However, despite the fact that actives are now being paid holiday pay based on 10-hour or 12-hour days, retirees are still being paid based on 8-hour days, so they are receiving just 12 hours of pay per holiday. Instead, pursuant to *Buck*, they should be paid as if they worked the holiday:

- o 12 holidays x 15 hours for holidays worked = **180 hours**
- o floating holiday = 8 hours³

¹ The City's own numbers suggest that approximately 10% of active police work 12-hour shifts.

² This means that even if an active officer didn't work any holidays—extremely unlikely unless they were out on leave—they would still receive 120-144 hours of holiday pay. Contrary to the assertion in the PFRS Staff Report, holiday pay that is paid when actives do not work a holiday is not paid *in lieu* of base pay; actives do not receive base pay for days on which they do not work. It is pay in addition to base pay. (See 2006-15 & 20 15-19 MOUs, art. VI.G.3.)

³ As the Court held in *Doan, supra*, Alameda Superior Court Case No. 426926, the City cannot escape its holiday pay obligations to retirees by providing holiday pay to actives as “compensatory time off.”

188 hours of holiday pay

2. It is not workable to calculate compensation attached to the rank based on averages.

PFRS Staff have analyzed payroll data based on the total number of hours worked by active officers, but what is relevant here is pay for holidays. And, in looking at total hours worked, the Staff Report left out the 10% of active officers who had a base of 2184 hours, who received 18 hours for each holiday they worked, as 12 hours for each holiday they did not work, which obviously skews the entire analysis.

PFRS Staff have asserted that active officers work, on average, approximately 6-7 holidays per year. But compensation attached to the rank cannot be reasonably calculated based on averages: such averages would be a moving target depending on available staffing, the day of the week the holiday falls on, anticipated or unanticipated workloads, emergency situations, and other factors. The averages would need to be re-computed on a regular basis – maybe even monthly. This is why, construing the Charter liberally in favor of retirees, Courts have held for over 45 years that compensation should be based on an assumption that retirees worked all holidays.

Moreover, even if the Board were to accept the premise that holiday premium pay should be calculated based on the average number of holidays worked by actives, this *still* means retirees are owed additional pay according to the City’s own data:

- If, based on a 10-hour shift, an active officer worked just *half* of the holidays, they would receive **158 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 6 holidays x 15 hours for holidays worked = 90 hours
 - 6 holidays not worked x 10 hours for holidays falling on day off = 60 hours holiday pay
 - 8 hours floating holiday
- If an active officer worked 7 holidays, they would receive **163 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 7 holidays x 15 hours for holidays worked = 105 hours
 - 5 holidays not worked x 10 hours for holidays falling on day off = 50 hours holiday pay
 - 8 hours floating holiday

Even if the Board finds that holiday pay should be calculated based on the average number of holidays worked by actives, this still means that retirees are owed additional compensation.

Figure 1. Holiday Pay & Holiday Premium Pay for Active Officers

Holiday	January 1	MLK Day (3rd Monday in Jan.)	Lincoln Day (Feb. 12)	Feb. – 3rd Monday	Memorial Day (last Monday May)	July 4th
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

Holiday	Labor Day (1st Monday Sept.)	Sept. 9 (Admission Day)	November 11 (Veterans Day)	Thanksgiving (Thurs in Nov.)	Friday after Thanksgiving (Nov.)	Christmas (Dec. 25)
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

E. Holiday pay should not be changed for captains and deputy chiefs.

- 1. PFRS Captain and Deputy Chief Ranks are obsolete and compensation should be determined by looking at the OPOA MOU.**

Captain of Police (PFRS) and Deputy Chief of Police (PFRS) are obsolete ranks and compensation attached to those ranks must be calculated in the same manner as other obsolete ranks including Chief of Police, Inspector of Police and Director of Police Services.

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Approximately 25 years ago, the PFRS Board decided retirement allowances for Chiefs of Police, Inspectors of Police and subsequently a Director of Police Services would henceforth be based on cost of living adjustments and other wage increases received by members of the Oakland Police Officers Association (OPOA). At that time, every member of the Oakland Police Department, except the Chief of Police, was a member of and represented by the OPOA (the Chief was an unrepresented member of the OPOA).

It is, therefore, illogical to base retirement allowances, including holiday and holiday premium pay, for retired PFRS captains and deputy chiefs on provisions of the Police Management Association Memorandum of Understanding (PMA MOU) while retired Chiefs of Police, Inspectors of Police and a Director of Police Services remain attached to the OPOA MOU. No retired PFRS captain or deputy chief was ever a member of or represented by the PMA.

Furthermore, there is no longer any community of interest between retired and currently employed captains and deputy chiefs. Many responsibilities of PFRS deputy chiefs have been transferred to the new rank of Assistant Chief and CalPERS captains no longer regularly work in the field at night or on weekends and holidays, unlike PFRS captains. Salary and benefit provisions of the PMA MOU reflect current working conditions and responsibilities.

Retired PFRS captains and deputy chiefs should remain attached to the OPOA MOU for calculation of retirement allowances.

2. Even if PFRS relies on the PMA MOU, it is fundamentally unfair to “cherry pick” the PMA MOU for provisions that are detrimental to PFRS retirees and ignore those that are of benefit.

It is undisputed that the Police Management Association agreed to modify holiday and holiday premium pay provisions for CalPERS captains and deputy chiefs to reflect current assignments, working conditions and membership in the CalPERS retirement system. However, it is also undisputed that the PMA received other benefits to offset any loss of holiday or holiday premium pay.

Specifically:

- **Vacation Buy Back – 120 Hours:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and is clearly compensation attached to the rank. No individual effort is required to obtain this benefit.
- **Management Leave – 15 Days:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and must be considered compensation attached to the rank. No individual effort is required to obtain this benefit.

David Low

November 15, 2017

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- **POST Management Certificate – 5% of pay:** It is undisputable that every CalPERS captain and deputy chief has qualified for a POST Management Certificate by virtue of their tenure in the Department and completion of required training. Every retired PFRS captain and deputy chief also holds a POST Management Certificate and should be paid accordingly.
- **Bachelor's Degree – 5% of pay:** While we do not yet have access to supporting data, it is likely that every CalPERS captain and deputy chief holds a bachelor's degree. This results in a cash benefit and compensation attached to the rank for PFRS retirees.

If the Board decides to modify the historic manner in which holiday and holiday premium pay is calculated for retired captains and deputy chiefs based on the PMA MOU, all other PMA cash benefits must be classified as compensation attached to the rank and paid to retirees.

Conclusion

Retirees should be compensated for holiday premium pay as if they worked the holiday, and should be awarded 188 hours of holiday pay rather than the current 144 hours. The PFRS Staff Report calculations do not analyze the hours actually worked and paid on each holiday, but instead, improperly focus on the average number of hours worked by active officers each year. Moreover, in calculating averages, the PFRS Staff Report improperly disregards the 10% of police officers who are paid 18 hours per holiday worked (resulting in 216 hours of holiday pay if all holidays worked, or 180 hours holiday pay even if just *half* of holidays are worked), obviously skewing the numbers. Even if the Board fails to pay retirees as if they worked all holidays, and even if the Board determines that retirees should be compensated as if they are working only 6-7 holidays, retirees are still being undercompensated. Finally, PFRS cannot cherry pick provisions from the PMA MOU that disadvantage retirees while ignoring those provisions that benefit retirees.

We urge the Board to take all necessary steps to compensate retirees and beneficiaries for 188 hours of holiday pay rather than the 144 hours currently being paid. Thank you for your time and consideration.

Very truly yours,



Sarah Grossman-Swenson

APPENDIX 1



AGENDA REPORT

TO: Oakland Police and Fire
Retirement Board

FROM: Katano Kasaine

SUBJECT: An Analysis Comparing The Current
Method of Calculating PFRS Police
Retiree Holiday Pay Benefits Against the
Holiday Pay Received by Active Police
Officers During The Last Three Fiscal
Years

DATE: October 16, 2017

EXECUTIVE SUMMARY

The purpose of this memo is to compare the current method of calculating PFRS Police retiree holiday pay benefits against the holiday pay received by active police officers during the last three fiscal years. This memo also addresses two related issues: (1) an adjustment of the way holiday pay retirement benefits are being calculated with respect to police retirees who retired at the rank of captain or above; and (2) whether the floating holiday is compensation attached to rank. Our report shows:

- The current method of calculating PFRS police retiree holiday pay benefits credits retirees with higher relative pay than the majority of active police officers receive.
- Police retirees who retired at the rank of captain and above are erroneously being credited Holiday Premium Pay at time-and-a-half, which is higher than what is granted under the current OPMA (Oakland Police Management Association) MOU.
- The Floating Holiday is not compensation attached to the rank for police retirees, because it is compensatory time that is not payable in cash.

BACKGROUND

At its March 29, 2017 Board Meeting, the PFRS Board passed a motion to set a hearing on August 30, 2017 to examine police holiday pay adjustments asserted by plaintiffs in Alameda County Superior Court Case No. RG16838274. At the June 28, 2017 Board meeting, the Board passed a motion to reschedule the August 30, 2017 board hearing to the October 25, 2017 Board meeting.

For this report, Staff has analyzed payroll records for active police officers for fiscal years (July through June) 2014/2015, 2015/2016 and 2016/2017, to determine how much holiday pay active police typically receive, and the combined number of hours of base and holiday pay active police officers actually received, compared to the number of hours that PFRS police retirees and

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PFRS Board Meeting
October 25, 2017

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Subject: An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Actually Received by Active Officers During The Last Three Fiscal Years

October 18, 2017

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beneficiaries are credited under the current method of calculating police retiree benefits. The results are summarized in the attachments to this report.

ANALYSIS

In accordance with the City Charter, the PFRS police retirees are paid based on compensation “attached to the average rank held”. The benefits PFRS retirees receive are intended to maintain parity with the pay deemed attached to the rank that active sworn personnel receive. The active police pay elements currently being paid to retirees include (1) Base Pay (2) Holiday Pay, (3) Uniform Pay, and (4) Longevity Pay.

The current method of calculating police retiree benefits relating to Base Pay and Holiday Pay is as follows: As a starting point for the calculation, police retirees are credited an amount that is based on an active police officer’s annual Base Pay of 2080 hours (40 hours X 52 weeks). In addition to the 2080 hours, police retirees are credited with 144 hours relating to Holiday Pay, for a total of 2224 hours.

The 144 hours relating to Holiday Pay is a holdover from prior Department General Order (DGO) D-8,¹ when active police were paid at a Holiday Premium Pay rate of 1.5X (8 hours X 1.5 = 12 hours) per holiday in addition to their Base Pay, regardless of whether they actually worked the holiday. Thus, if there were 12 paid holidays in the MOU, active police would receive 144 hours (12 holidays X 12 hours) in Holiday Premium Pay. PFRS therefore also credited the police retirees with 144 hours of Holiday Premium Pay.

However, since 2006 and subsequent OPOA (Oakland Police Officer Association) MOUs, active police are no longer paid additional holiday pay at a premium rate of 1.5X per holiday regardless of whether they actually work the holiday. Active OPOA police officers (below the rank of captain) receive additional Holiday Premium Pay at the premium rate (1.5X) only if they actually work the holiday. DGO D-8 has since been rescinded.

In addition, effective with the 2006-2015 OPMA (Oakland Police Management Association) MOUs (applicable to members at the rank of captain and above) active police OPMA officers only receive 8 hours of straight time Holiday Pay whether they work the holiday or not. OPMA Officers who actually work on a holiday are compensated Holiday Premium Pay at straight time, in the form of additional vacation under the new 2015-2019 contract.

In summary, under the current MOUSs, active police officers must work a holiday on their normal scheduled work day to receive additional Holiday Premium pay. Staff analyzed the total number of hours of Base Pay and Holiday Pay active police have been credited with in the last three fiscal years, in order to compare that to the total number of hours of Base Pay and

¹ See Department General Order D-8 Holidays, section II.B.5., 6., and 7, attached hereto as Exhibit A.

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Holiday Pay (2224) that PFRS Police Retirees are credited with.²

ANALYSIS OF ACTIVE POLICE HOLIDAY PAY (TABLES)

Staff analyzed hourly Base Pay as well as all Holiday Pay for active Oakland Police Officers below the rank of captain for the past three years (FY 2014/2015 through FY 2016/2017). The results of the analysis are included in **Tables 1, 2, and 3.** (see attachments.)

Tables 1, 2, and 3 reflect the total hours credited for each active Oakland sworn OPOA police member who works an 80-hour schedule, or who worked a combination of an 80-hour schedule for part of the year and an 84-hour schedule the other part of the year. We did not include the relatively small number of officers (approximately 10% of the force over the three years) who worked an 84-hour schedule exclusively for the entire year. The tables include hours worked for each eligible element, excluding Workers Compensation hours and Leave Without Pay elements. The tables also reflect hours at the Holiday Premium Pay rate of 1.5X for each holiday that fell during an active sworn officer's regular schedule which the active OPOA police officer worked.

In **Table 4** below, Staff summarized the total three-year average hours credited to active police officers (ranks below captain) who were assigned to 80-hour schedules and credited at least 2080 hours during the year. Staff compared this total to the 2224 hours (2080 base pay hours + 144 holiday hours) that PFRS police retirees are credited with in calculating holiday retirement benefits. Staff's analysis shows that for these active sworn officers working 80 hour assignments: (1) the average number of hours credited was less than 2224; and (2) the clear majority (approximately 74.0%) of these officers were credited with fewer than 2224 hours.

Table 4			
Active Police Officers with 80 HR Schedules (only)			
FY 2014/2015 to FY 2016/2017			
Fiscal Year	Officer Count Hours Credited Greater than or Equal to 2080 total Hours	Avg Total Hours Credited for Officers with Greater than or Equal to 2080 total Hours	Percentage of Active Officers credited less than 2224 Hours
FY 2014/2015	316	2176	79.4%
FY 2015/2016	450	2198	66.7%
FY 2016/2017	443	2191	75.8%
Averages	403	2188.3	74.0%

² It is necessary to look at the *combined* total of Base Pay and Holiday Pay because when a holiday falls during an officer's regular work schedule, the officer's regular (straight time) Holiday Pay is in lieu of Base Pay for that day.

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CAPTAINS AND ABOVE – STRAIGHT PAY FOR HOLIDAYS WORKED

PFRS' is currently paying retirement benefits to police retirees who retired at the rank of captain and above on the same basis as police retirees who retired below the rank of captain. Namely: 12 Holidays at 8 hours @ 1.5X = 144 hours. The current method does not take into account the fact that the two OPMA MOUs (commencing in 2006 and in 2015) provided lesser holiday benefits for captains and above compared to the lower ranks.

OPMA members were entitled to no extra holiday pay at all under the 2006-2015 MOU. Under the 2015-2019 MOU, OPMA members are entitled to one hour of vacation credit for each hour actually worked on a holiday, which means that their Holiday Premium Pay rate is 1.0X (straight time), not 1.5X. (see section VII.H.3 on the relevant MOU pages in attached **Exhibits E and G**) Retirees at ranks of captain and above are being overpaid.

FLOATING HOLIDAY PAY

Staff has also addressed at the question of whether PFRS retirees should receive an additional retirement benefit based on the "Floating Holiday" that active police officers receive. Under the OPOA and OPMA MOUs, the Floating Holiday is an award of eight hours of compensatory leave that active police receive each year. Currently PFRS members are not credited for the Floating Holiday. The benefit is described in the OPOA and OPMA MOUs of 2006-2015 and 2015-2019:

OPOA MOU (section VI.G.2.)

Floating Holiday - In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave. (See **Exhibits D and F.**)

OPMA MOU (section VII.H.2.)

Floating Holiday - The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect. (See **Exhibits E and G.**)

It is staff's position that Floating Holiday is not compensation attached to any rank for PFRS purposes because it does not fit the definition provided by the Charter. Charter Section 2607 defines compensation as "monthly remuneration payable in cash". The Floating Holiday is eight hours of compensatory time credit, not remuneration payable in cash. There is no convertible monetary value to this compensatory time award. When the member's employment with the City

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terminates, this eight hours is subtracted from the member's compensatory leave balance in their bank, unless the member has first used all compensatory leave on the books after said eight hours was credited and subsequently earned additional compensatory leave.

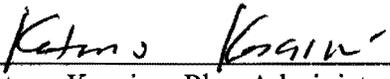
Additionally, Oakland City Administrator's Administrative Instruction (AI) No. 520 (attached hereto as **Exhibit B**) states that Floating Holidays can only be used in place of a regularly scheduled work day. Police Department General Order D-8 at section III.A.1 and 2 stated the same limitation on the Floating Holiday. It does not increase an employee's overall compensation, but simply substitutes for a regularly scheduled paid work day. For all of these reasons, it is staff's position that the Floating Holiday is not compensation attached to the rank for any PFRS police retiree.

CONCLUSION

The annual 2224 hours that PFRS retirees are currently credited with for Base Pay and Holiday Pay is higher than the average number of hours full-time active police are credited with for Base Pay and Holiday Pay. During the past three fiscal years, an overwhelming majority of these active police officers (74.0%) were credited with fewer than 2224 hours of Base Pay and Holiday Pay. PFRS retirees who retired as police captains and higher ranks have been receiving more Holiday Premium Pay at a higher level than what is currently being paid to active police in those ranks based on the OPMA MOU. Finally, the Floating Holiday is not compensation attached to the rank for any PFRS police retirees, because it is compensatory leave that is not payable in cash.

Staff requests direction from the Board on next steps for Board action to (1) propose a method to calculate police retiree holiday benefits to be in line with OPOA and OPMA MOUs and (2) change holiday benefits calculation method for OPMA Ranks (Captain and above) in order to be the same as active OPMA members as provided by the OPMA MOU.

Respectfully submitted,



Katano Kasaine, Plan Administrator
Oakland Police and Fire Retirement System

For questions please contact Teir Jenkins, Investment Officer, at 510-238-6481.

(cont'd)

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Attachments (8):

1. Tables 1, 2, and 3
2. **Exhibit A:** Police Department General Order D-8
3. **Exhibit B:** Administrative Instruction No. 520
4. **Exhibit C:** Assumptions for Analysis
5. **Exhibit D:** OPOA MOU - Effective July 1, 2015 through June 30, 2019
6. **Exhibit E:** OPMA MOU - Effective July 1, 2015 through June 30, 2019
7. **Exhibit F:** OPOA MOU - Effective July 1, 2006 through June 30, 2015
8. **Exhibit G:** OPMA MOU - Effective July 1, 2006 through June 30, 2015

Table 1

Oakland Police and Fire Retirement System

Analysis of Active Police Actual Hours Credited

Key Data Summary

Fiscal Year 2014-2015

Officers who worked 80 Hr Schedule Only During Fiscal Year				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
467	316	2,176	65	79.4%

Officers who worked 80 and 84 Hr Schedules During Fiscal Year ¹				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
236	183	2,211	69	62.3%

Note: Analysis does not include Officers who worked 84 hour shift the entire year (2184 hours)

¹Includes Sworn Officers who worked both an 80 Hr schedule with a total of 2080 hours and an 84 Hr schedule with a total of 2184 hours during the fiscal year

²PFRS Current Rate: 2224 Hrs = 2080 + 144 (12 Holidays @ 8 x 1.5)

Table 2

Oakland Police and Fire Retirement System

Analysis of Active Police Actual Hours Credited Key Data Summary

Fiscal Year 2015-2016

Officers who worked 80 Hr Schedule Only During Fiscal Year				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
656	450	2,198	150	66.7%

Officers who worked 80 and 84 Hr Schedules During Fiscal Year ¹				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
61	56	2,248	32	42.9%

Note: Analysis does not include Officers who worked 84 hour shift the entire year (2184 hours)

¹ Includes Sworn Officers who worked both an 80 Hr schedule with a total of 2080 hours and an 84 Hr schedule with a total of 2184 hours during the fiscal year

² PFRS Current Rate: 2224 Hrs = 2080 + 144 (12 Holidays @ 8 x 1.5)

Table 3

Oakland Police and Fire Retirement System

Analysis of Active Police Actual Hours Credited

Key Data Summary

Fiscal Year 2016-2017

Officers who worked 80 Hr Schedule Only During Fiscal Year				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
571	443	2,191	107	75.8%

Officers who worked 80 and 84 Hr Schedules During Fiscal Year ¹				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
188	147	2,247	93	36.7%

Note: Analysis does not include Officers who worked 84 hour shift the entire year (2184 hours)

¹ Includes Sworn Officers who worked both an 80 Hr schedule with a total of 2080 hours and an 84 Hr schedule with a total of 2184 hours during the fiscal year

² PFRS Current Rate: 2224 Hrs = 2080 + 144 (12 Holidays @ 8 x 1.5)

EXHIBIT A

OPD GENERAL ORDER D-8 (RESCINDED)

*(EXHIBIT-A PASSED OUT AND SUBSTITUTED
AT THE OCT 25, 2017 BOARD MEETING)*

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 22 Mar 00

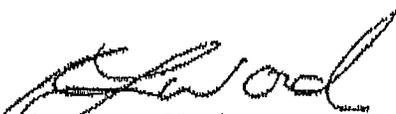
SUBJECT: Revision of Departmental General Order D-8
HOLIDAYS (15 Feb 85)

General Order D-8 has been revised to update time card reporting codes and the treatment of holiday duty pay for employees working alternative 4/10 work schedules.

The evaluation coordinator for this order shall be the Personnel Section Commander, who, without further notice, shall forward the required report to the Chief of Police on or by 22 Sept 00.

Personnel shall place the revised order in their General Order Manuals and make the necessary changes to the Table of Contents and Index.

By order of



Richard L. Word
Chief of Police

GO51/D-8



DEPARTMENTAL
GENERAL
ORDER

Rev.
22 Mar 00

D-8

Index as:

Ref: CALEA
Standard 22.1.1

Holidays

HOLIDAYS

The purpose of this order is to identify holidays and to set forth holiday compensation and reporting.

LIST OF HOLIDAYS

<u>DESIGNATED HOLIDAYS</u>	<u>DATE</u>
New Year's Day	1 Jan
Martin Luther King Day	3 rd Mon in Jan
Lincoln Day	12 Feb
Presidents' Day	3 rd Mon in Feb
Memorial Day	Last Mon in May
Independence Day	4 Jul
Labor Day	1 st Mon in Sep
Admission Day	9 Sep
Veterans' Day	11 Nov
Thanksgiving Day	A designated Thu in Nov
Friday after Thanksgiving Day	A designated Fri in Nov
Christmas Eve*	24 Dec (Employees only)
Christmas Day	25 Dec
New Year's Eve*	31 Dec (Employees only)
Floating Holiday	Individually selected (Employees only)

*Refer to Part II, C, 7

I. REGULATIONS

A. General Regulations

1. Holiday Time off (HDP) shall be calculated at the hourly base rate for the regular 7.5, 8, or 10 hour shift.
2. Unit commanders shall require members and employees to take HDP whenever practicable.

B. Regulations Pertaining to Members

1. **Vacation Leave** – If a holiday falls within a member's vacation period, the holiday shall be counted as part of the vacation and 12 hours of accrued compensatory time will be granted.
2. **On-Duty Injury Leave** – If a holiday falls within the period when a member is on on-duty injury leave, the member shall be granted 12 hours of pay or 12 hours of accrued compensatory time.
3. **Death Leave** – If a holiday falls within the period when a member is on death leave, the member shall be granted HDP for the holiday.
4. **Other Leave** – If a holiday falls within a period when the member is on other leaves (other than vacation, on-duty injury or death leave), the holiday shall be counted as part of the leave and no HDP or other compensation shall be granted. (This applies to sick leave, off-duty injury leave and other leaves of absence.)
5. **Holiday on Regular Day Off** - Regardless if a member is assigned to an 8 or 10-hour shift, if a holiday falls on a member's regular day off and the member is not required to work, the member shall be compensated for 12 hours of pay or accrued compensatory time.
6. **Holiday Duty on Regular Work Day** - If a holiday falls on a member's regular work day, the member shall be granted 8 or 10 hours (8 or 10-hour shift) of pay *plus*, 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time.

7. **Holiday Duty on Regular Day Off** - If a holiday falls on a member's regular day off and the member is required to work, the member shall be granted 12 hours of pay or accrued compensatory time *plus*, 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time. Advance approval from the Chief of Police is needed when requiring a member to work on a holiday on his/her regular day off.
8. **Chief of Police** - The Chief of Police is eligible to receive only standard HDP for holidays.

C. Regulations Pertaining to Employees

1. All full-time employees in units B, C, D, H and W shall be eligible to receive overtime compensation in pay or accrued compensatory time when required to work on a holiday. Any shift that includes five or more hours on a holiday (excluding lunch) shall be considered a holiday shift. Employees in unit M are eligible to receive only standard HDP for holidays.
2. **Alternative (4/10) Work Schedule Holiday.** – When a holiday falls on an employee's work day in cases where the employee is working an alternative work schedule, and the employee is given the day off in observance of the holiday, the employee is entitled to HDP only for the standard number of work day hours (7.5 or 8 hours.) associated with the employee's representation unit. An employee working a 9.0, 9.5 or 10.0 alternative work plan and wishing to take "HDP" the entire shift must account for all (9.0, 9.5 or 10.0) hours by supplementing the 7.5 or 8 hours of HDP with some other form of paid or unpaid leave (i.e., CTU – comp time off or ANP – authorized leave without pay).
3. **Vacation, Sick, or Death Leave** – If a holiday falls within a period of any one of these leaves, HDP will be granted for the holiday.
4. **Other Leave** – If a holiday falls within a period when the employee is on other leaves (other than vacation, sick or death leave), the holiday shall be counted as part of the leave and no HDP or other compensation shall be granted.

5. **Holiday Duty on Regular Work Day.** If a holiday falls on an employee's regular work day, the employee shall be granted 7.5 or 8 hours of pay or accrued compensatory time *plus* 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time. For employees working an alternative (4/10) work plan, the remaining hours of the shift shall be paid on a straight time basis.
6. **Holiday on Regular Day Off.** If a holiday falls on an employee's *first regular day off*, the employee shall receive one day's vacation credit (7.5 or 8 hours). If the holiday falls on an employee's *second or third regular day off*, the employee shall receive time off for the following work day. If the employee is required to work on a regular day off, the employee shall be granted 7.5 or 8 hours of pay or accrued compensatory time *plus* 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time.
7. If 24 and 31 Dec fall on an employee's regular work schedule, the employee shall be entitled to paid time off for one-half of the work shift (3.75 or 4 hours) on both days or paid time off for one full work shift (7.5 or 8 hours) on either day. If the employee is required to work instead of receiving time off, the employee shall receive 1.5 times base pay or 1.5 times of hours worked of accrued compensatory time. In the event an employee is required to work on only one of the days (*either 24 or 31 Dec*), the employee shall receive straight pay plus compensatory time equal to the number of hours worked.

II. EMPLOYEES' FLOATING HOLIDAY

A. Entitlement and Selection of Floating Holiday

1. Each employee is entitled to one floating holiday per fiscal year. Eligibility to take a floating holiday commences upon employment with the Department. **Employees must take their floating holiday during the fiscal year it is earned or lose it.**
2. Each employee shall select a regular work day of his/her choice as a floating holiday with the approval of the employee's unit commander.

III. PERSONNEL SECTION

It is the responsibility of the Personnel Section to ensure holiday reporting is accurate for all members and employees transferred to the Personnel Section on extended leave status.

IV. ACCOUNTING SECTION

It is the responsibility of the Accounting Section to process the holiday hours reported on the timesheets.

By order of

Richard L. Word
Chief of Police

GO51/D-8

HOLIDAY CODING FOR SWORN MEMBERS

Normal Work Day	Worked	8 hrs HDP and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs HDS or SOH	Pays 2.5x's
Normal Work Day	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Regular Day Off	Worked	CT Holiday Straight (for time) or HOL Holiday Police (for pay)	CT Holiday Straight (for time) or HOL Holiday Police (for pay)	CT Holiday Straight (for time) or HOL Holiday Police (for pay)	Pays 2.5x's
Regular Day Off	Not Worked	OT Slip indicating # of hours worked	OT Slip indicating # of hours worked	OT Slip indicating # of hours worked	Pays 1x's
Scheduled Vacation	Worked	8 hrs HDP (in lieu of VAC)	10 hrs HDP (in lieu of VAC)	12 hrs HDP (in lieu of VAC)	Pays 2.5x's
Scheduled Vacation	Not Worked	8 hrs HDS or SOH 8 hrs of HDP ONLY	10 hrs HDS or SOH 10 hrs of HDP ONLY	12 hrs HDS or SOH 12 hrs of HDP ONLY	Pays 1x's
Out-Jury Duty ICPS (4850 pay)	Not Worked	8 hrs ICH	10 hrs ICH	12 hrs ICH	Pays 1x's Pays 1x's
Paid Administrative Leave (OPA)	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
All Other Paid Leaves	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Normal Work Day	Worked Acting	8 hrs HDP and 8 hrs AHR and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs AHR and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs AHR and 12 hrs HDS or SOH	Pays 2.5 x's at Acting Higher

APPENDIX A
Attachment: 19
Document: Holiday Payroll Worksheets

revised 6/21/10

HOLIDAY CODING FOR SWORN MEMBERS

Holiday falls on:	Situation	8 Hr Shift	10 Hr Shift	12 Hr Shift	Comments
Normal Work Day	Worked	8 hrs HDP and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs HDS or SOH	Pays 2.5x's
Normal Work Day	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Regular Day Off	Worked	Hrs worked OTS or SOR and 8 hrs HDS or SOH	Hrs worked OTS or SOR and 8 hrs HDS or SOH	Hrs worked OTS or SOR and 8 hrs HDS or SOH	Pays 3x's
Regular Day Off	Not Worked	8 hrs HDS or SOH	8 hrs HDS or SOH	8 hrs HDS or SOH	Pays 1.5x's
Scheduled Vacation	Worked	8 hrs OTS or SOR and VAC	10 hrs OTS or SOR and VAC	12 hrs OTS or SOR and VAC	Pays 4x's
Scheduled Vacation	Not Worked	8 hrs HDS or SOH	8 hrs HDS or SOH	8 hrs HDS or SOH	Pays 2.5x's
Scheduled Vacation	Not Worked	8 hrs VAC and 8 hrs HDS or SOH	10 hrs VAC and 8 hrs HDS or SOH	12 hrs VAC and 8 hrs HDS or SOH	Pays 2.5x's
On-Duty Injury (LV1- Worker's Comp	Not Worked	12 hrs ICH and 8 hrs LV1 or ICFS	12 hrs ICH and 8 hrs LV1 or ICFS	12 hrs ICH and 8 hrs LV1 or ICFS	Pays 2.5x's
Paid Administrative Leave (OPA)	Not Worked	8 hrs HDP	8 hrs HDP and 2 hrs OPA	8 hrs HDP and 4 hrs OPA	Pays 1x's
Family Death Leave	Normal Work Day	8 hrs HDP (in lieu of FDL)	10 hrs HDP (in lieu of FDL)	12 hrs HDP (in lieu of FDL)	Pays 1x's
Family Death Leave	Normal Day Off	8 hrs HDS or SOH	8 hrs HDS or SOH	8 hrs HDS or SOH	Pays 1.5x's
All Other Paid Leaves	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Voluntary Leave (VTN) up to 60 days per calendar year	Not Worked	8 hrs HDP	8 hr HDP and 2 hrs VTN	8 hrs HDP and 4 hrs VTN	Pays 1x's
Normal Work Day	Worked Acting	8 hrs HDP and 8 hrs AHR and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs AHR and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs AHR and 12 hrs HDS or SOH	Pays 2.5 x's at Acting Higher

Code	Title	Description
AHR	Acting Higher Rank	Employee Acting in a position of higher classification
GTU	Compensatory Time Used	Compensatory Time Taken
FDL	Family Death Leave	Leave Pay for Death in the Immediate Family
HDP	Holiday Pay	
HDS	Holiday Overtime Pay	Holiday Overtime Pay @ 1.5%
ICH	Worker's Compensation / Holiday Pay	Holiday Pay for Employees on Worker's Compensation
ICFS	Worker's Compensation / Free Period	Worker's Compensation Pay for Free Period
LV1	Worker's Compensation / Leave Without Pay	
OPA	Paid Administrative Leave	
OTS	Overtime Pay	
SOH	Holiday Compensatory Time Earned	Holiday Compensatory Time Earned
SOR	Compensatory Time Earned	
VAC	Vacation Leave Taken	Vacation Leave Used
VTN	Voluntary Leave Without Pay	

EXHIBIT B

**CITY OF OAKLAND
ADMINISTRATIVE INSTRUCTION NO 520
FLOATING HOLIDAY PAY**

CITY OF OAKLAND
ADMINISTRATIVE INSTRUCTION

Subject: Floating Holiday

Number: 520

Reference: None

Effective Date: October 1999

Supercedes: 520

Responsible Department: Office of Personnel
Resource Management

I. PURPOSE

The purpose of this Administrative Instruction is to explain the "Floating Holiday" benefit, specifically, who is eligible, and under what circumstances and timeframes it may be taken.

II. POLICY

Eligible employees are granted one "floating holiday" each fiscal year. It is allocated the first pay period of the fiscal year. The following rules apply to the individual employee's choice and observance of his/her floating holiday:

1. It must be taken in the fiscal year in which it is earned. This means that it must be taken between July 1 and June 30.
2. The floating holiday is eliminated from the employee's record if it is not used within the allowable time period.
3. Prior department/agency approval is required, and the selected day must meet departmental scheduling requirements. Normally, the request must be submitted in advance.
4. The day selected will be a day on which the employee is otherwise regularly scheduled to work. The employee will not be permitted to work the day in order to obtain premium pay or compensatory time, where applicable.
5. The floating holiday may be taken by itself, or added to another holiday, approved day off or vacation.
6. An employee who terminates during the fiscal year and has not used the floating holiday by his/her date of separation should be scheduled to take the floating holiday prior to terminating, or should be paid at his/her straight time rate for the number of hours normally scheduled.

Eligibility

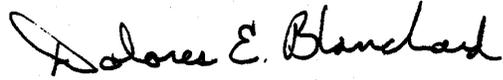
All unrepresented and represented full-time and permanent part-time employees receive the "Floating Holiday" benefit. Represented employees should refer to their respective Memorandum of Understanding for the terms and conditions under which the floating holiday may be taken. Hours for the holiday concur with the number of regularly scheduled hours in the employee's workday, and are prorated for permanent part-time employees.

II. PROCEDURES AND GUIDELINES

Responsible Parties

- | | |
|---|---|
| Employee | <ol style="list-style-type: none"> 1. Specifies desired day to observe the holiday, and submits request to supervisor in advance. 2. Using the appropriate code, records the day taken as the Floating Holiday on the weekly timecard. |
| Supervisor | <ol style="list-style-type: none"> 1. Approves the employee's request to use the Floating Holiday. 2. Assures that the employee's weekly timecard is correctly coded to reflect use of the Floating Holiday. |
| Department/Agency
Payroll Representative | <ol style="list-style-type: none"> 1. Records the Floating Holiday taken in TAMS (Time and Attendance Management System) |
| OPRM/HRIS | <ol style="list-style-type: none"> 1. Checks that the coding of the Floating Holiday has been correctly recorded and that its use is reflected in the employee's paycheck for that pay period. 2. Annually, issues the Floating Holiday to all eligible employees at the start of the fiscal year, and removes it from the employee's record if the holiday has not been used by June 30. |

Questions regarding the Floating Holiday benefit may be answered by referencing applicable Memoranda of Understanding, or contacting OPRM, HRIS Operations at (510) 238-3274.



Robert C. Bobb
City Manager

EXHIBIT C

ASSUPMTIONS FOR ANALYSIS

EXHIBIT C

ASSUMPTIONS FOR ANALYSIS

Below are our assumptions in the analysis of Active Oakland Police Holiday Base Pay and Holiday Pay for FY 2014/2015 through FY 2016/2017.

- A. HDS Holiday OT taken in pay were converted to regular hours by multiplying by a factor of 1 ½ hrs for every hour worked.
- B. SOH Holiday OT taken in compensatory time (banked) was converted to regular hours by multiplying by a factor of 1 ½ hrs for every hour worked.
- C. For the averages on the summary sheets, we excluded individual officers who were credited with a total of less than or equal to 2080 hours for the year.
- D. We also excluded officers who worked an 84-hour shift the entire year.
- E. The analysis is for REP bargaining unit PP1 represented by the OPOA (Oakland Police Officers Association) comprised of sworn police ranks below captain.
- F. Pay Elements **INCLUDED**

ADSO Sworn Administrative Leave	CTU Sworn CT Taken	FDL Sworn Death Lv	FMLA Comp Day Taken
FMLA Sick Taken	FMLA Comp Time Taken	FMLA Vacation Taken	HDS Holiday Sworn
HDP Holiday	HOL Holiday Police	MSW SWN Mod Duty Work	VAC Vacation Lv Taken
REG Sworn Earnings	SCK Sick Leave Taken	SOH Hol Comp Time Sworn	HCT Comp Time Hol Straight

- G. Pay Elements **EXCLUDED**: All Workers Compensation, Leave Without Pay, and Special Leave hours are excluded from the spreadsheet. In addition, staff excluded all premium pays, not included in Base Pay, with the exception of Holiday Pay.

EXHIBIT D

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE OFFICERS ASSOCIATION
EFFECTIVE JULY 1, 2015 THROUGH JUNE 30, 2019**

MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
OAKLAND POLICE OFFICERS' ASSOCIATION

Effective July 1, 2015 through June 30, 2019

does not elect to continue coverage during military leave, the employee retains the right to be reinstated to the City's health insurance plan when the employee is reemployed.

Any bargaining unit member, who has completed one full year of service with the department, or one full year of service with OPD and active military service combined, shall be entitled to receive his or her salary for the first 300 hours of a military leave period.

Military pay shall not exceed 300 hours in any one fiscal year.

An employee may elect to use accrued vacation time or personal time off in lieu of unpaid leave for the portion of military leave which is paid. The period of city compensation for military which is unpaid. The period of city compensation for military may be extended by resolution of the city council. This provision shall be governed by Oakland City Council Resolution #77044, Attachment 4, in the absence of specific provisions set forth in this section.

F. Family Care and Medical Leave

The City's Family and Medical Leave policy is set forth in the City's Administrative Instruction No. 567 as may be amended from time to time.

This provision is not subject to the MOU grievance procedure.

G. Holidays

1. Designated Holidays

The following days are designated as holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September known as "Labor Day"

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th

The Chief or designee shall determine which positions shall be filled on each designated holiday. However, all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw.

2. Floating Holiday

In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.

3. Holiday Pay

All qualifying bargaining unit employees will be paid straight time for the full length of their regularly scheduled shift for each holiday as designated in Article VI Section G. In order to qualify for receipt of compensation for a designated holiday, a unit member must be in paid status the work day before and the work day after the designated holiday.

Pursuant to Article III, Section E, in addition to the straight-time holiday pay, if the holiday is worked, the employee shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off, or by employer request, employee will be paid holiday pay at the straight time rate. In the event that a holiday falls on a member's day off, the member may take the holiday in pay or comp time at straight time, at his/her election.

ARTICLE VII ALLOWANCES

A. Uniform Allowance

1. Initial Uniform Allowance

The City agrees to provide to an employee covered by this Memorandum, at the time of employment, an initial uniform allowance of four hundred dollars (\$400.00).

EXHIBIT E

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE MANAGEMENT ASSOCIATION
EFFECTIVE JULY 1, 2015 THROUGH JUNE 30, 2019**

MEMORANDUM OF UNDERSTANDING

Between

CITY OF OAKLAND

And

OAKLAND POLICE MANAGEMENT ASSOCIATION

Effective July 1, 2015 through June 30, 2019

not elect to continue coverage during military leave, the employee retains the right to be reinstated to the City's health insurance plan when the employee is reemployed.

Although the USERRA does not require that the City pay an employee during a military leave of absence, pursuant to state law, the City will compensate employees for up to thirty (30) calendar days of paid military leave, at the normal base rate of pay for the employee's assigned classification, for each fiscal year the employee is formally ordered to active military service, so long as the employee has completed a minimum of one year of service with the City or one full year of combined active military service and City service at the time the leave is granted. (Cal. Mil. & Vet. Code section 389 *et. seq.*) An employee may elect to use accrued vacation time or personal time off in lieu of unpaid leave for the portion of military leave which is unpaid. The period of city compensation for military may be extended by resolution of the city council. This provision shall be governed by Oakland City Council Resolution #77044, Attachment 1, in the absence of specific provisions set forth in this section.

G. Family Care and Medical Leave

The City's Family and Medical Leave policy is set forth in the City's Administrative Instruction No. 567 as may be amended from time to time. This provision is not subject to the MOU grievance procedure.

H. Holidays

1. Designated Holidays

The following days are designated as holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September, known as Labor Day

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th.

2. Floating Holiday

The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect.

3. Holiday Pay

All bargaining unit members will be paid eight (8) hours of straight time for each holiday as defined in Article VII Section H.

In addition to the straight-time holiday pay, if the member works on the holiday, the employee shall accrue one hour of extra vacation for every hour worked on a holiday.

ARTICLE VIII ALLOWANCES

A. Annual Uniform Allowance

Effective the first pay period after July 1, 2008, the City shall provide an annual uniform allowance of eight hundred dollars (\$800.00) to represented employees covered by this Memorandum.

In the event that an employee separates from City service, for whatever cause (except in the case of death resulting from on-the-job injury), during the fiscal year for which the annual uniform allowance has been paid, such payment shall be adjusted on a pro rata basis in relationship to the period of service in the final fiscal year of employment.

The annual Uniform Allowance shall be paid in combination with Longevity Premium Pay, as a separate check.

B. Uniform Boots

An employee who becomes regularly assigned as a motorcycle officer after the effective date of this MOU shall receive one pair of approved boots which shall meet specifications set forth in the pertinent Police Department General Order.

C. Body Armor

Employees who elect to purchase body armor in-lieu-of standard City issued body armor shall receive a voucher for the cost of standard City issued body armor provided however that all body armor worn by employees and eligible for reimbursement under this provision must meet minimum safety requirements set

EXHIBIT F

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE OFFICERS ASSOCIATION
EFFECTIVE JULY 1, 2006 THROUGH JUNE 30, 2015**

MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
OAKLAND POLICE OFFICERS' ASSOCIATION



July 1, 2006 through June 30, 2015

Pursuant to the March 11, 2008 Interest Arbitration Decision and Award

Issued by Arbitrator Barry Winograd

EXHIBIT F

This provision is not subject to the MOU grievance procedure.

G. Holidays

1. Designated Holidays

The following days are designated as holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September.

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th

The Chief or designee shall determine which positions shall be filled on each designated holiday. However, all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no additional holiday pay for September 9th, known as "Admission Day." Employees who work Admission Day will receive straight time pay. Those employees who do not work Admission Day will not receive holiday compensation.

2. Floating Holiday

In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the

fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no credit of eight (8) hours of compensatory time at the beginning of each fiscal year.

3. Holiday Pay

All qualifying bargaining unit employees will be paid straight time for the full length of their regularly scheduled shift for each holiday as designated in Article VI Section G. In order to qualify for receipt of compensation for a designated holiday, a unit member must be in paid status the work day before and the work day after the designated holiday.

Pursuant to Article III, Section E, in addition to the straight-time holiday pay, if the holiday is worked, the employee shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off, or by employer request, employee will be paid holiday pay at the straight time rate. In the event that a holiday falls on a member's day off, the member may take the holiday in pay or comp time at straight time, at his/her election.

4. Unpaid Holidays During FY 2009-2010, 2010-2011, and 2011-2012

For six holidays in the three fiscal years cited above, employees shall receive no pay for holidays that are not worked and shall only receive straight time pay for holidays that are worked.

The six unpaid holidays shall be designated by the Chief of Police after consultation with the Union.

This provision shall not preclude members from receiving overtime when working a holiday if the total hours worked in the pay period otherwise qualify the individual member for overtime.

This entire provision (VII.H.4) will expire on June 30, 2012.

ARTICLE VII ALLOWANCES

A. Uniform Allowance

1. Initial Uniform Allowance

The City agrees to provide to an employee covered by this Memorandum, at the time of employment, an initial uniform allowance of four hundred dollars (\$400.00).

EXHIBIT G

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE MANAGEMENT ASSOCIATION
EFFECTIVE JULY 1, 2006 THROUGH JUNE 30, 2015**

MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
OAKLAND POLICE MANAGEMENT ASSOCIATION



July 1, 2006 through June 30, 2015

EXHIBIT G

1. With certain exceptions, the cumulative leave must not have exceeded five years;
2. The employee must have provided proper advance notice to the City of the employee's military service;
3. The employee must report back to work or submit an application for reemployment in a timely manner after conclusion of military service; and
4. The employee must not have been separated from military service with a disqualifying discharge or under other than honorable conditions.

If an employee is eligible to be reemployed, the employee must be restored to the job and benefits the employee would have attained if the employee had not been absent due to military service. An employee taking military leave retains all of his/her seniority-based benefits as if continuously employed. The employee returning from military leave is also entitled to pension benefits as if continuously employed throughout the leave period.

During a leave for military service, an employee has the right to elect to continue his/her existing health insurance plan for up to 24 months. If the employee does not elect to continue coverage during military leave, the employee retains the right to be reinstated to the City's health insurance plan when the employee is reemployed.

Although the USERRA does not require that the City pay an employee during a military leave of absence, pursuant to state law, the City will compensate employees for up to thirty (30) calendar days of paid military leave, at the normal base rate of pay for the employee's assigned classification, for each fiscal year the employee is formally ordered to active military service, so long as the employee has completed a minimum of one year of service with the City or one full year of combined active military service and City service at the time the leave is granted. (Cal. Mil. & Vet. Code section 389 *et. seq.*) An employee may elect to use accrued vacation time or personal time off in lieu of unpaid leave for the portion of military leave which is unpaid. The period of city compensation for military may be extended by resolution of the city council.

G. Family Care and Medical Leave

The City's Family and Medical Leave policy is set forth in the City's Administrative Instruction No. 567 as may be amended from time to time. This provision is not subject to the MOU grievance procedure.

H. Holidays

1. Designated Holidays

The following days are designated as holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."
February 12th, known as "Lincoln Day".
The third Monday in February.
The last Monday in May.
July 4th.
The first Monday in September.
September 9th, known as "Admission Day."
November 11th, known as "Veterans Day".
The Thursday in November appointed as "Thanksgiving Day".
The Friday after Thanksgiving.
December 25th.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no additional holiday pay for September 9th, known as "Admissions Day." Employees who work Admissions Day will receive straight time pay. Those employees who do not work Admission Day will not receive holiday compensation.

2. Floating Holiday

The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no credit of eight (8) hours of compensatory time a the beginning of each fiscal year.

3. Holiday Pay

All bargaining unit members will be paid eight (8) hours of straight time for each holiday as defined in Article VII Section H.

4. Unpaid Holidays During FY 2009-2010, 2010-2011, and 2011-2012

For six holidays in the three fiscal years cited above, employees shall receive no pay for holidays that are not worked and shall only receive straight time pay for holidays that are worked.

The six unpaid holidays shall be designated by the Chief of Police after consultation with the Union.

This entire provision (VII.H.4) will expire on June 30, 2012.

APPENDIX 2



AGENDA REPORT

TO: Oakland Police and Fire
Retirement Board

FROM: Katano Kasaine

SUBJECT: Receive responses to October 25, 2017
Staff Agenda Report Regarding
Calculation of Police Retiree Holiday Pay
Benefits

DATE: November 20, 2017

SUMMARY

On October 25, 2017, the PFRS Board received and considered a report from PFRS staff “*Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Received by Active Police Officers During The Last Three Fiscal Years.*” The item is still under consideration by the Board. Two written comments have been received, and are attached here.

BACKGROUND

At the October 25, 2017 PFRS Board meeting, staff presented an Agenda Report which provided an analysis comparing the current method of calculating PFRS police retiree holiday pay benefits against the holiday pay received by active police officers during the last three fiscal years. Public Speaker Sarah Grossman-Swenson, Attorney for the Retired Oakland Police Officers’ Association (ROPOA), stated she would provide comments to this report sometime following the October 25, 2017 meeting. On November 15, 2017 Staff received a “Response dated November 15, 2017” (**Attachment 1**) from Ms. Grossman-Swenson for submission to the PFRS Board.

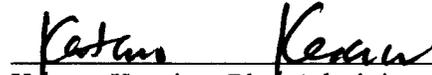
Additionally, PFRS Board Member Robert J. Muszar submitted a memorandum dated November 15, 2017 (**Attachment 2**) on this subject and asked that it be published to the PFRS Board as part of the November 29, 2017 Board Meeting agenda.

Agenda Item B
PFRS Board Meeting
November 29, 2017

RECOMMENDATION

That the PFRS Board accept Attachment #1 and Attachment #2 into the record of its ongoing consideration of the current method of calculating PFRS police retiree holiday pay benefits against the holiday pay received by active police officers during the last three fiscal years.

Respectfully submitted,



Katano Kasaine, Plan Administrator
Oakland Police and Fire Retirement System

Attachments (2):

- 1. Response dated November 15, 2017 from Retired Oakland Police Officers Association & Petitioners to October 16, 2017 PFRS Agenda Report on Holiday Pay*
- 2. Memorandum from PFRS Board Member Robert J. Muszar dated November 15, 2017 regarding the Calculation of Holiday Pay and Holiday Premium Pay for Active Members of the Police Department and Holiday Premium Pay for PFRS Police Retirees and Widows.*

ATTACHMENT 1
(to the 11/20/17 Agenda Report)

McCRACKEN, STEMERMAN & HOLSBERRY, LLP

Counselors and Attorneys at Law

November 15, 2017

San Francisco

595 Market Street, Suite 800
San Francisco, California 94105
415.597.7200
Fax 415.597.7201

Via E-Mail (DLow@oaklandnet.com) and U.S. Mail

Oakland Police and Fire Retirement System Board
c/o David Low
150 Frank Ogawa Plaza, Ste. 3332
Oakland CA 94612

Steven L. Stemerma (CA, NV)
Richard G. McCracken (CA, NV)
W. David Holsberry (CA, NV)
John J. Davis, Jr. (CA)
Florence E. Culp (CA, NV)
Kristin L. Martin (CA, NV, HI)
Eric B. Myers (CA, NV)
Paul L. More (CA, NV, MA)
Sarah Varela (CA, AZ, NV)
Sarah Grossman-Swenson (CA, NV)
Yuval Miller (CA, NV)
David L. Barber (CA, NV)
Kimberley C. Weber (CA, NV)
Yonina Alexander (CA)
A. Mirella Nieto (CA)

Re: **Response from Retired Oakland Police Officers Association & Petitioners to October 16, 2017 PFRS Agenda Report on Holiday Pay**

Dear Oakland Police and Fire Retirement System Board:

Retired Oakland Police Officers Association (“ROPOA”), Ronald B. Gunar, Ned S. Ubben, Raymond T. Miller, Robert L. Aven, and Nita G. Balousek (“Petitioners”), hereby submit this response to the PFRS Staff Report from October 16, 2017.

Summary of Material Facts

1. Compensation Attached to the Rank

As you know, PFRS is a fluctuating pension system: under the Charter, retirement benefits are calculated as a fraction of the amount of compensation paid to *active* police officers of the same rank—known as compensation “attached to the rank.” The purpose of a fluctuating system is to maintain a standard of living and equality of position between the retired and active officers.

The Charter sets PFRS pensions at a fixed fraction of “compensation attached to the average rank held.” (Charter § 2608.) Compensation, as defined in the Charter, is the “monthly remuneration payable in cash, by the City, . . . but excluding remuneration paid for overtime and for special details or assignments” (Charter § 2607.) Whether compensation is “attached to the average rank” is based on the compensation paid to active sworn peace officers (“actives”), and is determined by the City’s actual pay practices for actives, including but not limited to as provided for in the Memoranda of Understanding (“MOUs”) between the City and the Oakland Police Officers Association. (*City of Oakland v. Oakland Police & Fire Retirement Sys.* (2014) 224 Cal.App.4th 210, 231, 217 [“OPFRS”].)

Las Vegas

1630 S. Commerce Street, Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848

Robert P. Cowell (1931-1980)
Philip Paul Bowe (CA) (Ret.)
Barry S. Jellison (CA) (Ret.)



2. Holiday Pay Based on 10-Hour Days

All officers in all ranks, Police Officer through Deputy Chief, receive holiday pay. The July 1, 2006-June 30, 2015 MOU provided that active officers in patrol could no longer work an 8-hour day: they were required to work at least 10-hour days. Accordingly, their holiday pay (for working or not working on a holiday) was calculated based on a 10-hour day or 12-hour day. Similarly, the 2015-19 MOU also requires officers to work at least a 10-hour day; again, holiday pay for active officers in patrol and others working 10- or 12-hour shifts is also calculated based on a 10- or 12-hour day. At issue in the court case is the PFRS Board's ("Board's") failure to include holiday premium pay in retirement allowances paid to all similarly-situated retirees based on a 10-hour day.

The MOUs require that all officers be paid for twelve holidays per year at "straight time" (their regular rate of pay or regular holiday pay) regardless of whether or not they are working. (2006-15 & 20 15-19 MOUs, art. VI.G.3.) This pay is referred to as "holiday pay." Active officers are also paid holiday premium pay in addition to their regular holiday pay. When an active officer works on a holiday, holiday premium pay is paid in addition to the regular pay at the rate of time-and-one-half. (2006-15 & 2015-19 MOUs, art. VI.G.3.) The 2015-19 MOU describe this practice as follows: "in addition to the straight-time holiday pay, if the holiday is worked, the officer shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off; or by employer request, the officer will be paid holiday pay at the straight time rate. In the event that a holiday falls on an officer's day off, the officer may take the holiday in pay or comp time at straight time, at his/her election." (2015-19 MOU, art. VI.G.3.) The 2006-15 MOU uses identical language, except that it uses the words "employee" or "member" in place of "officer." (2006-15 MOU, art. VI.G.3.)

3. Board Determination that Holiday Pay Based on 12-Hour Day Attached to Rank for One Retiree

In November 2013, the Board determined that holiday pay based on a 12-hour day *was* compensation "attached to the rank" for one active PFRS member who was in the process of retiring, and determined that holiday pay based on a 12-hour day should be included in calculating that retiree's benefits. A resolution was adopted by the Board that held, in a 6-0 vote, with one abstention, that "Holiday Pay retirement allowance shall be based on ... twelve hours per holiday." (PFRS Resolution No. 6776, Nov. 13, 2013.)

Despite requests from ROPOA on behalf of Petitioners and other retirees, the Board refused to award holiday pay based on a 10- or 12-hour day to all other similarly-situated PFRS retirees and beneficiaries. Indeed, the Board flatly refused to address the issue.

Legal Analysis

A. Pension provisions must be liberally construed in favor of pensioners.

Retirees have contractual rights in their pensions, which are protected by the California Constitution, and benefits may not be changed to their detriment. Under the California Constitution, “the duty of a public retirement board ‘to its participants and their beneficiaries shall take precedence over any other duty,’ including minimizing employment contributions and defraying administrative costs.” (*Id.* [citing Cal. Const., art. XVI, § 17, subd. (b)].) Pension provisions must be liberally construed in favor of the pensioners, and benefits provisions must be applied “fairly and broadly.” (*Eichelberger v. City of Berkeley* (1956) 46 Cal.2d 182, 188.) A “retired employee has a contractual right, protected by constitutional guarantees, in a pension ...’ and such benefits ‘may not be changed to [that employee’s] detriment.’” (*OPFRS*, 224 Cal.App.4th at pp. 226-27 [alteration in original] [citing *Dunham v. City of Berkeley* (1970) 7 Cal.App.3d 508, 513].)

Although fluctuating pension plans like PFRS are not static, their purpose is to “guarantee the pensioner a fairly constant standard of living despite inflation,” (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 54) and to “maintain equality of position between the retired member and the members currently holding the rank the pensioner attained before retirement.” (*OPFRS*, *supra*, 224 Cal.App.4th at p. 227.) Accordingly, California courts have repeatedly held that cities with fluctuating retirement systems, such as Oakland’s PFRS, may not escape from their promises to pay retirement benefits.

B. Where a court can determine whether a retiree met the criteria necessary to receive premium pay, that pay attaches to the rank.

Construing the Oakland City Charter, courts have repeatedly determined that where a “court [can] determine whether the retired plaintiff met the criteria necessary to receive the additional pay,” that pay attaches to the rank. (*Kreeft*, *supra*, 68 Cal.App.4th at pp. 60-61; see also *OPFRS*, *supra*, 224 Cal.App.4th at pp. 231-33 & fn. 12 [PFRS holiday premium pay attached to the rank] [citing *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. op.) (same)]; *OPFRS*, *supra*, 224 Cal.App.4th at pp. 222 & 240 [PFRS “line-up pay,” extra pay for working in patrol, was judicially determined to be attached to the rank; “any PFRS retiree who had been assigned to patrol ... at any time during the final three years of employment was given credit for ‘the amount of line-up pay received by active police officers similarly assigned.’”] [citing *Arca v. City of Oakland* (Super. Ct. Alameda County, 1984, No. 579832-8) (“*Arca I*”)].

Retirement systems must pass along pay increases to retirees even when those increases are based on new, non-rank-specific criteria. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 214-15 [“merit” and “longevity” bonuses attached to

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the rank]; *City of Long Beach v. Allen* (1956) 143 Cal.App.2d 35 [new salary ordinance providing for “merit” increases to be given only on recommendation of the chief of police must be awarded to retirees even though they had retired prior to the adoption of the ordinance and could not comply with the merit evaluation]; *Estes v. City of Richmond* (1967) 249 Cal.App.2d 538, 541, 546 [“hazardous duty pay” for completing one “tour of duty” each month was attached to the rank]; *Dunham, supra*, 7 Cal.App.3d at pp. 512, 515 [new incentive program for training was a “system of general pay raises” and thus compensation attached to the rank, because retirees “performed the services, including training, required of them; they are entitled to their deferred compensation ... based on the benefits now received by their active counterparts”].) To provide otherwise would allow municipalities to escape their promises to pay retirees based on the compensation due to actives.

C. Holiday premium pay is attached to the rank.

For more than 45 years, the holiday premium pay earned by Oakland police officers for working on holidays has been held to be “compensation attached to the rank” under the City’s Charter and must therefore be included in calculating retirees’ pensions. (*OPFRS*, 224 Cal.App.4th at pp. 222, 231-33, fn. 1 *Buck v. City of Oakland* (Cal.Ct.App. 1971, No. 1-Civ-28402) [nonpub. Opn.]; *Oakland Police & Fire Retirement Association v. City of Oakland* (Alameda Sup. Ct. 1996, No. 763859-O) [nonpub. opn.] .)

By its nature, police work does not pause for holidays— “[b]eing subject to working on holidays as regular work days is normal for police officers.” (*City of Fremont v. Bd. of Admin. of the PERS* (1989) 214 Cal.App.4th 1026, 1031.) When officers are scheduled to work on a holiday, they do not have discretion on whether to work or not. If they want the day off, they are required to request and receive permission from their superior officer—and such permission is rarely granted. Retired police officers who are now collecting pensions regularly worked holidays while they were active and made contributions to PFRS based on the premium pay they received for this hardship. Current, active police officers regularly work holidays and earn premium pay for doing so. They also receive holiday pay when they do not work on holidays. (See 2006-15 & 2015-19 MOUs, art. VI.G.3.)

Because active police officers are regularly scheduled to work on holidays—and have no discretion on whether to take those days off—the holiday premium pay that they receive for this hardship is “compensation attached to the rank.” It “adhere[s] to the rank, as an appertaining quality or circumstance.” (*Kreeft, supra*, 68 Cal.App.4th at p. 57.) An active police officer is entitled to holiday premium pay not based on “his individual efforts over and above what are required to obtain the rank” but rather in the normal course of his scheduled work. Holiday premium pay is no different from other forms of variable pay that courts have held to “attach” to a rank for pension purposes. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 213-214 [longevity and merit pay attached to the rank, even

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though not all members of the rank were entitled to them, and even though retirees entitled to varying amounts of the pay].)

As this Court recognized in *Kreeft*, the term “compensation attached to the rank” is ambiguous. Given the Charter’s ambiguous language—and the consistent, forty-five year practice of paying holiday premium pay as if retirees *worked* the holiday, the Board is obligated to interpret the phrase in the manner most favorable to the pensioners. (*Rose, supra*, 126 Cal.App.3d at p. 940 [“If an ambiguity or uncertainty exists, the foregoing statutory provisions are to be construed in favor of the pensioner.”]; *City of Oakland, supra*, 95 Cal.App.4th at p. 39 [pension “laws are to be interpreted in favor of the employee or beneficiary when a semantic ambiguity is presented by the statute at issue”].)

The Court of Appeal in *OPFRS*, 224 Cal.App.4th 212, recently described the long history of holiday premium pay being attached to the rank:

The question of whether holiday pay is “compensation attached to rank” for purposes of calculating PFRS retirement benefits was first addressed by Division Four of the First Appellate District in 1971 in the case of *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. opn.) (*Buck*). When *Buck* was decided, the compensation payable to active members of the Department was set by salary ordinance. (See Oakland Ord. No. 4817, amending § 1.19 of Oakland Ord. No. 4727 (the 1971 Ordinance).) With respect to holiday pay, the 1971 Ordinance provided in relevant part: “Time worked by any officer or member of the Police Department ... in excess of 40 hours during any one-week period shall be deemed overtime work; provided, however, that ... whenever any legal holiday, as herein designated, shall fall within any such one-week period, the said officer or member of the Police Department shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” (*Ibid.*)

...

The court went on to determine that remuneration for holiday work did not constitute overtime and therefore was not excluded from the Charter's definition of “compensation.” (*Buck, supra*, 1 Civ. 28402; see Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

OPFRS, 224 Cal.App.4th at pp. 217-18. The Court in *Buck* held that retirees must be compensated as if they worked each holiday. The Court explained that after *Buck*, the City tried to avoid paying holiday pay to retirees by providing compensatory time off in lieu of actual holiday pay:

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In the wake of *Buck*, the City reportedly tried to avoid the inclusion of holiday pay in PFRS retirement benefits by altering the holiday pay structure for active members of the Department. Specifically, the Department began giving active officers compensatory time off in lieu of actual holiday pay. In response to this change, lawsuits were filed and eventually the City was permanently enjoined from enforcing any “ordinance, resolution or directive which decreases or attempts to decrease the holiday pay ... received by Oakland police officers or firemen as ‘monthly compensation comprising salary.’” (*Doan v. City of Oakland* (Super. Ct. Alameda County, 1972, No. 426926) (*Doan*)). In addition, the City was ordered to pay active members retroactively for any lost holiday pay and was directed “to pay the increased retirement allowances based thereon pursuant to the [*Buck*] decision.” (*Ibid.*)

Id. at pp. 218-19. The Court went on to explain that subsequent litigation in *Arca II* was initiated because retirees were being compensated based on 8 hours of premium pay, while actives were being credited with 12 hours of pay:

Based on the language of the MOU’s, PFRS retirees only received credit for eight hours of holiday premium pay in the calculation of their retirement benefits from 1976 through 1996. In contrast, active members of the Department received 12 hours of holiday pay during this same period. ... Holiday premium pay was again the subject of litigation in 1996. (See *Oakland Police & Fire Retirement Assn. v. City of Oakland* (Super. Ct. Alameda County, 1996, No. 763859) (*Arca II*)). *Arca II* was a class action lawsuit filed on behalf of PFRS retirees and their beneficiaries challenging the MOU language that excluded retirees from receiving credit for the additional four hours of holiday pay that was being paid to active members of the Department. In that case, the City did not contest the holding in *Buck*, but argued that the additional four hours of holiday pay was “overtime” pay and therefore expressly excluded from the calculation of PFRS retirement benefits. (See Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

Id. at pp. 219-20. After reviewing the relevant case history, the Court of Appeal again held in 2014 that retirees had to be paid as if they worked the holidays:

Similarly, the inclusion in the 2006-2015 MOU of express language defining the rights of active members to certain holiday pay when they *do not* work on a holiday has no bearing on active members' continuing entitlement to receive extra compensation when they do. Although the amount of remuneration has changed over the years, for over four decades active members of the Department have possessed an unbroken right to holiday pay for working on

holidays. And, based on *Buck*, PFRS retirees have been entitled — during that same period — to have such holiday pay included in the calculation of their retirement allowance.

Id. at p. 229.

Accordingly, retirees and beneficiaries must be compensated as if they worked the holidays.

D. Compensating retirees as if they worked the holiday, as required by *Buck*, entitles them to 188 hours of holiday pay rather than the current 144 hours they are receiving.

1. Retirees’ holiday pay should be based on the 10-hour and 12-hour shifts worked by actives.

Active officers working in patrol are *required* to work a 4/10 schedule, meaning that they work at least 10 hours per shift rather than 8 hours per shift. A substantial number of officers, including patrol officers, work 12-hour shifts.¹ Accordingly, when actives receive holiday premium pay for working on a holiday, they receive 10 hours at 1.5x pay, or 15 hours of pay, or 12 hours at 1.5x, or 18 hours of pay, respectively. (When they do not work on a holiday, they receive 10-12 hours of holiday pay.)²

However, despite the fact that actives are now being paid holiday pay based on 10-hour or 12-hour days, retirees are still being paid based on 8-hour days, so they are receiving just 12 hours of pay per holiday. Instead, pursuant to *Buck*, they should be paid as if they worked the holiday:

- o 12 holidays x 15 hours for holidays worked = **180 hours**
- o floating holiday = 8 hours³

¹ The City’s own numbers suggest that approximately 10% of active police work 12-hour shifts.

² This means that even if an active officer didn’t work any holidays—extremely unlikely unless they were out on leave—they would still receive 120-144 hours of holiday pay. Contrary to the assertion in the PFRS Staff Report, holiday pay that is paid when actives do not work a holiday is not paid *in lieu* of base pay; actives do not receive base pay for days on which they do not work. It is pay in addition to base pay. (See 2006-15 & 20 15-19 MOUs, art. VI.G.3.)

³ As the Court held in *Doan, supra*, Alameda Superior Court Case No. 426926, the City cannot escape its holiday pay obligations to retirees by providing holiday pay to actives as “compensatory time off.”

188 hours of holiday pay

2. It is not workable to calculate compensation attached to the rank based on averages.

PFRS Staff have analyzed payroll data based on the total number of hours worked by active officers, but what is relevant here is pay for holidays. And, in looking at total hours worked, the Staff Report left out the 10% of active officers who had a base of 2184 hours, who received 18 hours for each holiday they worked, as 12 hours for each holiday they did not work, which obviously skews the entire analysis.

PFRS Staff have asserted that active officers work, on average, approximately 6-7 holidays per year. But compensation attached to the rank cannot be reasonably calculated based on averages: such averages would be a moving target depending on available staffing, the day of the week the holiday falls on, anticipated or unanticipated workloads, emergency situations, and other factors. The averages would need to be re-computed on a regular basis – maybe even monthly. This is why, construing the Charter liberally in favor of retirees, Courts have held for over 45 years that compensation should be based on an assumption that retirees worked all holidays.

Moreover, even if the Board were to accept the premise that holiday premium pay should be calculated based on the average number of holidays worked by actives, this *still* means retirees are owed additional pay according to the City's own data:

- If, based on a 10-hour shift, an active officer worked just *half* of the holidays, they would receive **158 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 6 holidays x 15 hours for holidays worked = 90 hours
 - 6 holidays not worked x 10 hours for holidays falling on day off = 60 hours holiday pay
 - 8 hours floating holiday
- If an active officer worked 7 holidays, they would receive **163 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 7 holidays x 15 hours for holidays worked = 105 hours
 - 5 holidays not worked x 10 hours for holidays falling on day off = 50 hours holiday pay
 - 8 hours floating holiday

Even if the Board finds that holiday pay should be calculated based on the average number of holidays worked by actives, this still means that retirees are owed additional compensation.

Figure 1. Holiday Pay & Holiday Premium Pay for Active Officers

Holiday	January 1	MLK Day (3rd Monday in Jan.)	Lincoln Day (Feb. 12)	Feb. – 3rd Monday	Memorial Day (last Monday May)	July 4th
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

Holiday	Labor Day (1st Monday Sept.)	Sept. 9 (Admission Day)	November 11 (Veterans Day)	Thanksgiving (Thurs in Nov.)	Friday after Thanksgiving (Nov.)	Christmas (Dec. 25)
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

E. Holiday pay should not be changed for captains and deputy chiefs.

- 1. PFRS Captain and Deputy Chief Ranks are obsolete and compensation should be determined by looking at the OPOA MOU.**

Captain of Police (PFRS) and Deputy Chief of Police (PFRS) are obsolete ranks and compensation attached to those ranks must be calculated in the same manner as other obsolete ranks including Chief of Police, Inspector of Police and Director of Police Services.

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Approximately 25 years ago, the PFRS Board decided retirement allowances for Chiefs of Police, Inspectors of Police and subsequently a Director of Police Services would henceforth be based on cost of living adjustments and other wage increases received by members of the Oakland Police Officers Association (OPOA). At that time, every member of the Oakland Police Department, except the Chief of Police, was a member of and represented by the OPOA (the Chief was an unrepresented member of the OPOA).

It is, therefore, illogical to base retirement allowances, including holiday and holiday premium pay, for retired PFRS captains and deputy chiefs on provisions of the Police Management Association Memorandum of Understanding (PMA MOU) while retired Chiefs of Police, Inspectors of Police and a Director of Police Services remain attached to the OPOA MOU. No retired PFRS captain or deputy chief was ever a member of or represented by the PMA.

Furthermore, there is no longer any community of interest between retired and currently employed captains and deputy chiefs. Many responsibilities of PFRS deputy chiefs have been transferred to the new rank of Assistant Chief and CalPERS captains no longer regularly work in the field at night or on weekends and holidays, unlike PFRS captains. Salary and benefit provisions of the PMA MOU reflect current working conditions and responsibilities.

Retired PFRS captains and deputy chiefs should remain attached to the OPOA MOU for calculation of retirement allowances.

2. Even if PFRS relies on the PMA MOU, it is fundamentally unfair to “cherry pick” the PMA MOU for provisions that are detrimental to PFRS retirees and ignore those that are of benefit.

It is undisputed that the Police Management Association agreed to modify holiday and holiday premium pay provisions for CalPERS captains and deputy chiefs to reflect current assignments, working conditions and membership in the CalPERS retirement system. However, it is also undisputed that the PMA received other benefits to offset any loss of holiday or holiday premium pay.

Specifically:

- **Vacation Buy Back – 120 Hours:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and is clearly compensation attached to the rank. No individual effort is required to obtain this benefit.
- **Management Leave – 15 Days:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and must be considered compensation attached to the rank. No individual effort is required to obtain this benefit.

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- **POST Management Certificate – 5% of pay:** It is undisputable that every CalPERS captain and deputy chief has qualified for a POST Management Certificate by virtue of their tenure in the Department and completion of required training. Every retired PFRS captain and deputy chief also holds a POST Management Certificate and should be paid accordingly.
- **Bachelor's Degree – 5% of pay:** While we do not yet have access to supporting data, it is likely that every CalPERS captain and deputy chief holds a bachelor's degree. This results in a cash benefit and compensation attached to the rank for PFRS retirees.

If the Board decides to modify the historic manner in which holiday and holiday premium pay is calculated for retired captains and deputy chiefs based on the PMA MOU, all other PMA cash benefits must be classified as compensation attached to the rank and paid to retirees.

Conclusion

Retirees should be compensated for holiday premium pay as if they worked the holiday, and should be awarded 188 hours of holiday pay rather than the current 144 hours. The PFRS Staff Report calculations do not analyze the hours actually worked and paid on each holiday, but instead, improperly focus on the average number of hours worked by active officers each year. Moreover, in calculating averages, the PFRS Staff Report improperly disregards the 10% of police officers who are paid 18 hours per holiday worked (resulting in 216 hours of holiday pay if all holidays worked, or 180 hours holiday pay even if just *half* of holidays are worked), obviously skewing the numbers. Even if the Board fails to pay retirees as if they worked all holidays, and even if the Board determines that retirees should be compensated as if they are working only 6-7 holidays, retirees are still being undercompensated. Finally, PFRS cannot cherry pick provisions from the PMA MOU that disadvantage retirees while ignoring those provisions that benefit retirees.

We urge the Board to take all necessary steps to compensate retirees and beneficiaries for 188 hours of holiday pay rather than the 144 hours currently being paid. Thank you for your time and consideration.

Very truly yours,



Sarah Grossman-Swenson

ATTACHMENT 2
(to the *11/20/17 Agenda Report*)

To: PFRS Board Via November 29, 2017 Agenda Package
Katano Kasaine, Plan Administrator

From: Robert J. Muszar, PFRS Board Member

Date: November 15, 2017

Subject: October 16, 2017 Agenda Report Related to Alameda County Superior Court Case No. RG16838274 and the Calculation of Holiday Pay and Holiday Premium Pay for Active Members of the Police Department and Holiday Premium Pay for PFRS Police Retirees and Widows.

Introduction

On October 25, 2017 the PFRS Board received an Agenda Report from the System's Plan Administrator which was titled *An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against The Holiday Pay Received By Active Police Officers During the Last Three Fiscal Years*. Following that meeting I requested a copy of the data upon which the Agenda Report was based for just one (1) of the three (3) years covered by the report. However, the Plan Administrator has refused to provide that information. I also requested a meeting with the Plan Administrator to discuss what I fear could be some significant unintended consequences associated with the apparent direction suggested in the Agenda Report. The Plan Administrator also declined to meet indicating it would be best for me to request information, address concerns and ask questions through the Board's meeting processes. The purpose of this memorandum is to do as the Plan Administrator suggested and to give PFRS Board members ample opportunity to review these materials prior to the Board's November 29, 2017 meeting.

Issues before the Board

When the issues raised by: the Retired Oakland Police Officers Association (ROPOA) in its 2014 letter and 2016 Petition for a Writ of Mandate; PFRS outside legal counsel in his 2017 Demurrer; and, the PFRS Plan Administrator in the August 2015 and October 2017 Agenda Reports are combined; it appears the following questions are before the Board for possible resolution:

- Should police retirees continue to be compensated for holidays as though they had worked each of the holidays available to active members of the department, or should holiday pension benefits be paid on some other basis?
- Should holiday pension benefits be based on 8, 10 or 12-hour shifts or, perhaps some average?
- Is the Floating Holiday "compensation" and "compensation attached to the average rank held" for the purposes of calculating pension benefits?
- Should Captains and Deputy Chiefs receive pension benefits based on the OPMA MOU rather than the OPOA MOU or on some other basis?

Discussion

1. Should police retirees continue to be compensated for holidays as though they had worked each of the holidays available to active members of the department, or should holiday pension benefits be paid on some other basis?

For nearly half a century, pursuant to various court decisions and various actions of the PFRS Board, police and fire¹ retirees have been compensated for holidays as though they had worked each of the holidays available to active members of the respective departments.

The number of holidays available to active members of the Police Department has changed (including a temporary reduction in holidays) and the rate of holiday premium pay has changed; but, *the practice of compensating retirees as though they had worked each of the holidays available to active members has been unbroken.*

Throughout this time, it also has been universally recognized that not all police officers work all holidays.

1971. Holiday Pay and Holiday Premium Pay were first determined to be “compensation” and “compensation attached to the average rank held” in *Buck v. City of Oakland* (“*Buck*”), an unpublished appellate court decision which was decided in August 1971. In examining the question of holiday premium pay the *Buck* court wrote:

“According to the salary ordinance, the policeman or fireman who works on a “legal holiday” which falls during his regular 40-hour work week “shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” The “credit” does not amount to “pay” as such; in practice, however, almost every employee so “credited” is paid his “credit’s” cash equivalent, on a per-hour basis and as a supplement to the monthly salary paid him for the period of time involved. He is thereby paid, in cash and at appropriate monthly intervals, “extra compensation” for having worked on a “legal holiday.” “Accordingly, it [the extra compensation for having worked on a legal holiday] must be included in the computation of retirement allowances...”

In December 1971, the court ordered the City to comply with *Buck* and threatened City representatives with contempt proceedings for any further delays/failures.

1972: In early 1972, in an attempt to avoid the *Buck* mandate, the City unilaterally eliminated holiday pay (and uniform allowance) for active members thereby eliminating any prospective holiday pay to retirees as well. The City’s unilateral actions resulted in the filing of at least two (2) secondary lawsuits (*Doan v City of Oakland* and *Gray v City of Oakland*. In *Doan*, the City was permanently enjoined from enforcing any:

...ordinance, resolution or directive which decreases or attempts to decrease holiday pay...received by Oakland police officers or firemen as “monthly compensation comprising salary” and “to pay the increased retirement allowances based thereupon pursuant to the Buck decision.

¹ Firefighters now receive Holiday In-Lieu pay rather than compensation for individual holidays. Based on the plain language of the MOU, it appears that the value of two (2) Floating Holidays may be included.

1973: The City and the OPOA entered into the first MOU between the parties in 1973. The one-page document provided in part:

“...Retroactive restoration of holiday pay and uniform allowance, abolished by Council action, to June 29, 1972; application of Proposition C percentage increase to uniform allowance and holiday pay effective July 1, 1972, and annually thereafter; computation of retirement benefits under the Buck Decision upon the holiday pay and uniform allowances as so adjusted...”. (Emphasis added)

Since 1973, holiday pension benefits have been calculated “under the Buck Decision” and paid as though retirees had worked each of the holidays available to active members. It is important to note that holiday pay practices of the Department during this period of time were essentially the same as they are today. It is perhaps even more important to note that the City, the PFRS Board and the *Buck* Court were certainly all aware that not every officer worked every holiday. Nonetheless, the practice of paying retirees as though they had worked each of the holidays available to actives went unchallenged until approximately 2010.

1996: In approximately 1976 the City and the OPOA entered into an MOU that increased holiday premium pay from straight-time to time and one-half. This MOU included contingency language which excluded PFRS retirees from receiving the additional half-time holiday premium pay. Thus, active members who did not work the holiday continued to be compensated at straight time while actives who worked holidays received holiday premium pay at the rate of 1.5 times base pay which was paid in addition to their regular pay for the day. PFRS retirees continued to be paid holiday premium pay at the rate of straight time for each of the holidays available to active members.

In 1996, the Alameda County Superior Court, in *Oakland Police and Fire Retirement Association and Jon Arca vs. City of Oakland et al (“Arca II”)*, ruled that the above-described additional holiday premium pay was “compensation” and “compensation attached to the average rank held” and ordered this higher rate of pay be used to calculate pension benefits. The court wrote:

“Respondents are compelled in determining and computing the amount of the retirement allowances due to Petitioners and the class they seek to represent to take all actions necessary to include as “compensation” and “compensation attached to the average rank held” the full twelve hours holiday pay received by current Oakland Police Officers... and to compute and pay such corrected retirement allowance amounts in future years”.

Again, the City, the PFRS Board and the court were all aware that not every officer worked every holiday. They were equally aware of how holiday benefits for retirees were being calculated. But again, neither the City nor the PFRS Board argued this point and the court did nothing to invalidate the existing practice. Instead, the court’s order directing PFRS to include the “full twelve hours holiday pay received by current Oakland Police Officers” kept the practice of calculating pension benefits based on all of the holidays available to actives intact. Thus, following *Arca II*, retirees continued to be compensated for holidays as though they had worked each of the holidays available to actives.

2002: In approximately 2002, the City and the OPOA entered into an MOU covering the period from July 1, 2001 to June 30, 2006. It is believed that this is the first MOU which incorporated 10-hour shift scheduling in the Department. It is further believed that all

compensation for holidays, including holiday premium pay, continued to be based on an 8-hour workday. I have not been able to locate a copy of the 2001-06 MOU to verify this information.

2006: Based on a Chronology of Communications which was prepared by the Plan Administrator and presented to the PFRS Board at its January 26, 2011 meeting, it appears the City first asserted police retirees were being overcompensated for holidays at the Board's April 26, 2006 meeting. In 2006, the Plan Administrator, supported by the deputy city attorney assigned to the PFRS Board asserted that retirees should be compensated for holidays as though they had not worked holidays. Later in 2006 the Plan Administrator reported that research into this issue was continuing and that the matter would be brought back to the Board at a later date. There is no indication that the issue was discussed following June 2006.

2008: Then in 2008, PFRS implemented the 2008 arbitration award and 2006-2010 MOU making no changes to how retirees were compensated for holidays. That is, the Board continued its practice of compensating police retirees as though they had worked each of the holidays available to active members.

2010: In October 2010 the City Administrator wrote to the PFRS Board asserting that police retirees/beneficiaries were being overcompensated for holidays. The City Administrator wrote:

The City of Oakland ("City") recently determined that for over two years, retired police officers who are members of the Police and Fire Retirement System ("PFRS") have been mistakenly paid for 12 annual holidays at the rate of 2.5 times the regular salary. Under the relevant MOUs, it should have been paid at a straight time (1.0) for these 12 days. This effectively increased annual compensated hours of the PFRS police retirees by 144 hours, from the base annual amount of 2,080 hours. City's records indicate that the overpayment has been in place since March 11, 2008.

The City Administrator's letter also indicated the City would be taking unilateral action to reduce pension benefits prospectively and sought Board direction to recover overpayments.

On November 2, 2010, pursuant to instructions received from the Board, PFRS' outside legal counsel wrote to the City Attorney's Office. Among other things, the letter acknowledged the Board's obligation to inquire into the City's assertions and informed the City Attorney's Office of the following:

The Board will place an item on its Audit Committee agenda for its meeting on November 17, 2010 for the purpose of providing the City with the opportunity to make a full factual and legal showing regarding its contention that an overpayment situation exists with respect to police holiday pay. The City's submission to PFRS must be made by Tuesday, November 9 at 2 PM to ensure its inclusion in the agenda materials in compliance with the City's Sunshine Ordinance.

Following the Audit Committee's consideration of the City's arguments, this issue will then be continued to the Committee's next meeting (tentatively scheduled for December 15 but subject to change), to give affected retirees the opportunity to respond to the City's contentions. Either at that meeting or its next meeting, the Audit committee will make a recommendation to the full Board for a determination.

On November 8, 2010 outside counsel for the City responded disagreeing with the legal contentions expressed by PFRS' counsel, agreeing to participate in further dialogue with the Board "along the general lines you outline in your letter" and representing the following:

The City will present two items for the Audit Committee agenda for its meeting on November 17, 2010:

- 1) An explanation of the overpayment, how it arose and the methodology for prospective correction. The City will be available to respond to questions from the Board with regards to prospective correction, and will be requesting the Board's concurrence on an expedited basis.*
- 2) A request for Board action on the manner and method of recovery of past overpayments, with a recommendation of deductions from future payments.*

Also on November 8, 2010, the ROPOA wrote to the Board essentially agreeing with the procedural recommendations expressed by PFRS legal counsel in the November 2, 2010 letter.

On November 9, 2010, the City provided the Board with a package of written materials further explaining and in support of its position that retirees should be compensated as though they had taken the day off on each of the holidays available to active officers. The City provided oral argument in support of its position to the Audit/Operations Committee and the full Board on November 17, 2010.

2011: On January 14, 2011, the ROPOA provided lengthy written materials in support of its position that retirees were being correctly compensated as though they had worked each of the holidays available to active officers. The ROPOA provided oral argument in support of its position to the Audit/Operations Committee and the full Board on January 26, 2011.

The City provided oral argument in rebuttal to the ROPOA's position to the Audit/Operations Committee and the full Board on January 26, 2011 as well. At the conclusion of oral arguments, both the ROPOA and the City agreed that the matter was "submitted". The Board then unanimously adopted a motion directing PFRS outside legal counsel to provide the Board an advice letter "for action on this Police Holiday Pay matter".

Thereafter, PFRS outside legal counsel prepared a 10-page advice letter which was presented to the PFRS board on March 3, 2011 indicating the following: "We have reviewed and considered all of the information provided by both the City and the ROPOA in evaluating the issues and in providing our advice to the Board". PFRS outside legal counsel opined as follows:

We have determined above that the 2008 Arbitration Award and the resulting 2006-2010 MOU did not change the payment of holiday premium pay for active sworn personnel. Since the City's argument that an overpayment for retired police personnel and their

beneficiaries was predicated on the assertion that the Award/MOU changed an existing practice for active personnel, their position fails. Even if the City had been correct in its assertion that there was a change in practice in 2008 that limited the payment of holiday premium pay to active sworn police personnel only to days actually worked, case law specifically applicable to PFRS and generally applicable to fluctuating pension systems demonstrate that holiday premium pay, even if only paid to active employees who actually work the holiday, is never the less compensation attached to the rank for retirement purposes. (Emphasis added)

Later in this opinion letter when referring to *Buck*, outside counsel wrote:

It is clear from the above that Buck stands for the proposition the extra compensation paid to active police officers for actually working a holiday constitutes compensation attached to the rank for retirement purposes even though, by definition, retired police officers do not work on holidays. As such, Buck stands in direct contrast to City's position that because retirees don't work holidays they are not entitled to have holiday premium pay treated as compensation attached to the rank. In accord is the minute order in the Arca case provided by ROPOA, which compels the treatment of the 12 hours of holiday premium pay as "compensation attached to the average rank held" for purposes of the calculation of retirement allowances.

Following outside counsel's presentation of the above-described opinion letter and after having received the written materials and oral arguments provided by both the City and the ROPOA over the course of several meetings the Board, by majority vote, determined there had been no overpayment and directed outside counsel to prepare a resolution consistent with the Board's determination.

On April 26, 2011 the Board unanimously adopted Resolution No. 6682 confirming its March 3, 2011 decision.

Throughout the above-described hearings, the City, relying upon the 2008 Arbitration Award and the resulting 2006-10 MOU, argued that rather than being compensated as though they had worked each of the holidays available to actives; retirees should be compensated as though they had worked none of them. In the end, the Board upheld the long-standing practice of compensating retirees as though they had worked each of the holidays available to actives.

In approximately June 2011 the City initiated court proceedings against the PFRS Board. Among other things, once again asserting that retirees should be compensated as though they had *not* worked holidays and once again relying upon the 2008 Arbitration Award and the resulting 2006-10 MOU. In this action, the City also relied upon the 2006-13 MOU.

In its opposition brief, PFRS vigorously defended its long-standing practice of compensating retirees as though they had worked each of the holidays available to active officers writing for example:

In sum, two previous writs² of mandate issued by the Alameda Superior Court compel the Board to calculate and pay pension benefits to PFRS members based on the hourly rate of holiday premium pay earned by active police who work on a paid holiday. The Board has a clear, present ministerial duty to comply with those court orders.

² Referring to *Buck and Arca II*

The City and PFRS later filed supplemental briefs at the request of the court. Specifically, the court invited further briefing regarding *Kreeft v. City of Oakland* (1998) 68 Cal.qpp.4th 46. The City's supplemental brief urged the court to apply a Kreeft-type standard to its analysis of this case and PFRS argued exactly the opposite.

2012: In approximately September 2012, the Superior Court, relying heavily on *Kreeft* found in the City's favor nonetheless finding that the straight-time holiday pay paid to all officers regardless of whether they worked the holiday was compensation attached to the rank and could result in additional compensation. Although the PFRS Board filed only a partial appeal which was later settled, the ROPOA as an intervener appealed the Superior Court's decision. The results of the appeal are discussed further below.

On October 16, 2012 the Board held a closed session regarding the Superior Court's ruling during which the Board took certain reportable actions. On October 17, 2012, at the request of the deputy city attorney assigned to the PFRS Board, outside legal counsel issued a memorandum detailing the reportable actions taken by the Board in closed session. Among those actions PFRS Counsel reported:

2) The Board voted to direct staff, in consultation with outside legal counsel, to provide the Board with the information and calculations necessary for the Board to take action to prospectively adjust benefits effective December 1, 2012 (January 1, 2013 benefit payments) based on the following criteria for holiday pay and shift pay:

- *Retirement benefits to be calculated based on the annual receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at the 100% of base pay per holiday times 13 paid holidays, instead of 150% of base pay per holiday times 12 paid holidays;*
- *No shift pay.*

The Board directed staff to bring back the above-referenced information and calculations to the Board at its November meeting for Board review and approval.

Thus, even though the Board directed that the rate of additional holiday pay for retirees was to be reduced from 150% to 100% of base pay, the Board directed that this additional compensation was to be based upon each of the 13 holidays available to active members.

The following month staff presented an Agenda Report to the Board which verified and complied with the above-described direction.

2013: In November 2013, the Board unanimously adopted Resolution No. 6766 setting the retirement benefits for the only remaining active police member of the System. Among other things, the Board based the holiday pay benefits for this retiree on a 12-hour work schedule and has since paid those benefits as though he had worked 12 hours *on each of the holidays available to active members.*

2014: In February 2014 the First District Court of appeal in, *City of Oakland v. Oakland Police and Fire Retirement System et al.*, 224 Cal. App. 4th 210 ("*City of Oakland*"), overturned the portion of the lower court's ruling which addressed the rate of holiday pay owed to retirees; rejecting the City's argument that retirees should be compensated as though they had *not* worked

holidays and finding this argument to be “specious”. The appellate court specifically rejected the Superior Court’s reliance on *Kreeft*. In addition to providing a very detailed review of the history of holiday pay benefits and the various litigations surrounding them, the appellate court’s references to other analogous court decisions make it clear the court was aware that not all officers work all holidays.

When addressing the subject of res judicata, the appellate court wrote:

The trial court summarily dismissed the doctrine of res judicata, remarking simply that Buck and Arca II concerned retiree rights when compensation for active members of the Department was “set by different MOUs.” We, in contrast, find the doctrine dispositive.

When addressing the preclusive nature of *Buck*, the court wrote:

Now, over 40 years later, the City is arguing under the exact same Charter provisions that the extra compensation payable to active members of the Department for working on a holiday should not be included in the calculation of PFRS retirement allowances. However, having had one chance to litigate this issue before the First District, the City is not now entitled to take another bite of the same apple; and,

*Similarly, the inclusion in the 2006-2015 MOU of express language defining the rights of active members to certain holiday pay when they do not work on a holiday has no bearing on active members’ continuing entitlement to receive extra compensation when they do. Although the amount of remuneration has changed over the years, for over four decades active members of the Department have possessed an unbroken right to holiday pay for working on holidays. And, based on *Buck*, PFRS retirees have been entitled—during the same period—to have such holiday pay included in the calculation of their retirement allowance; and,*

*In the present case, in contrast, the City has failed to make any showing that a material change in circumstances has occurred since *Buck* with respect to the holiday pay issue which would justify its relitigation. As stated above, neither the change in the underlying document providing the holiday pay benefit, nor the fact that the current MOU expressly discusses holiday pay for members who do not work holidays is a material change justifying relitigation. Further, the City’s specious argument—that retirees should not be compensated for working on holidays because they currently do not work—misses the point entirely and, regardless, has been true since *Buck* was decided. The appropriate inquiry is not whether retirees no longer work, but rather how active members are compensated for holiday work and whether this has changed significantly since *Buck*. (Emphasis added)*

The appellate court also addressed the superior court’s reliance on *Kreeft* and found it to be misplaced.

*Nor do we view the First District’s decision in *Kreeft* as materially changing the legal landscape with respect to the provisions in the Charter which govern the calculation of PFRS retirement benefits, including those based on holiday pay; and,*

*We view *Kreeft* as a commonsense application of the Charter provisions to particular facts rather than as a significant departure from existing precedent. Certainly, there is nothing in the statutory analysis engaged in by the *Kreeft* court that could not have been argued*

to the First District in Buck. For instance, it could easily have been urged that working on a holiday was based on individual effort and scheduling rather than rank. “A prior judgment is res judicata on matters which were raised or could have been raised (emphasis added), on matters litigated or litigable” (citation omitted). “Were the rule otherwise, litigation finally would end only when a party ran out of counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background” (citation omitted).

Although the appellate court determined that the “unanalyzed and incomplete” payroll data provided to the superior court by the city was “wholly insufficient” and “essentially useless” for the purpose of triggering relitigation, the court nonetheless examined the raw data and drew certain conclusions from it.

We have, however, reviewed the raw payroll data supplied by the City for the two-week pay period ending January 6, 2012. While we doubt that the two-week pay period encompassing a Sunday New Year’s holiday represents the typical experience of most Department members for most holidays, even a cursory review of the data in light of other information contained in the record permits certain conclusions to be drawn. First, it appears that the majority of active Department members work 10- or 12-hour shifts, rather than the traditional eight-hour shift (emphasis added). Second—although there were entries that we could not interpret with the information available in the record—it appears that essentially all active members receive between eight and 18 hours of holiday pay in connection with the occurrence of a holiday, based on the length of their usual shift. Thus, members who work on a holiday receive holiday pay of 12, 15, or 18 hours. Members for whom a holiday falls on a regular day off receive holiday pay of eight, 10 or 12 hours. And, finally, members who take a holiday off receive holiday pay of eight, 10, or 12 hours.

The above observation by the court is significant in that the court certainly would be aware that 10-plan and 12-plan type scheduling include changed day-off patterns.

Although the appellate court determined that *Kreeft* did not apply and that *Buck* controlled, the court nonetheless hypothesized regarding the likely outcome of a properly applied *Kreeft*-type analysis to the facts of the instant case.

Indeed, were we to throw out the holding in Buck and reconsider the holiday pay issue generally in light of Kreeft, it is not at all clear that a different outcome would result. As stated above, it appears that essentially all members of the Department currently receive between eight and 18 hours of holiday pay for every holiday simply for being on the force. Thus, holiday compensation seems to be incident to rank rather than individual effort. And, while it is true that there is variation in the amount of extra compensation paid to each member based on schedule, we disagree with the trial court that any such variability is fatal under Kreeft. In fact, Kreeft speaks of the FLSA pay at issue being “widely” varied. The variation in the present case, in contrast, is much more narrowly focused and predictable. Were a proper analysis to be done, we would not be surprised to find that the 12 hours of holiday currently used in the calculation of PFRS retirement benefits pursuant to Buck represents an average that is a “meaningful predictor of the experience of most” Department members.

When addressing the temporary reduction in holidays which resulted from the 2006-2013 MOU, the court concluded that holiday pay for retirees should be based on all of the holidays available to active members of the Department.

Although the total holiday compensation paid to active members of the Department was clearly reduced during this timeframe, the Board continued to calculate retirement benefits for PFRS retirees as if this temporary reduction had not occurred. Based on the plain language of the Charter and the 2006-2013 MOU, the trial court held that the reduction in holiday pay experienced by active members should have been reflected in PFRS benefits for the years in question. Specifically, retirees, during the relevant timeframe, should only have been credited with seven holidays, rather than 12 (emphasis added).

Again, the court certainly was aware that not all actives work all holidays, yet it decided that retirees should have been credited with all seven of the holidays available to actives.

2014 - 2016: In October 2014, the ROPOA wrote to the PFRS Board asserting that holiday pension benefits should be based on either 10 or 12-hour shifts and that the Floating Holiday should be included in retiree holiday pay calculations.

In August 2015, at the direction of the Board, the Plan Administrator submitted an Agenda Report analyzing the ROPOA's assertions.

In October 2016, the ROPOA petitioned for a Writ of Mandate and filed a Complaint for Declaratory Relief in Alameda County Superior Court (Case No. RG16838274) on behalf of the ROPOA and five (5) named plaintiffs. The petition asserts that retirees/beneficiaries should be compensated for holidays as though they worked 10-hour shifts rather than 8-hour shifts and that the Floating Holiday received by active officers should be included in retirement compensation. Central to the ROPOA petition is the assertion that retirees should be compensated as though they worked each of the holidays available to active members of the department.

The October 2014 letter, the 2015 Agenda Report and the 2016 Writ will be discussed in more detail below. They are included here to provide context to the actions taken on behalf of the Board in 2017.

2017: In February 2017, outside legal counsel for PFRS filed a demurrer to the ROPOA's Writ and alternatively filed a motion to stay the action. Both the demurrer and the motion to stay were denied by the court.

Without express direction or authorization from the Board, outside counsel proffered an argument which, on its face, represents a significant departure from the long-standing practices of this Board as they relate to the calculation of retiree holiday benefits pursuant to Buck, Arca II and City of Oakland. PFRS outside counsel argues that the 4-10 work schedule increases the likelihood a holiday will fall on one of an officer's regularly scheduled days-off; therefore retiree holiday premium pay should be based on a Kreeft-like standard rather than the decades-long Board practice of calculating pension benefits as though retirees had worked each of the holidays available to active members.

Summary: The practice of calculating holiday pension benefits as though retirees worked each of the holidays available to active members has been uninterrupted for more than 44 years. As indicated above, each time it has been reviewed, either by this Board or by the courts or by both, the practice has been validated.

The most recent set of challenges began in October 2010 and were based on the City's interpretation of the 2008 Arbitration Award and resulting 2006-2010 MOU. In early 2011, following hearings which spanned several months and the receipt of a detailed advice letter from legal counsel, the Board adopted Resolution No. 6682 upholding the practice.

When the City filed its 2011 Writ, the Board vigorously defended its 2011 decision. Even when the 2012 superior court decision reduced the rate of holiday pay, the Board's October 16, 2012 direction to staff was to pay the reduced rate on all, not some portion, of the holidays available to actives.

In late 2013, the Board set the holiday benefits for the last active member of the Department based on a 12-hour shift and has since paid them as though he had worked each of the holidays available to actives.

In early 2014, the appellate court overturned the lower court ruling that would have reduced the rate of pay upon which holiday pension benefits are to be based while upholding the lower court's ruling regarding the temporary reduction in the number of holidays available to actives; ruling that retirees should be credited with each of the seven (7) holidays temporarily available to actives. Based upon the textual content of the appellate court's decision, it is obvious the court was aware that most actives were working 10 or 12 hour shifts with their accompanying day-off patterns and that not all actives work all holidays.

Lastly, citing other decisions, the court wrote that "a prior judgment is *res judicata* on matters which were raised or could have been raised on matters litigated or litigable" (emphasis added) and, "Were the rule otherwise, litigation finally would end only when a party ran out of counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background". The 10-hour shift schedule used by the Department has been in place for about 16 years. The 12-hour shift schedule has been in place for approximately 10 years. Thus the argument now being made by PFRS outside legal counsel - that these shift patterns increased the likelihood a holiday would fall on a regularly scheduled day-off - was available and could have been raised by the City and/or PFRS in the court proceedings that began in 2011.

Only the Board should decide whether to modify its long-standing practice of calculating holiday pension benefits as though retirees had worked each of the holidays available to actives – the pay determined by the courts to be "attached". I, of course, would argue that we shouldn't and that our current practices are mandated by *Buck and Arca II* and were affirmed in *City of Oakland*. But, even if not mandated, the practice is a reasonable interpretation and application of those decisions given our duty to construe pension benefits liberally in favor of retirees and our obligation to administer the system efficiently. Certainly, none of the Board's advisers should be proffering arguments to the contrary until the Board decides.

This decision, to maintain or abandon the Board's decades-long practice of calculating holiday pension benefits as though retirees had worked each of the holidays available to actives, is the cornerstone to any other decisions the Board may make in this case.

2. Should holiday pension benefits be based on 8, 10 or 12 hour shifts or, perhaps some hybrid shift schedule?

As indicated above, *holiday premium pay* has been determined to be attached to the average rank held and is therefore required to be included in the calculation of pension benefits. The

ROPOA has questioned, actually challenged, the amount of holiday premium pay being included in pension calculations. We know that active members now receive holiday premium pay based on all hours worked, rather than a static eight (8) hours. We also know that the standard shifts utilized within the Department are 8-, 10- and 12-hour shifts rather than a singular 8-hour shift. The current OPOA MOU prohibits the use of 8-hour shifts in Patrol.

Clearly, everyone on the Department (setting aside the question of Captains and Deputy Chiefs which will be addressed below) who works on a holiday receives a minimum of eight (8) hours of holiday premium pay, which is paid at the rate of 1.5 times his/her base rate of pay. The courts have already determined and reaffirmed that the requirement for police officers to work holidays as a matter of routine is so commonplace that the compensation paid for doing so is "compensation attached to the average rank held" in fluctuating pension systems and compensation "earnable" in fixed systems. Most recently, in *City of Oakland*, the court has determined that the benefit structure mandated by the 2008 Arbitration Award and the resulting 2006-2010, 2006-2013 and 2006-2015 MOUs have done nothing to justify the relitigation of this issue. Hence, holiday premium pay based on 8-hours of work and paid on all holidays available to actives is our baseline. In my opinion any attempt to justify something less, is nothing more than folly, will be costly and will further drive a wedge between this Board and the retirees/beneficiaries we serve.

So, in my mind at least, the question then becomes: are enough officers assigned to 10- or 12-hour shifts so as to tip the scales to require that it is one of these shifts, rather than an 8-hour shift, which attaches to the rank? This will not be an easy question to answer. Therefore our inquiry should be as targeted as possible and the criteria by which we make our decision should be well articulated.

Secondary is essentially the same question, but answered only as to officers assigned to Patrol. The courts have twice decided that compensation paid to officers assigned to Patrol can "attach to the average rank held" by those officers. In *Arca*, the court determined that Patrol Division Half-Hour Pay attached to the rank. Although under appeal, the superior court also recently determined that Master Police Officer Pay, which was paid only to officers assigned to Patrol, was attached.

2012: On October 16, 2012, the Plan Administrator submitted a memorandum to the Board showing "estimated prospective pension payments and retroactive overpayments as mandate by the Writ of Mandate". This memorandum assumed that **all** retirees worked a Monday-Friday workweek and prospectively provided additional compensation only for those holidays that fell on weekends as follows:

1. *Payroll is based on a Monday-Friday week with additional compensation for holidays that fall on weekends.*

The report indicated that retroactive calculations also would assume a Monday-Friday workweek with additional compensation being provided only for holidays falling on a weekend.

The Board also met in closed session on October 16, 2012. As indicated earlier in this document, on October 17, 2012, at the request of the deputy city attorney assigned to the PFRS Board, outside legal counsel issued a memorandum detailing the reportable actions taken by the Board during its October 16, 2012 closed session. Among those actions was the criteria upon which holiday premium pay calculations were to be based. It would appear the October 16 closed session action was a conscious departure from the criteria recommended

by the Plan Administrator in her October 16 report. Among other things, PFRS Counsel reported:

“2) The Board voted to direct staff, in consultation with outside legal counsel, to provide the Board with the information and calculations necessary for the Board to take action to prospectively adjust benefits effective December 1, 2012 (January 1, 2013 benefit payments) based on the following criteria for holiday pay and shift pay:

- *Retirement benefits to be calculated based on the annual receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at the 100% of base pay per holiday times 13 paid holidays, instead of 150% of base pay per holiday times 12 paid holidays;*
- *No shift pay.*

The minutes of the October 16, 2012 Board meeting indicate the calculations in the Plan Administrator’s October 16 memorandum would be recalculated pursuant to action taken by the Board in closed session. The minutes indicate:

Katano Kasaine reported the previous calculations submitted by the staff of the PFRS board will change after consideration of the Board action today. Staff will provide revised calculations at a future meeting. Rich Miadich, PFRS outside counsel, provided explanation of the calculation methodology in consideration of the Judge’s order on this matter.

On November 14, 2012, a November 9, 2012 memorandum from the Plan Administrator appeared on the Board’s agenda and was included with distributed agenda materials. This memorandum indicated:

At the PFRS Board’s October 16, 2012 closed session meeting, the Board directed staff to meet with the Board’s outside attorney’s and to provide calculations necessary for the Board to prospectively adjust benefits effective December 1, 2012. The PFRS Board directed staff that the prospective change should be based on the following:

1. *Retirement benefits to be calculated based on receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at 100% of base pay per eligible holiday (emphasis added)*
2. *No Shift Differential pay.*

Based on instructions from PFRS outside attorney, Holiday Pay for Patrolmen are based on a value of 10 hours per day (emphasis added). All other ranks holiday pay is assumed to be based on 8 hours per day.

2013: In November 2013, the Board unanimously adopted Resolution No. 6766 setting the retirement benefits for the only remaining active police member of the System, a Sergeant who was assigned to Patrol at the time of retirement. Among other things, *the Board based the holiday pay benefits for this retiree on a 12-hour work schedule.* This action was not inconsistent with the Board’s November 2012 action to base holiday premium pay for Patrolmen on 10-hours per day.

2014: In February 2014, the appellate court published its decision in *City of Oakland*. As previously indicated the court reviewed raw data which was submitted by the City in support of its position. Among other things, the court found:

While we doubt that the two-week pay period encompassing a Sunday New Year's holiday represents the typical experience of most Department members for most holidays, even a cursory review of the data in light of other information contained in the record permits certain conclusions to be drawn. First, it appears that the majority of active Department members work 10- or 12-hour shifts, rather than the traditional eight-hour shift (emphasis added).

As indicated above, in October 2014, the ROPOA wrote to the PFRS Board asserting that holiday pension benefits should be based on either 10 or 12-hour shifts. Specifically, the ROPOA wrote:

Pay should reflect ten and twelve-hour shifts: *The Resolutions and the supporting staff reports also fail to recognize that active members routinely work either 10 or 12-hour shifts, and that pension benefits should be based on these work hours, even though some recognition of this requirement was included in a staff report which was dated November 9, 2012 (Exhibit 2). This staff report indicated: "Based on instructions from PFRS outside attorney, Holiday Pay for Patrolmen are based on the value of 10 hours per day".*

Although we disagree with the premise that only patrolmen should receive holiday pay based on a 10-hour shift, we believe outside counsel was correct in principle. First, the Court of Appeal recognized and set the standard for retiree holiday pay compensation when it wrote: "Further, the City's specious argument — that retirees should not be compensated for working on holidays because they currently do not work — misses the point entirely...The appropriate inquiry is not whether retirees no longer work, but rather how active members are compensated. . ." (City of Oakland v. Oakland Police & Fire Retirement System (2014) 224 Cal.App.4th 210, 231.)

- *Since 2006, the Board has been calculating holiday premium pay for retirees based on an 8-hour shift even though 10-hour and 12-hour shifts have become the norm throughout the Department. The Court of Appeal recognized the widespread use of these extended shifts when it wrote: "First, it appears that the majority of active Department members work 10- or 12-hour shifts rather than the traditional 8-hour shift." (224 Cal.App.4th at p. 231, fn. 11.)*
- ***Under the current MOU, 8-hour shifts are not even permitted for officers in Patrol; at least 10-hour shifts are required.*** *Article IX, Section L of the MOU provides: "For the duration of this MOU, the current 4/10 shift schedule shall be the core shift in patrol. There shall be no 5/8 shift schedule in patrol for the duration of this MOU." The use of 12-hour shifts is prevalent enough to warrant the modification of the salary schedule to account for them. (See Appendix G to the 2006 MOU.)*
- *Lastly, in November 2013, the Board directed that the holiday pay for a recently retired PFRS member be calculated based on a 12-hour shift.*

Given the above, it is clear that the Board cannot reasonably or permissibly assume that all retirees—all except one, that is—are only entitled holiday premium pay based on an 8-

hour day (12 hours of holiday pay). At a minimum, holiday premium pay should be based on a 10-hour day (15 hours of holiday pay). This means that all retirees have been undercompensated for more than seven years, and these underpayments must be included in the Board's calculations.

Even if the Board were to disagree with the above, it is inescapable that retirees of all ranks who were assigned to patrol during any portion of their final three years of employment are entitled to a minimum of 15 hours of holiday pay.

2015: In August 2015 the PFRS Plan Administrator submitted an Agenda Report titled *Informational Report regarding Retired Oakland Police Officers Association (ROPOA) claims of PFRS Police retiree underpayments stated in their October 27, 2014 memo to the PFRS Board.* Although fatally flawed because of the many obvious errors that carry through Exhibit 1 (explained more fully below), in my opinion, this is exactly the type of analysis needed by the Board to resolve the issue before it. This report indicates:

Staff has conducted research to determine how many active officers, sergeants, and lieutenants worked 8, 10, or 12 hour shifts over the last six fiscal years. Summarized below are the facts which are included in Exhibit 1 and Exhibit 2 herein.

Exhibit 1 reflects the shifts worked by active Oakland Police officers for the six Fiscal Years 2009-2010 through 2014-2015. The tables show the shifts worked by active Oakland Police assigned to Patrol, as well as the shifts worked for active Oakland Police in the entire department. The data shows that 10-hour shifts are most often worked by sergeants and officers assigned to patrol. However, the data also shows that other shifts, including 8-hour shifts, are also worked by a significant number of personnel assigned to patrol. The percentage of 8, 10, and 12 hour shifts worked varies from year to year, and from rank to rank (lieutenant, sergeant, and officer). What this inconsistency shows is that the data does not support the broad-brush assertion made by the ROPOA.

It is difficult to analyze the material in Exhibit 1 fully without having the data upon which it is based, however it is obvious that most of the numbers reflected in the exhibit are mistaken. Most of these mistakes are reflected in page 1 of the exhibit (Fiscal Year 2009-2010) and those mistakes then carry through the entire exhibit. For example:

The "Total Hours" columns for each of the ranks and for all of patrol reflect obviously mistaken numbers. It is universally accepted that an officer assigned to a 40-hour workweek (80 hours worked in a pay period) will typically work 2,080 hours in a year and an officer assigned to a 12-hour workday (84 hours worked in a pay period) will work 2,184 hours. Even if we were to assume that every officer assigned to patrol was on a 12-hour shift, for them to have worked 9,711,896 hours in a year (Total Patrol Hours column) would have required approximately 4,447 officers assigned to Patrol. Similarly, the numbers reported separately for Lieutenants, Sergeants and Officers would have required approximately 119 Lieutenants, 547 Sergeants, and 3,781 Officers.

The "Total Shifts" columns are similarly mistaken. The maximum number of shifts would be worked by Officers assigned to a 40-hour workweek. Without allowance for additional time off such as vacation, an Officer assigned to a 2080 hour work-year, will be scheduled to work 260 shifts if on an 8-hour shift and 208 shifts if on a 10-hour shift. Officers assigned to a 12-hour shift typically will be scheduled to work approximately 183 shifts per year. Even if we were to assume that every officer in Patrol was scheduled to work 260 shifts,

which they obviously were not, the numbers reported in Exhibit 1 would require about 94 Lieutenants, 464 Sergeants, and 3,100 Officers. Of course, the more reasonable divisor would have been 208 shifts which would simply make these numbers even more unrealistic.

The same mistakes seem apparent in the Total Hours and Total Shifts columns for the All Sworn portion of the exhibit. These mistakes then generally carry forward throughout the remainder of Exhibit 1.

Other mistakes appear that seem to be unique to the All Sworn portion of the exhibit for Fiscal Years 2011-2012 and 2014-2015. For example:

The Total Shifts columns in the 2011-2012 report reflect numbers that are impossibly low. For example it reflects that only 1,181 shifts were worked throughout the Department for the entire year. Assuming there are 260 scheduled shifts per year per officer, this number reflects fewer than five (5) individuals.

Setting aside the fact that the numbers generally are unrealistically high, the Grand Total rows of the Total Hours columns in the 2014-2015 report simply do not add. For example, the report shows a Grand Total of 10,620,904 hours worked department-wide. Those numbers add horizontally across the columns however, when the Total Hours column is added vertically, the total comes to 11,650,748. Likewise, each of the Total Hours columns in this report, when added vertically, reflect mistaken totals. Without having the data upon which the report is based, it is impossible to determine the exact nature of the mistakes but it is clear the numbers don't match.

Given the above-described issues, I made no attempt to examine Exhibit 2, except to say that any such analysis is of limited or no use when attempting to determine which work schedule attaches to the rank. Assuming the information is correct and is reflective of all the pay codes associated with holidays, the type of analysis reflected in Exhibit 2 goes to "compensation earnable"; not "compensation attached to the rank".

Lastly, given the express language in the MOU which prohibits the use of 8-hour shifts in Patrol, the report should explain its findings in this regard. Either the report is mistaken or there are exceptions to the MOU language which may or may not be authorized. If there are exceptions, they should be explained.

Having pointed out all of the above, I still believe that the type of analysis reflected in Exhibit 1 is essential to resolving the question before the Board both as to Patrol and as to the Department. **I therefore request that it be corrected and resubmitted for the Board's review and consideration. I further request that the corrected report include an explanation of its findings regarding the use of 8-hour shifts in Patrol.**

2016: As previously discussed, in October 2016, the ROPOA petitioned for a Writ of Mandamus and filed a Complaint for Declaratory Relief in Alameda County Superior Court (Case No. RG16838274) on behalf of the ROPOA and five (5) named plaintiffs. The petition asserts that retirees/beneficiaries should be compensated for holidays as though they worked 10-hour shifts rather than 8-hour shifts.

2017: On October 25, 2017 the Plan Administrator submitted an Agenda Report which was dated October 16, 2017. The report was titled: *An Analysis Comparing The Current Method*

of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Received by Active Police Officers During the Last Three Fiscal Years.

As to the question before the Board – should Holiday Premium Pay for retirees be based on an 8-, 10-, or 12-hour shift³ - both the methodology and the logic of this report miss the mark and, if adopted, would make it practically impossible to administer PFRS. Essentially, as explained below, the Agenda Report attempts to apply a “Fixed System” standard to a “Fluctuating System”.

In a fixed retirement system, pension benefits are based on what a retiree actually earned in those areas which have been determined to be “compensation earnable” for the purposes of calculating pension benefits. A fixed system works because it focuses on the individual and his/her compensation earnable only once – the day the individual retires. That is, an individual’s pension benefit is based on the pensionable compensation he/she *actually earned* over a fixed period of time, usually either 12 or 36 months, *and has absolutely nothing to do with the compensation earned by his/her peers either currently or prospectively*. The appropriate pension formula is then applied to this compensation earnable snapshot to determine the individual’s pension benefit. Thereafter, additions or deletions to those pay elements which are considered “compensation earnable” for actives and/or the compensation actually paid to actives have no impact on the individual’s future pension benefits. Hence, the pension is “fixed” based on the above-described snapshot. In the public sector, pension payments typically are adjusted periodically by whatever COLA formula might be applicable within the pension system but, again, these formulas have no connection to COLAs received by active employees.

In a fluctuating system, pension benefits are based on those items of pay that have been determined to be “compensation attached to rank”. In PFRS, a retiree’s pension is based on the compensation attached to the average rank held over either the final year of employment (disability retirements) or final three (3) years of employment for service retirements. Although a number of factors must be considered when determining whether a particular form of compensation “attaches to rank”, once it is decided that compensation attaches to the rank it is an all or nothing proposition. The compensation element is either attached and paid or it’s not attached and not paid. There is no middle ground.

Pension benefits then fluctuate, either up or down, based only on changes to the amounts of “attached” compensation that is available to those actives holding the same rank as the retiree but, not based on the amounts actually earned by actives within that rank. Any attempt to link pension benefits in a fluctuating system to individual performance, as implied by this Agenda Report, is contrary to the nature of the system and would be unmanageable.

Court decisions involving fluctuating systems have universally recognized this distinction. In every instance where a court has been asked to answer this question, the answer has been “attached” or “not attached”. There has never been what would amount to a compromise decision in this regard and there has never been a court decision mandating that the up and down movements applied to compensation once determined to be attached to the rank in a fluctuating system be based on individual performance.

³ The questions regarding the compensation paid to Captains and Deputy Chiefs and the issue of the Floating Holiday are addressed elsewhere in this memorandum

As indicated earlier, a fixed system can function based on individual performance because it only examines individual performance once. If benefits in a fluctuating system were to be adjusted based on individual performance, benefit levels would be constantly moving, impossible to determine with any degree of stability and impossible to administer effectively.

The October 16, 2017 Agenda Report is based on the same flawed assertion that was rejected by this Board in 2011 and by the appellate court in 2014. The report indicates:

However, since 2006 and subsequent OPOA (Oakland Police Officer Association) MOUs, active police are no longer paid additional holiday pay at a premium rate of 1.5X per holiday regardless of whether they actually work the holiday. Active OPOA police officers (below the rank of captain) receive additional Holiday Premium Pay at the premium rate (1.5X) only if they actually work the holiday. DGO D-8 has since been rescinded.

The City made this very same argument in October 2010. Following an exhaustive hearing process and upon detailed advice of its legal counsel, the Board rejected this notion in early 2011. The City made the same argument in the Writ it filed in June 2011 and the Board vigorously defended against it asserting its practice of paying holiday pension benefits as though retirees worked each of the holidays available to actives was mandated by the courts.

In February 2014 the appellate court, writing in significant detail, found the City's 2010 and 2011 arguments to be specious. Now, the Plan Administrator is attempting to resurrect the very same failed arguments.

Even if one were to disagree with all of the foregoing, the October 16, 2017 report is of little use in answering the question before the Board. For example:

- The report eliminates all officers who were paid less than 2080 hours without regard to the reason and without regard to the holiday premium pay they received. This eliminated approximately 29% of the records examined.
- The report eliminates all officers assigned to an 84-hour work-schedule even though, according to the report, they represent 10% of the workforce. These officers also are generally assigned to Patrol. The MOU provides "all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw".
- The report eliminates officers who are off work on Workers Compensation even though those officers are compensated for holidays as though they worked the holiday.
- The document does nothing to inform the Board regarding the number officers who received holiday premium pay based on 8-, 10-, or 12-hour shifts.

Summary: The ROPOA, relying on MOU language and the previous actions of the Board, has asserted that holiday premium pay for retirees should be based on a 10-hour shift rather than an 8-hour shift.

In October 2012, the Board, in closed session, made certain decisions regarding the calculation of holiday premium pay for retirees. Among them, it would appear the Board

decided that holiday premium pay for patrolmen should be based on a 10-hour shift. The November 2012 Agenda Report which was intended to comply with the Board's October 2012 direction indicated:

Based on instructions from PFRS outside attorney, Holiday Pay for Patrolmen are based on a value of 10 hours per day. All other ranks holiday pay is assumed to be based on 8 hours per day.

In November 2013, the Board based the holiday premium pay pension benefit for the last active police member of the System on a 12-hour shift and has since paid pension benefits at this level based on each holiday available to active members.

In February 2014, the appellate court observed that most actives were now working either 10- or 12-hour shifts rather than the traditional 8-hour shift.

In August 2015, the Board received the only Agenda Report thus far that would help respond to the ROPOA's claims. But for the mistakes in this report, it represents the type of analysis needed by the Board. Again, I strongly urge that staff be directed to provide the Board with a corrected version of the August 2015 report.

I also urge the Board to reject the methodology and logic of the October 2017 Agenda Report. The methodology used to prepare this report is irrelevant to a fluctuating system and reliance upon it will be fraught with unintended consequences.

Before the Board receives the corrected report, I recommend that we engage in: a meaningful dialogue regarding what the Board's decision-making criteria should be; and, an exploration of the possible unintended consequences that may arise from implementation of any such criteria. I have found that developing decision-making criteria before attempting to decide the main issue can be useful to the development of consensus. Particularly, when attempting to determine whether something is "attached" or "not attached" to rank, where should the scales tip in favor of one or the other? When deciding the City's Holiday Pay Writ, the Superior Court decided that "any variability" and any degree of "individual effort" meant the compensation did not attach. In *City of Oakland*, the appellate court rejected this standard and included language suggesting that criteria which, identifies the experience of "most officers" might be acceptable. I don't believe the Board has ever tackled this question head-on.

3. Is the Floating Holiday "compensation" and "compensation attached to the rank" for the purposes of calculating pension benefits?

The ROPOA also has asserted that the Floating Holiday should be included as "Compensation" and "Compensation Attached to the Average Rank Held" for the purposes of calculating pension benefits.

2008: The benefit which currently is designated as a "Floating Holiday" first appeared as such in the 2006-2010 MOU which was the result of the 2008 Arbitration award. A very similar benefit appeared in earlier MOUs but it was not designated as a "Holiday". Actives currently receive 12 designated holidays and one (1) floating holiday.

2012: In October 2012 it appears the Board decided the Floating Holiday was compensation attached to the average rank held and decided to include the benefit in pension calculations. As previously indicated PFRS outside counsel reported:

Retirement benefits to be calculated based on the annual receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at the 100% of base pay per holiday times 13 paid holidays, instead of 150% of base pay per holiday times 12 paid holidays;

This memorandum was drafted and distributed the day following the closed session and is consistent with the minutes of that meeting which were approved by the Board the following month. The reference to 13 paid holidays appears intentional rather than a mistake.

On November 14, 2012 the Board approved the minutes of the October 16, 2012 Board meeting. These minutes reported the "Recommendations from Final Decision made during Closed Session partially as follows:

Recommendations from Final Decision made during Closed Session – The regular meeting reconvened at 4:44 pm. Chris Waddell from Olson Hagel & Fishburn LLC, PFRS Outside Counsel, reported the following actions voted upon by the PFRS board during closed session. Mr. Waddell said, in closed session:

- 1. The PFRS board voted to...*
- 2. The PFRS board separately voted the prospective correction, in accordance with the Judge's order, begins effective December 2012 (impacting the benefits payment for January 2013). The calculations are to be based on the following: employees to receive 100% of base pay times 13 paid holidays prorated over the 12-month period instead of the current receipt of 150% of times 12 paid holidays. Also, this decision, effective with the December 2012 period, eliminates Shift Pay for the PFRS police retirees. He said the calculation should be performed by staff between now and the November 2012 PFRS board meeting in consultation with outside counsel. This report will be brought back to the board for approval and consideration before they are implemented...*

There is no recorded attempt by anyone present at the November 14 meeting to question the accuracy of or to correct the above described minutes.

On November 14, 2012, the following item appeared on the Board's Agenda:

- D. Subject: Board Action regarding the matter of City of Oakland vs. Oakland Police and Fire Retirement System, et al, (Superior Court of California for the County of Alameda, Case #RG11-580626)*

From: PFRS Legal Counsel (Olson Hagel & Fishburn, LLC) & Staff of the PFRS Board

Recommendation:

- 1. ACCEPT an informational report from staff regarding calculation of pension payment adjustments should the Board take action to prospectively adjust pension payments for police members and their dependents/beneficiaries as follows: (a) that the annual receipt of retirement benefits based on holiday pay, in addition to benefits based on 2080 hours of base pay, should be calculated at the rate of 100% of base pay multiplied by the number of paid holidays (including any floating holidays)*

(emphasis added) for which active police are currently entitled to receive holiday pay; and (2) the elimination of retirement benefits based on shift pay.

2. ACTION for PFRS Board approval on whether pension payments for police members and their dependents/beneficiaries should be adjusted, effective December 1, 2012 (i.e., for purposes benefits payments to be received in January 2013), to reflect annual receipt of retirement benefits based on holiday pay, in addition to benefits based on 2080 hours of base pay, calculated at the rate of 100% base pay multiplied by the number of paid holidays (including any floating holidays) (emphasis added) for which active police are currently entitled to receive holiday pay.

On November 14, 2012, the Board received the above referenced Agenda Report, which was dated November 9, 2012. It indicated in part as follows:

Staff calculated PFRS Police Holiday Pay in accordance with the Board's instructions based on the current active Police Holiday MOU schedule. Holidays in the Police MOU are based on a calendar year. Per the current schedule, active police officers were not compensated for the following holidays in calendar year 2012 (1) January 1, 2012 – New Years' Day, (2) February 12, 2012 – Lincoln's Birthday, (3) President's Day and (4) Floating Holiday. In addition, per Article VII Section H of the current Police MOU, active police employees were not compensated for September 9, 2012 – Admission Day. The attached calculation assumes that PFRS Retirees will be paid for 8 Holidays (13 Holidays – 5 Holiday Concessions) over a 12 month period for CY 2012. This calculation is presented on Table 1 (a). (Emphasis added)

The attached calculation also includes a calculation for CY 2013. Holiday Pay for CY 2013 will be based on 11 Holidays. Per the existing MOU, active police members will receive 11 Holiday in CY 2013. Active police will not be compensated for the Floating Holiday and Admission day. This calculation is presented on Table 1 (b).

In August 2015 the Board received an Agenda Report in which, among other things, the Plan Administrator indicated “staff will continue to research the floating holidays items to determine if it is attached to the rank and will bring it back at a future Board meeting. The 2015 report makes no mention of the Board’s previous decision or the calculations completed by staff pursuant to it.

In October 2017 the Plan Administrator provided the Board with the October 16, 2017 Agenda Report in which concludes:

The Floating Holiday is not compensation attached to the rank for police retirees, because it is compensatory time that is not payable in cash.

Although the October 2017 report addresses the OPOA and OPMA provisions related to the Floating Holiday, it too makes no mention of the 2012 decision of the Board or any of the public documents which flowed from it.

Summary: The question before the Board is whether the Floating Holiday is compensation and compensation attached to the average rank held for the purposes of calculating PFRS pension benefits.

First, it is clear from the record that the Board addressed this issue in October and November 2012. Unfortunately, the Board took this action in Closed Session so there is no clear record of the motion adopted or the discussion surrounding it. Nonetheless, the minutes of the October 16, 2012 Board Meeting and Outside Counsel’s October 17 memorandum are clear that the Board decided that holiday pay would be based on 13 holidays rather than 12 holidays. The November 14, 2012 Agenda is clear that the calculations presented pursuant to the Board’s direction included “any floating holidays”. And, the November 9, 2012 Agenda Report was clear that the Floating Holiday was included in the concessions to be applied to retirees.

The Floating Holiday obviously attaches to rank. Every sworn member of the Police Department is *credited* with the Floating Holiday (8 hours of compensatory time off) in July of each year by virtue of their employment with the City. The question, which appears to already have been answered by the Board in 2012, but is raised again by the Plan Administrator here is whether it is “compensation” and therefore “compensation attached to the average rank held” for PFRS purposes.

The Plan Administrator concludes the Floating Holiday is not compensation attached to the rank because it “is not payable in cash”. This assumption is incorrect. The language found in *Buck* is helpful:

“According to the salary ordinance, the policeman or fireman who works on a “legal holiday” which falls during his regular 40-hour work week “shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” The “credit” does not amount to “pay” as such; in practice, however, almost every employee so “credited” is paid his “credit’s” cash equivalent, on a per-hour basis and as a supplement to the monthly salary paid him for the period of time involved. He is thereby paid, in cash and at appropriate monthly intervals, “extra compensation” for having worked on a “legal holiday.”

In July of each year actives are “credited” with 8 hours. Just as in *Buck*, this “credit” does not amount to “pay” as such, but when the Floating Holiday is taken, actives are paid “its cash

equivalent” on a per-hour basis and as a supplement to base pay. It is “extra” compensation in that it is paid for time not worked.

I recommend the Board, consistent with the decision it has already made in 2012, reaffirm that the Floating Holiday is Compensation Attached to the Average Rank held for the purposes of calculating pension benefits for each of the ranks that receive it and is therefore payable to retirees at the straight time rate for eight (8) hours.

4. Should Captains and Deputy Chiefs receive pension benefits based on the pay practices described in the Oakland Police Management Association (OPMA) MOU rather than the OPOA MOU?

This issue was first raised by the City in its June 2011 Writ. However the City abandoned its position. Therefore, neither the superior court nor the appellate court ever ruled on the issue. Clearly, the Board and staff, including the deputy city attorney assigned to the Board, have been aware of this issue for over six (6) years.

Now, the October 25, 2017 Agenda Report suggests that the Board look to the OPMA to decide the issue of holiday premium pay for retired Captains and Deputy Chiefs in isolation with no broader analysis of this MOU and with no consideration given as to how other “obsolete” ranks have been treated in the past and are being treated today.

In the end, if the Board decides that PFRS retirees who held the rank of Captain and Deputy Chief should be tied to the OPMA MOU, then the entire MOU should be examined to determine which benefits attach to the rank.

Summary: The Board should take up the possible application of the OPMA MOU to retired PFRS Captains and Deputy Chiefs as a separate matter. If it is decided that the OPMA MOU applies, the question of “compensation attached to the average rank held” must be examined on a broader scale. It certainly should not be used to decide a single issue in isolation.

Close

I wish to thank my fellow PFRS Board members for taking the time to read and consider the points raised in this document. I know it’s long. I know it’s complicated. But, the issues before the Board go to the core of our responsibilities.



AGENDA REPORT

TO: Oakland Police and Fire
Retirement Board

FROM: David Jones
Plan Administrator

SUBJECT: A Report Regarding The Method of
Calculating PFRS Police Retiree Holiday
Pay for Captains and Deputy Chiefs; and A
Resolution Adopting A Revised Method for
Calculating Police Holiday Retirement
Allowances for Captains and Deputy Chiefs

DATE: October 24, 2018

I. EXECUTIVE SUMMARY

This report supplements the agenda reports on this subject for the PFRS Board Meetings of October 25, 2017 (**Attachment 1** hereto) and November 29, 2017 (**Attachment 2** hereto). The purpose of this report is to provide information so that the Board may determine the correct method to calculate the number of holiday hours to be included in the retirement allowances of PFRS police retirees classified as captains and deputy chiefs. Generally, this report explains the significant changes in the labor agreements governing active police in these higher ranks since 2006, and summarizes payroll data illustrating the holiday work behavior of active police to determine if there is parity in compensation between the retired and active police in the higher ranks.

This report contains PFRS staff's conclusions and recommended findings on two topics raised in the October 25, 2017 PFRS Board meeting as follows:

- A. Contrary to case law and the City Charter, PFRS Police retirees who retired at the ranks of captain and deputy chief are erroneously being credited substantially more holiday hours than what active members in those ranks receive, and contrary to the terms of the applicable OPMA (Oakland Police Management Association) MOU, police retirees in those ranks are erroneously being credited for holidays at an inflated premium rate of 1.5x, rather than at 1.0x rate. There is an overpayment which the PFRS Board should address.
- B. The Floating Holiday benefit is not compensation attached to the rank for any PFRS police retirees classified as captain and deputy chief, because it is awarded as compensatory time that is not payable in cash and is forfeited if not used in the year in which it is granted.

For discussion and action, staff proposes a resolution for the Board to adopt a revised method for calculating the holiday pay component of the retirement allowances of PFRS police members who retired at the ranks of captain or deputy chief. The method would be applied going

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forward in calculating the total combined (holiday and other compensation attached to rank) annual rate of police retirement allowances for captains and deputy chiefs.

II. PROCEDURAL BACKGROUND

As of this October 31, 2018 meeting, the Board's consideration of police holiday pay methodology has been divided into separate legislative items for the lower ranks (below captain) and the upper ranks of captain and deputy chief. This report additionally introduces additional payroll data from the 2017-2018 fiscal year.

The PFRS Board has considered this matter during its October and November 2017 meetings. It also previously received a report at its August 2015 Board Meeting in which PFRS Staff concluded that PFRS police retirees were not being underpaid holiday benefits. The reports dated May 24, 2018 (published for the cancelled May 30, 2018 PFRS Board meeting) and June 21 (item was not called for discussion at the June 27, 2018 Board meeting) were never considered by the Board, and are not part of the record of this discussion.

For the report received by the PFRS Board on October 25, 2017 (**Appendix 1** attached to this report), Staff summarized the holiday pay begin credited to retirees classified as captain and deputy chief, as well as the relevant OPMA MOU provisions on that subject. Further discussion on this matter was continued to 2018, and the Board invited written comment to be submitted during the November 29, 2017 Board meeting.

At the November 29, 2017 Board meeting (see **Appendix 2** attached to this report), the PFRS Board received written statements on the issues submitted by PFRS Board Member Muszar (the elected Police Retiree Representative) and by the ROPOA (through its attorneys). Following oral statements from Member Muszar and the ROPOA's attorney, the Board voted to accept the statements into the record of this matter.

PFRS Staff received the following document (attached hereto) in June 2018, and it is attached to this report for consideration by the Board:

Exhibit J - Letter dated June 20, 2018 from ROPOA Secretary Mr. Robert W. Nichelini on behalf of the Retired Oakland Police Officers Association.

III. APPLICABLE PRINCIPLES AND HISTORY

In order to facilitate the Board's understanding of the claims, data, and issues in this report, the fundamental principles applicable to PFRS police retiree compensation and the history of police holiday pay for retirees are summarized in this section.

A. THE PFRS FLUCTUATING BENEFIT RETIREMENT SYSTEM

PFRS retirees receive a monthly allowance based on a fraction of the compensation attached to the average rank held by each retiree during his final three years of active service.

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(City Charter section 2607 and 2608) By tying a retiree's benefits to the compensation "attached" to the rank of active duty police officers holding the same rank, the Charter established a fluctuating pension system in which pension benefits increase or decrease as the compensation paid to active employees increases or decreases. This fluctuation maintains a direct linkage between retirement allowances and active duty police officer pay. The primary purpose of a fluctuating pension plan is to guarantee the pensioner a fairly constant standard of living despite inflation, and to maintain equality of position between the retired member and the person (or persons) currently holding the rank the pensioner attained before his retirement. (Kreeft v. City of Oakland (1998) 68 Cal.App.4th 46, 54.) (emphasis added)

City Charter section 2607 provides:

The following words and phrases, as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," "Death allowance," or "allowance" shall mean equal monthly payments, beginning to accrue upon the date of retirement, or upon the day following the date of death, as the case may be, and continuing for life, unless a different term of payment is definitely provided by the context.

"Compensation" as distinguished from benefits under the Labor Code of the State of California, shall mean the monthly remuneration payable in cash, by the City, without deduction, for time during which the individual receiving such remuneration is a member of the Police or Fire Department, but excluding remuneration paid for overtime and for special details or assignments as provided in Sections 91 and 97* of the Charter.

"Compensation attached to the average rank held" shall mean the compensation attached to the lowest rank held during the three years immediately preceding retirement plus one thirty-sixth (1/36) of the difference between it and the compensation attached to any higher rank held during that period of each month, and fraction thereof, the higher rank was held.

* This reference is to the Section or Article so designated in the former Charter.

Police pay for active officers generally includes a number of components such as regular pay, overtime pay, holiday pay, vacation pay, uniform pay, longevity pay, and premium pay (fractional increases above base pay that vary depending on assignment or obtaining special educational certificates). These components vary with each periodic agreement negotiated between the City of Oakland and the OPOA (Oakland Police Officers Association) or OPMA (Oakland Police Management Association) unions, and memorialized in Memoranda of Understanding ("MOU"). Some pay components are expressly excluded by section 2607 from being classified as compensation attached to rank for PFRS retirement purposes (overtime and special details or assignments).

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There have been a multitude of lawsuits about whether certain of these pay components are compensation attached to rank, and if so how they should be included in the calculation of the retirement allowance of PFRS members. In Kreeft v. City of Oakland (1998) 68 Cal.App.4th 46, 55, the First District Court of Appeal interpreted Charter section 2607 and held that for an element of compensation to be “attached” to rank, “the compensation must ‘adhere to’ the rank ‘as an appertaining quality or circumstance.’ That is, the employee must be entitled to the compensation by virtue of the rank, and not his individual efforts over and above what are required to obtain the rank.” Kreeft at p. 58. (emphasis added.)

Over the years, courts have determined that many types of premium pay are not compensation attached to rank (shift differential pay, self-improvement pay, voluntary day off for pay, motorcycle premium pay, aerial patrol premium pay, standby pay, field training officers’ premium, and meal allowance pay). Courts have also found that holiday pay is a category of compensation that is attached to rank for PFRS retirees, and that is discussed below in section III.B.

B. HOLIDAY PAY OF PFRS POLICE RETIREES

The most recent court decision on the subject of PFRS police holiday pay was rendered in City of Oakland v. Oakland Police and Fire Retirement System (2014) 224 Cal. App. 4th 210 (“City v. OPFRS”), which is discussed in detail in section III.C. below. The Court of Appeal recounted the history of MOUs between the City of Oakland, the active police officers, and the treatment of holiday pay for PFRS police retirees:

The City and the Oakland Police Officer's Association (OPOA) adopted the first MOU setting Department compensation in 1973. . . . In 1974, a more comprehensive MOU was adopted which designated 11 holidays and indicated that premium pay for holidays was to be “computed at the regular hourly base rate of pay for an employee's classification, rather than at the [overtime] rate of time and one-half.” Thus . . . members of the Department received eight hours of holiday premium pay. Similar language was carried over into the 1975 MOU. During this timeframe, the extra eight hours of compensation received by members of the Department as holiday premium pay was included in the calculation of PFRS retirement benefits.

In 1976, the City and OPOA adopted an MOU increasing holiday premium pay from the straight-time rate (8 hours) to a rate based on “time and one-half the regular base rate of pay for an employee's classification” (12 hours). The 1976 MOU, however, contained the following language impacting the calculation of PFRS retirement benefits: “City and [OPOA] agree that premium pay shall not be subject to retirement except for the straight time portion of holiday pay.” Although the record does not contain MOU's covering the period from 1988 through 1994, it appears that similar limiting language continued from 1976 up through the 1995–1998 MOU. Based on the language of the MOU's, PFRS retirees only received credit for 8 hours of holiday premium pay in the calculation of their

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retirement benefits from 1976 through 1996. In contrast, active members of the Department received 12 hours of holiday pay during this same period. At some point between 1986 and 1995, the number of paid holidays increased from 11 to 12.

Holiday premium pay was again the subject of litigation in 1996. (See Oakland Police & Fire Retirement Assn. v. City of Oakland (Super. Ct. Alameda County, 1996, No. 763859) (Arca II).) Arca II was a class action lawsuit filed on behalf of PFRS retirees and their beneficiaries challenging the MOU language that excluded retirees from receiving credit for the additional four hours of holiday pay that was being paid to active members of the Department. In that case, the City . . . argued that the additional four hours of holiday pay was “overtime” pay and therefore expressly excluded from the calculation of PFRS retirement benefits. (See Charter, art. XVI, § 2607 [“ ‘compensation’ ” defined as monthly remuneration excluding overtime].) The trial court disagreed, granting a writ of mandate in favor of PFRS retirees with the following instructions: “Respondents are compelled in determining and computing the amount of the retirement allowances due to Petitioners and the class they seek to represent to take all actions necessary to include as ‘compensation’ and ‘compensation attached to the average rank held’ the full twelve hours holiday pay received by current Oakland Police Officers” (italics added). . . .

In accordance with Arca II and the related settlement agreement, the 1998–2001 MOU between the City and OPOA deleted the language limiting holiday pay for PFRS retirees, stating simply that premium pay for holidays would be “computed at time and one-half the regular base rate of pay for an employee’s classification.” Identical language appeared in the 2001–2006 MOU. In practice, however, the application of holiday premium pay to the various shifts worked by active members of the Department was becoming more complex. In 2000, the Department issued Departmental General Order 8 (DGO 8) interpreting the MOU provisions in light of these changes. Pursuant to DGO 8, a member that took holiday time off was paid at the straight-time rate of 8 or 10 hours, depending on the length of that member’s usual shift. A member of the Department who worked on a holiday received regular base pay (of either 8 or 10 hours) plus 1.5 times that base pay in holiday premium pay. When a holiday fell on a member’s regular day off, that member was allotted 12 hours of holiday pay, regardless of whether he/she usually worked an 8 or 10–hour shift. Finally, a member who was required to work on a holiday that was his/her regular day off was granted 12 hours in base pay, plus 1.5 times base pay in holiday premium pay. Thus, while all members were entitled to holiday pay for each holiday, the amount actually received on a particular holiday varied from 8 to 18 hours, depending on scheduling and length of shift. During this same time period, PFRS retirees continued to receive credit for 12 hours of holiday pay for each holiday in accordance with the terms of Arca II.

Upon expiration of the 2001–2006 MOU, the City and OPOA reached an impasse in negotiations and thus the terms of the successor MOU were determined through

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an arbitration process conducted by Arbitrator Barry Winograd. The resulting 2006–2010 MOU states expressly that it was entered into pursuant to the terms of this arbitration decision and award, which is attached to the MOU and incorporated as Appendix A (Winograd Decision). With respect to holiday pay, the 2006–2010 MOU designated 12 holidays and one “floating” holiday and provided for base pay¹ for any regularly scheduled shift worked on a designated holiday. In addition: “[I]f the holiday is worked, the employee shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off, or by employer request, employee will be paid holiday pay² at the straight time rate.” The Winograd Decision did not alter the holiday pay structure set forth in the body of the MOU and—with respect to the number of designated holidays—stated simply “[s]tatus quo.”

As a result of additional negotiations between the City and OPOA, the 2006–2010 MOU was subsequently extended into 2013. This amended and extended MOU temporarily changed the structure of holiday pay for active members of the Department. Specifically, for the 2009, 2010, and 2011 fiscal years, only seven of the regular holidays were paid in accordance with the customary policy established by the MOU. For the other six holidays, active members received no holiday pay for holidays that were not worked and “straight time pay” for holidays that were worked. Currently, holiday pay for active members of the Department is governed by the 2006–2013 MOU, which has been extended a second time into 2015.³ No additional changes have been made with respect to the provisions governing holiday premium pay except that, for the 2012, 2013, and 2014 fiscal years, active members are not entitled to any holiday pay for Admission Day. Members who work on Admission Day will still receive their regular base pay for that shift.

City v PFRS (2014) at pp. 219-221.

C. CITY OF OAKLAND v. PFRS (2014) COURT OF APPEAL DECISION – CALCULATION OF HOLIDAYS FOR PFRS POLICE RETIREES.

In August 2012, the trial court overruled the PFRS Board’s February 2010 decision in which the Board decided not to reduce the holiday pay component of PFRS police retirees despite a reduction in holidays negotiated (between the City of Oakland and the OPOA) for active police during the 2010, 2011 and 2012 fiscal years. “Based on the plain language of the Charter and the 2006–2013 MOU, the trial court held that the reduction in holiday pay experienced by active members should have been reflected in PFRS benefits for the years in

¹ The Court of Appeal’s use of the term “base pay” here does not reflect the City’s actual practice; City payroll codes these hours as HDP (straight time holiday pay falling in an officer’s regular schedule), in place of REG pay (a day worked inside of regular schedule). Moreover the Court here, and elsewhere in its opinion, uses the term “base pay” to refer to the straight time 1.0x rate of pay.

² City payroll practice is to code these hours as HOL (straight time) holiday pay falling outside of an officer’s regular schedule.

³ It expired and was replaced by the current 2015-2019 MOU.

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question.” (City v PFRS (2014) at p. 247.) Intervenor the ROPOA⁴ did not appeal the trial court’s ruling on this issue, so it is binding on the parties.

On other issues, the Court of Appeal provided significant guidance on how a correct holiday calculation should be made. The Court of Appeal’s key holdings on holiday pay were:

1. The Court rejected the City’s contention that because PFRS retirees do not work, they are not entitled to any Holiday Pay above base pay (2080 hours/year or 40 hours x 52 weeks). The Court found that the 1971 decision in Buck v City of Oakland had already decided the same issue in favor of the retirees, and the City did not show any “material change” in circumstances since Buck with respect to the holiday pay issue. Namely, the limited record before the court showed that PFRS police members regularly worked holidays when they were active and “active members of the department currently work most holidays that fall during their regular work schedule and earn premium pay for doing so.” However, evidence demonstrating a meaningful change in the holiday work patterns may form the basis of changing the retiree holiday calculation method. (City of Oakland v. OPFRS (2014) at p. 231.)
2. An examination of payroll data which represents the “typical experience of most department members for most holidays” (City of Oakland v. OPFRS (2014) at p. 231, fn11) and an average figure which represents a “meaningful predictor of the experience of most” officers (City of Oakland v. OPFRS (2014) at p. 233, fn12) can form the basis for calculating the amount of holiday pay that should be credited to PFRS police retirees.
3. Holiday Pay is compensation attached to the rank for PFRS police retirees, which the Court defined as “pay in excess of the regular or base pay to which a member of the Department may be entitled due to the occurrence of a holiday. Thus, holiday pay includes the extra compensation payable to a police officer who works on a holiday (over and above base pay), as well as the compensation due to an officer who has a regular day off or takes vacation on a holiday and therefore does not work.” (City of Oakland v. OPFRS (2014) at p. 217.)

Most notably, in its decision, the Court of Appeal did not specify exactly how the Board should calculate the number of holiday hours to be credited to PFRS retirees. However, construing the OPOA MOU (not the OPMA MOU), the Court stated that: “Were a proper analysis to be done, we would not be surprised to find that the 12 hours of holiday pay currently used in the calculation of PFRS retirement benefits pursuant to Buck represents an average that is a ‘meaningful predictor of the experience of most’ Department members.” City of Oakland v. OPFRS (2014) at p. 233, fn12. (emphasis added) Although the Court of Appeal was construing the OPOA MOU applicable to ranks below captain, the same principles apply to construe the

⁴ That lawsuit ultimately focused on the OPOA MOU, and there was no determination from the trial court or Court of Appeal with regard to the ranks of captain and higher. (City v. OPFRS (2014) at p. 224 and fn6.)

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OPMA MOUs to determine the amount of holiday credits that are attached to the upper ranks of police retirees.

D. POLICE RANKS, UNIONS, AND SHIFTS

Current ranks within the police department are officer, sergeant, lieutenant, captain, deputy chief, assistant-chief and chief of police.⁵ Prior to 2006, all Oakland Police sworn members, with the exception of the chief of police, were in the same union (the OPOA) and subject to the same MOU. However, the City Council and City Administrator separated⁶ captains and deputy chiefs into a distinct bargaining unit which is governed by its own MOU starting July 1, 2006.⁷ Since the creation of a separate bargaining unit and the formation of a management union (the “OPMA”), the PFRS Board has not examined whether it should apply a different holiday calculation methodology for PFRS retirees who held the rank of captain or deputy chief.

Police are paid every two weeks (a “payroll period”), 26 times per year. The most common work schedules for police ranks of officer, sergeant, and lieutenant are either five days per week x eight hours per shift (the “5x8 shift schedule”), or four days per week x 10 hours per shift (the “4x10 shift schedule”), both of which result in 80 hours per payroll period and 2080 hours per year. Some police members work seven days per payroll period x 12 hours (“84 hour schedule”) resulting in 2184 hours per year. The various shifts schedules do not pertain to any particular rank, and police sworn employees holding the ranks of officer, sergeant and lieutenant could be assigned to work any of them. However, captains and deputy chiefs normally have a 5x8 shift schedule from Monday through Friday.

The various labor MOU’s specify the official paid holidays for employees. Police captains and deputy chiefs normally work a Monday-Friday 40-hour schedule and receive a paid day off⁸ (eight hours for police captains and deputy chiefs) at straight time pay rate (payroll code HDP) in lieu of their regular pay for each holiday that falls on a regular work day. If a holiday

⁵ PFRS still has retirees classified in discontinued ranks. “Police Inspector was a rank between Sergeant and Lieutenant. Agency Director was equivalent to the Chief of Police. Neither of these ranks would be affected by changes to the calculation method to be applied to determine holiday credits for retirees holding OPMA ranks of Captain and Deputy Chief.

⁶ The City Council passed Resolution No. 80211 on October 17, 2006 providing a mechanism for removing sworn police management employees from the OPOA. This was followed by a November 20, 2006 letter from the City Administrator to the president of the OPOA, stating her decision to place captain and deputy chief into a separate bargaining unit (referred to as “UN2” in the MOUs).

⁷ The 2006-2010 (later extended to 2015) MOU was approved by the City Council and ratified by the OPMA in 2009, with retroactive effect to July 1, 2006.

⁸ One exception to the normal practice that is not applicable to police captains and deputy chiefs exists for a subset of OPOA ranked police who are assigned to patrol duties. There is a special provision in the OPOA MOUs for 2006-2015 and 2015-2019 regarding holidays. It states that “. . . all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw.” (See **Exhibit D** to the October 25, 2017 report at page 23 and **Exhibit F** to the October 25, 2017 report at page 21.) Therefore, if an OPOA member is not assigned to patrol (such as to the training division, investigations division, or to administration), he or she normally has the holiday off when it falls during the regular work schedule.

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falls outside of their regular work schedule, they are credited eight hours of holiday pay (payroll code HOL or HCT).

The OPMA MOUs for 2006-2015 and 2015-2019 both state that the “4/10 shift schedule shall be the core shift in patrol. There shall be no 5/8 shift schedule in patrol for the duration of this MOU.” Nevertheless, captains and deputy chiefs assigned to the “Field Operation” Division (some of who are assigned to patrol duties) are assigned to the 5x8 shift schedule.

IV. ANALYSIS

There has been a material change in the circumstances affecting how much holiday pay is credited to active police in the upper ranks, compared to the circumstances at the time when the current holiday pay methodology was implemented prior to 2006. Most significantly, the captains and deputy chiefs were separated into a separate bargaining unit and are governed by a separate MOU. Second, the holiday pay provisions of the OPMA MOU are considerably different and lesser compared to the prior OPOA MOU which used to govern the higher ranks. Third, the holiday work behavior of active police captains and deputy chiefs shows that they rarely work on holidays. Consequently, the methodology currently used by PFRS which credits police retirees classified as captain and deputy chief with 144 holiday hours per year causes police retirees in these ranks to be paid far more for holidays than active police holding the same ranks. The current method is inconsistent with the objective of PFRS’ fluctuating benefit approach which seeks to achieve parity, between the active and retired police of the same rank. Staff recommends that the Board take action to conform the calculation method to achieve relative equality in the level of compensation between active and retired police in these ranks.

A. CURRENT METHOD COMPARED TO OPMA MOU HOLIDAY PROVISIONS – STRAIGHT PAY FOR HOLIDAYS WORKED

The Agenda Report for October 25, 2017 summarized the current holiday benefit methodology for PFRS police retirees of all ranks from officer through deputy chief. i.e.: Base Pay⁹ of 2080 hours (40 hours x 52 weeks). In addition to the 2080 hours, police retirees are credited with 144 hours (12 days x 8 hours @ 1.5x rate) as Holiday Pay, for a total of 2224 hours. The current practice is not consistent with the terms of the OPMA MOUs. In short, under the current OPMA MOU, active police captains and deputy chiefs must work a holiday on their normal scheduled work day in order to receive additional Holiday Premium Pay at 1.0x rate, yet all retirees in these ranks are currently being compensated at 1.5x rate for every one of the 12 MOU holidays, without regard to the actual holiday work behavior of active captains and deputy chiefs, which ignores the fundamental changes implemented after the 2001-2006 MOU.

1. 144 Holiday Hours Per Year Under the 2001-2006 OPOA MOU and DGO D-8

The 144 hours of Holiday Pay currently being credited and paid to PFRS police retirees is a holdover from the 2001-2006 era. The 2001-2006 OPOA MOU (see **Exhibit H** attached hereto) simply stated at section II.F.2. “Holiday Pay – Compensation for holidays shall be

⁹ These base pay hours are a combination of REG regular hours and HDP holiday hours (paid at straight time holiday falling inside a regular work schedule) totaling 2080 hours.

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computed at time and one-half the regular base rate of pay for an employee's classification." Section V.I. identified 12 specific holidays. However, the MOU contained no details on how holidays would be paid when they were worked or not worked, and when they fell inside or outside of an officer's usual work schedule. Those details were set forth in prior Department General Order (DGO) D-8¹⁰. Under DGO D-8, active police were paid at a Holiday Premium Pay rate of 1.5X (8 hours X 1.5 = 12 hours) per holiday in addition to their Base Pay regardless of whether they actually worked the holiday. Thus, because there were 12 paid holidays in the 2001-2006 OPOA MOU active police received 144 hours (12 holidays X 12 hours) in Holiday Premium Pay each year. However, since 2006 the way holidays are to be paid is set forth within the MOUs themselves, and DGO D-8 was rescinded.

2. Zero or Variable Holiday Pay Under the OPMA MOUs For Captains and Deputy Chiefs

Under the 2006-2015 OPMA MOU, the higher ranks could receive a day off and 8 hours of straight time Holiday Pay for the 12 designated holidays that are recognized in the MOU. However, they were entitled to no additional pay if they worked on a holiday, whether inside or outside of their regular work schedule. (See **Exhibit G** to the Agenda Report for October 25, 2017, at sections VII.H.1. and H.3.) Consequently, active captains and deputy chiefs were not entitled to, and received no holiday pay in addition to their 2080 combined total hours during 2006-2015. Without regard to the MOU provisions, PFRS police retirees in these higher ranks received an overpayment of 144 hours (12 days x 8 hours x 1.5x rate) of holiday pay above 2080 hours during those nine years.¹¹

Under the current 2015-2019 OPMA MOU, active captains and deputy chiefs are still entitled to a day off and eight hours of pay for the 12 holidays in the MOU. However, they negotiated a new benefit and are now eligible to receive Holiday Premium Pay in the amount of one hour of "holiday vacation accrual" for each hour worked on a holiday. See **Exhibit E** the Agenda Report for October 25, 2017, at sections VII.H.1. and H.3.) Contrary to the MOU provisions, PFRS police retirees in these higher ranks continued receiving 144 hours of holiday pay above 2080 hours since July 1, 2015, which continues today. A proposed revised method for calculating the amount of holiday pay that should be credited to PFRS police captains and deputy chiefs is discussed below in section IV.B.

It is clear that PFRS retirees holding the ranks of captain and deputy chief have been overpaid up to 144 hours of Holiday Pay per year during the years that the OPMA MOUs have been in effect.

¹⁰ See Department General Order D-8 Holidays, section II.B.5., 6., and 7., attached as **Exhibit A** to the October 25, 2017 Agenda Report. It was rescinded after ratification of the 2006-2015 MOUs with the OPOA and the OPMA.

¹¹ In *City of Oakland v. OPFRS* (2014), the Court of Appeal determined that PFRS police retirees were entitled to only seven paid holidays (84 hours (7 days x 8 hours x 1.5 rate)) in three fiscal years starting 2010, 2011, and 2012 because of a reduction in holidays that active police agreed to. The Board passed Resolutions 6825 and 6866 whereby it is recovering those holiday overpayments.

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B. ACHIEVING PARITY BETWEEN ACTIVE AND RETIRED CAPTAINS AND DEPUTY CHIEFS

Because the 2015-2019 OPMA MOU provides additional holiday pay to active captains and deputy chiefs for each hour worked on a holiday, such compensation can be attached to the rank for the purpose of determining the retirement allowances of PFRS police captains and deputy chiefs. And because the purpose of PFRS's fluctuating system is to provide parity and to maintain equality of position between the retired member and his active counterpart, (Kreeft v. City of Oakland (1998) 68 Cal.App.4th 46, 54), holding the same rank, the Board can determine the number of holiday hours that constitute "par" by examining the actual holiday work behavior of active police captains and deputy chiefs.

PFRS staff analyzed payroll records to identify the average number of holiday hours and holiday vacation accrual hours credited to active OPMA members above the 2080 hours that PFRS currently credits police retirees. Staff analyzed the total number of such hours credited to active police captains and deputy chiefs in the last four fiscal years (FY 2014/2015 through FY 2017/2018) in order to compare that amount to the total number of hours of Holiday hours (144 hours) credited to PFRS police retirees in the upper ranks.

Exhibit I (attached hereto) shows Holiday Pay in addition to Base Pay for active OPMA police members for the past four fiscal years. In comparison to the current holiday credit method, the PFRS captain and deputy chief retirees are being overpaid for holidays. The table shows that over the most recent three-year period¹², the average active OPMA member was credited total Active Holiday hours (holidays outside their regular schedule) and Holiday Vacation Accrual hours (holidays worked) for all persons in said ranks averaged 0 hours in FY 2014/2015, 8 hours in FY 2015/2016, 26 hours in FY 2016/2017 and 17.67 hours in FY 2017/2018.

In accordance with the holding of City v OPFRS (2014) at p. 231 discussed on pages 7 and 8 above, it is within the Board's discretion to use an average of the number of holidays hours credited to active Oakland police captains and deputy chiefs, as a basis for determining how much holiday pay to credit to retired PFRS police of these same ranks.

The current data shows that active captains and deputy chiefs received an average total holiday pay of 17.67 hours for fiscal year 2017-2018 (Table 4 below). Under the proposed methodology, the PFRS retirees in the ranks of captain and deputy chief would be credited the same 17.67 hours of holiday pay in fiscal year 2018-2019, rather than the 144 hours per year that they are currently being paid. This amount would equate to approximately 1.47 hours per month for fiscal year 2018-2018 instead of the current retiree holiday pay rate of 12 hours per month.

¹² The 2015-2019 OPMA MOU was not in effect yet, so the 2014-2015 year is not counted toward the overall average.

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Table 4
Fiscal Year 2017/2018 (excerpt from Exhibit I)
City of Oakland Police and Fire Retirement System
Active Police Captain and Deputy Chief (OPMA)
Holiday Pay and Vacation Accrual Earned Above 2080 Hours

FY 2017-2018						
Count	TITLE	Total Active Holiday Hours (a) ¹	Active Holiday Vacation Accrual	Total Active (Holiday Hours and Holiday Vacation Accrual)	Current PFRS Holiday Pay Hours above 2080 Base Pay	Excess Hours credited to Retirees above Active members
1	Capt of Police	8	16	24	144	120
2	Capt of Police	16	7	23	144	121
3	Capt of Police	16	0	16	144	128
4	Capt of Police	16	0	16	144	128
5	Capt of Police	16	0	16	144	128
6	Capt of Police	16	0	16	144	128
7	Capt of Police	16	0	16	144	128
8	Capt of Police	16	0	16	144	128
9	Capt of Police	16	0	16	144	128
10	Deputy Chief of Police	16	5	21	144	123
11	Deputy Chief of Police	16	0	16	144	128
12	Deputy Chief of Police	16	0	16	144	128
	AVERAGES	15.33	2.33	17.67	144	126

(a) Summary of Holiday pay in addition to Base Pay. Excludes HDP which is considered part of the 2080 base pay for the purpose of this analysis

¹ Received HOL/HCT hours because Admission's Day and Veteran's Day fell outside of the regular work schedule

C. FLOATING HOLIDAY PAY

Staff presented in the Agenda Report for October 25, 2017, the relevant portions of the City Charter, the OPOA and OPMA MOUs since 2006, AI 520, and DGO D-8. Staff's conclusion and recommended finding is that the Floating Holiday is not compensation because it is not payable in cash (except in one narrow circumstance) and does not increase an employees' annual take-home compensation. The Floating Holiday can only be used in place of a regular workday, so it supplants regular pay for that day. Below are a few additional facts that may further assist the PFRS Board in determining this issue.

To quote AI 520, which governs Floating Holidays, "it must be taken in the fiscal year in which it is earned . . ." and "is eliminated from the employee's record if it is not used within the allowable period." (See **Exhibit B** to the October 25, 2017 Agenda Report at section II.1 and II.2). It is abundantly clear that the Floating Holiday is lost if it is not used.

For reasons that are not clear, the adjective "holiday" was attached to this form of compensatory time. It should be noted that the 2001-2006 OPOA MOU included an identical

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benefit called “Compensatory Leave.” (See **Exhibit H** attached hereto at sections V.G.) Had the MOU not used the “holiday” nomenclature, there would be no question that this is Comp Time.

2001-2006 OPOA MOU	2006-2015 and 2015-2019 MOUs for OPMA
<p>V. Leaves and Holidays</p> <p>G. <u>Compensatory Leave</u>. In addition to such compensatory leave as may be earned by an employee pursuant to Article II, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee’s record at the beginning of the fiscal year. An Employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.</p> <p>(see Exhibit H attached hereto at sections V.G)</p>	<p>OPMA MOU Section VII.H.2.</p> <p><u>Floating Holiday</u>. The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect. (See Exhibits E and G to the Agenda Report for October 25, 2017.)</p>

Juxtaposed in this manner, it is apparent that the “Floating Holiday” is just another form of compensatory time. Moreover, the MOUs, DGO D-8, and AI No. 520 make clear that this compensatory leave is forfeited if not taken in the year it is credited. Also of note, the 2008 Interest Arbitration Decision by Barry Winograd reviewed that pay element and concluded it is compensatory time.

“23. Holiday – Floating Birthday

Status quo (that is, paid in comp time).”

Because compensation attached to rank under Charter section 2607 must be “payable in cash” and the “floating holiday” is generally not payable in cash, it is not compensation attached to the rank for PFRS police retirees. Furthermore, because the floating holiday hours are simply a substitute for regular work hours, they do not serve to expand compensation beyond the typical 2080 hours of annual compensation.

V. PROPOSED REVISION TO HOLIDAY CALCULATION METHOD

The PFRS Board has not reexamined or adjusted the holiday calculation methodology for PFRS retirees since the Court decisions were rendered in City v. OPFRS in 2014. The PFRS Board has a fiduciary duty to administer the System for the benefit of all members and to take corrective action when reasonably appropriate in the best interest of Plan participants (see generally McMahon v McDowell (3rd Cir. 1986) 794 Fed 2d 100, 110). Now that the Board is aware of apparent overpayments of Holiday Pay since 2006 to all PFRS retirees classified as captains and deputy chiefs, and it has further guidance from the 2014 court decisions, it is incumbent upon the PFRS Board to consider taking corrective action.

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Staff recommends that Board cease the current holiday calculation methodology of crediting each police retiree with 144 holiday hours above 2080 hours of regular pay. Staff also recommends going forward, that the Board adopt the following method for calculating annual police retiree allowances, including holiday hours credits. The method stated below is intended to achieve the objective of providing police retirement allowances which include an amount of holiday pay that maintains an equality of position between the retired members and the active members currently holding the same rank.

For retirees who retired at the ranks of captain and deputy chief – Because all holidays are already included¹³ in the 2080 hours of base pay that are credited to these retirees, except the occasional year when a holiday falls outside of their regular schedule (in which case an additional 8 hours of Holiday pay are credited), the calculation method focuses on the holiday hours above 2080 hours that are credited to active members in the higher ranks.

The retirement allowance for these ranks would be calculated by adding two main elements: (1) The average Holiday Pay credited for any Holidays that fall outside of an active employee's normal work schedule – looking backward 12 months. And (2) the average Holiday Vacation Accrual hours (for holiday hours actually worked) for an active employee - looking backward 12 months. These two averages will be combined, to credit the retirees with the average Holiday Pay as calculated above for active captains and deputy chiefs from the prior fiscal year in addition to the 2080 base pay hours. This average would be calculated by the same assumptions used in **Exhibit I** attached to this report. Each July, staff will calculate the above amount and pay it to retirees commencing in the next fiscal year (July payroll payable on August 1st).

VI. CONCLUSION

PFRS retirees who retired as police captain and deputy chief ranks have been receiving 2224 hours of combined Base Pay (2080 hours) and Holiday Pay (144 hours) each year since 2006. The current calculation method is contrary to the terms of the 2006-2015 and the 2015-2019 OPMA MOUs. Analysis of payroll data shows that active Oakland police captains and deputy chiefs have been credited an average of 17.22 holiday hours over the last three fiscal years¹⁴, which includes the Holidays that fell outside their regular schedule and Holiday vacation accrual hours (for working on a holiday) each year since July 1, 2015 (see **Exhibit I**), which is significantly less than the additional 144 hours currently being credited to retirees of these same ranks.

Staff recommends that the PFRS Board modify its holiday calculation method as outlined in Section V. above for PFRS police retirees holding the ranks of captain and deputy chief to provide relative parity between the annual allowance paid to retirees and the annual

¹³ Under the current OPMA MOU (2015-2019) captains and deputy chiefs do not work on holidays. The only way for active officers holding those ranks to earn additional holiday pay over and above their regular base pay is by working a holiday, in which case the officer is credited with one additional hour of Holiday Vacation Accrual for each hour worked.

¹⁴ The 2015-2019 OPMA MOU was not in effect yet, so the 2014-2015 year is not counted toward the overall average.

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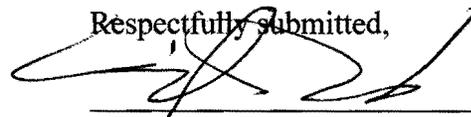
compensation (including average holiday compensation) for active officers in these ranks. Under the proposed methodology, PFRS retirees would receive in fiscal year 2018-2019 the average number of holiday hour credited to active police in the same ranks in fiscal year 2017-2018 (Table 4). Therefor the police captains and deputy chief retirees would receive 17.67 hours of holiday pay for fiscal year 2018-2019 instead of the 144 hours per year currently being paid.

The data shows that PFRS police captains and deputy chiefs have been overpaid between 118 and 136 hours of holiday pay per year since July 1, 2015, and overpaid 144 hours of holiday pay between 2006 and 2015 (subject to footnote 11 above).

Staff also recommends that the Board direct staff to return and provide a future report calculating the overpaid holiday amounts and that the Board exercise its discretion to consider recovering the overpayments. It is the Board's fiduciary duty to consider whether and how to address this issue.

The Board should find that the Floating Holiday benefit is not compensation attached to the rank for any PFRS police retirees, because it is compensatory leave that does not increase base pay, is not payable in cash, and is forfeited if not taken each year. When taken, it supplants regular pay, and does not increase an officer's 2080 annual hours.

Respectfully submitted,



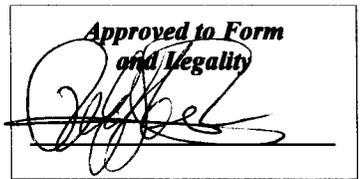
David Jones, Plan Administrator
Oakland Police and Fire Retirement System

For questions please contact Teir Jenkins, Investment Officer, at 510-238-6481.

Attachments (5):

1. **Exhibit H:** OPOA MOU "Compensatory Leave" – Effective July 1, 2001 through June 30, 2006.
2. **Exhibit I:** Matrix of data - Active Police Captain and Deputy Chief (OPMA) Holiday Pay Credited Above 2080 Hours for FY 2014-2015, 2015-2016, 2016-2017, and 2017-2018.
3. **Exhibit J:** Letter dated June 20, 2018 from ROPOA Secretary Mr. Robert W. Nichelini on behalf of the Retired Oakland Police Officers Association.
4. **APPENDIX 1:** Agenda Report from October 25, 2017 of an Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Received by Active Police Officers During The Last Three Fiscal Years [includes Tables 1, 2, & 3 and Exhibits A through G]
5. **APPENDIX 2:** Agenda Report from November 29, 2017; received written responses to October 25, 2017 Agenda Report [includes 11/15/17 responses from ROPOA and PFRS Board Member Robert Muszar regarding PFRS October 25, 2017 Agenda Report and PFRS report on holiday pay]

OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA



RESOLUTION No. 7030

ON MOTION OF MEMBER _____ SECONDED BY MEMBER _____

**RESOLUTION SETTING THE METHOD FOR CALCULATING HOLIDAY
PAY TO BE CREDITED TO POLICE RETIREE ALLOWANCES FOR
THOSE CLASSIFIED WITH THE AVERAGE RANK OF CAPTAIN
AND/OR DEPUTY CHIEF OF POLICE**

WHEREAS, the Retired Police Officers' Association ("ROPOA") and its members have asserted (since October 2014) that police retirees of the Oakland Police and Fire Retirement System ("PFRS") they are entitled to more credit for holidays as a part of their Retirement Allowances since the change in the labor Memorandum of Understanding (MOU) between the Oakland Police Officers' Association (OPOA) and the City of Oakland ("City") going back to approximately 2006; and

WHEREAS, the City Charter at section 2607, 2608, 2610, 2611, and 2619 states that PFRS retirement allowances shall be based on "compensation attached to average rank held"; and

WHEREAS, upon retirement, each police officer's "average rank held" was calculated by referring to his last three years of active service as specified in Charter section 2607 and elsewhere in Charter Article XXVI; and

WHEREAS, the City Charter at section 2607 defines "compensation" as "the monthly remuneration payable in cash"; and

WHEREAS, in City of Oakland v. Oakland Police and Fire Retirement System (2014) 244 Cal.App.4th 210, and Alameda County Superior Court Action No. RG11580626, the Court of Appeal and Trial Court recognized that PFRS is a fluctuating benefits system, and that "[t]he primary purpose of a fluctuating pension plan such as PFRS 'is to guarantee the pensioner a fairly constant standard of living despite inflation, and to maintain equality of position between the retired member and the person (or persons) currently holding the rank the pensioner attained before his retirement.'"; and

WHEREAS, in September 2012, the Superior Court entered judgment in favor of the City of Oakland, declaring, among other things, that the retirees are not entitled to retirement benefits based on holiday pay exceeding those stated in the relevant labor Memorandum of Understanding, and directed the PFRS Board to prepare a plan to recover any overpayments; and

WHEREAS, on February 28, 2014, the Court of Appeal issued its decision partially affirming the Superior Court's judgment, finding that the PFRS retirees and beneficiaries are subject to the negotiated reduction in holidays in the July 1, 2006 OPOA MOU and were overcompensated to the extent they received retirement benefits exceeding the seven holidays allowed in the labor MOU and that excess holidays are not attached to the rank; and

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WHEREAS, Under California Constitution Article XVI, section 17, the PFRS Board has the sole and exclusive fiduciary responsibility over the assets of the System, while concurrently having the responsibility to discharge its duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries (with the duty to its participants and their beneficiaries taking precedence over any other duty), minimizing employer contributions thereto, and defraying reasonable expenses of administering the system; and

WHEREAS, the current method used by PFRS to calculate retirement allowances for police retirees classified in the ranks of captain and deputy chief includes crediting 2,080 base or regular hours for each year, based on the assumption that the employee worked 40 hours per week for 52 weeks per year; and

WHEREAS, in 2015-2019 OPMA MOU at Article VII.H.3. describes the holiday pay of members covered by the MOU (captains and deputy chiefs) as follows:

“3. Holiday Pay

All bargaining unit members will be paid eight (8) hours of straight time for each holiday as defined in Article VII Section H.

In addition to the straight-time holiday pay, if the member works on the holiday, the employee shall accrue one hour of extra vacation for every hour worked on a holiday.”

WHEREAS, when a holiday occurs within an employee's regular schedule, his or her base or regular hours for that day are recognized as holiday pay instead of regular pay thereby reducing the assumed 2,080 hours; and when a holiday occurs on a regular day off, the hours for that day are recognized as holiday pay coded HOL or HCT in addition to the 2,080 base or regular hours; and

WHEREAS, in addition to the 2,080 base/straight time holiday hours, the PFRS police retirees classified as captains and deputy chiefs are currently credited 144 hours for holiday pay each year, calculated as 12 holidays recognized in the MOU at 8 hours per day at the rate of time and one half 1.5x ((8x1.5) x 12 =144) for the year; and

WHEREAS, the fixed 144 hours of holiday pay currently being credited to retired PFRS police captains and deputy chiefs is not consistent with the provisions of Article VII. Section H. 3. of the 2006-2015 and the 2015-2019 OPMA MOUs; and

WHEREAS, PFRS staff performed analysis of four years of payroll data covering fiscal years 2014-2015 through 2017-2018 to identify active police classified in ranks captain and deputy chief who were credited at least 2,080 hours of regular and holiday pay (falling inside their work schedule) in a year; and

WHEREAS, for the group of active police mentioned immediately above, PFRS staff's further data analysis identified the amount of hours above 2,080 that such

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CITY OF OAKLAND, CALIFORNIA

persons were credited for straight-time holidays falling outside of an officers' regular work week (payroll code HOL/ HCT), and for holiday pay that captains and deputy chiefs actually worked during their regular work week each year (payroll code HVA); and

WHEREAS, PFRS staff's analysis (appearing in **Exhibit I** of the October 31, 2018 agenda report) shows that active police in these ranks were credited holiday pay above 2080 hours in the four years period as follows: 0 hours for 2014-2015, 8 hours for 2015-2016, 26 hours for 2016-2017, and 16.67 hours for 2017-2018; and

WHEREAS, the data shows that current method of crediting the holiday portion of PFRS police retirees holding the ranks of captain and deputy chief results said retirees receiving more holiday hours and overall relative compensation than what active police of the same ranks are being paid, which is contrary to the objective of PFRS fluctuating benefit system;

WHEREAS, the PFRS Board is under a fiduciary duty to avoid and terminate overpayments in order to preserve fund assets to pay benefits to all members of the System, which includes retired Fire Department members; and

WHEREAS, it is the duty of the PFRS Board to credit holidays to retired police in a way which achieves a relative "equality of position" between retired and active police; and

WHEREAS, the PFRS Board finds that given the variation in the number of holiday hours which active police captains and deputy chiefs work each year, and the ever shifting days of the week on which a number holidays fall each year, it is reasonable to achieve the "equality of position" between active and retired police by calculating holiday credits for PFRS police retirees classified in the ranks of captain and deputy chief through use of an annual average (based on actual payroll data) of holidays hours credited to active police in the same ranks; and

WHEREAS, the terms of the relevant MOUs and City of Oakland policies demonstrate that the benefit called "floating holiday" does not increase overall annual pay and is not compensable in cash except as part of terminal pay; and

WHEREAS, The PFRS Board, in light of its constitutional duties, now exercises its discretion and powers in good faith; now therefore be it

RESOLVED: That the benefit described as a "floating holiday" in the OPMA MOUs dated 2006-2015 and 2015-2019 is not compensation attached to rank for PFRS police retirees, and shall not be used in calculating the holiday pay portion of retirement allowances; and be it

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CITY OF OAKLAND, CALIFORNIA

FURTHER RESOLVED: that effective immediately, monthly allowances, including the holiday credit portion of retirement allowances for all PFRS police retiree classified in the ranks of captain and deputy chief shall be calculated as follows:

- (1) Each year in July, a calculation shall be performed of police sworn payroll data for the prior fiscal year of all active police classified as captain and deputy chief, who were credited at least 2,080 hours of time in the categories REG, HDP, and all other paid leaves for the fiscal year, to identify (a) Holidays that fall outside of a regular work schedule (payroll code HOL/HCT) and (b) the Holiday Vacation Accrual hours (payroll code HVA), credited to all persons in said ranks.
- (2) The average identified by the calculation from step (1) above, plus 2,080 hours, shall be credited to all PFRS police retirees classified in ranks of captain and deputy chief at the 1.0x rate, annualized into 12 equal monthly installments for the following fiscal year commencing on July 1. For example, fiscal year 2017-2018 active payroll data averages will be used to calculate the PFRS Retiree Holiday Pay credit for payment in fiscal year 2018-2019.
- (3) Any applicable longevity and uniform pay shall be added to the above.
- (4) For the fiscal year 2018-2019, the average annual number of holiday hours above 2,080 to be paid to PFRS police retirees classified in the rank of captain or deputy chief shall be 17.67 hours (instead of 144 hours), and the adjustment shall be implemented in the December 1, 2018 payroll (to be paid on January 1, 2019); and
- (5) The holiday credit of police retirees whose allowance is calculated using split ranks shall be apportioned.

IN BOARD MEETING, CITY HALL, OAKLAND, CA _____ OCTOBER 31, 2018

PASSED BY THE FOLLOWING VOTE:

AYES: GODFREY, KASAIN, MELIA, MUSZAR, SPEAKMAN, WILKINSON,
AND PRESIDENT JOHNSON

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
PRESIDENT

ATTEST: _____
SECRETARY

EXHIBIT H

**OAKLAND POLICE OFFICERS ASSOCIATION
MEMORANDUM OF UNDERSTANDING
EFFECTIVE JULY 1, 2001 THROUGH JUNE 30, 2006
(EXCERPT)**

MEMORANDUM OF UNDERSTANDING

Between

CITY OF OAKLAND

and

OAKLAND POLICE OFFICERS' ASSOCIATION

Effective July 1, 2001 through June 30, 2006

(1) Except as provided in subsection (3) below, employees will have the option to receive overtime in cash or compensatory leave. However, notwithstanding this provision, the City may elect to buy any overtime worked (OTW) credit in excess of ninety-six (96) hours.

(2) Employees who are exempt from the provisions of FLSA choosing cash compensation for direct charge overtime pursuant to II.E, (a)(3) above may defer payment for a later date. Employees covered under the provisions of FLSA choosing cash compensation for overtime may defer payment for a later date on overtime hours earned up to the 171 hour FLSA work period limit. Employees shall receive deferred overtime pay a maximum of twice each fiscal year, payable in the months of December and July. Deferred overtime payment requests for December must be made in writing by November 1 on a form, which shall be provided by the Department. Payments for such requests will be by separate check payable on the first Friday, in the month of December, which is not a payday. Any remaining or unclaimed deferred overtime will be paid at the end of each fiscal year by separate check on the first Friday, in the month of July, which is not a payday. Deferred overtime cannot be accumulated from one fiscal year to the next and it will be paid at the salary level at which it was earned.

(3) Compensatory Time. Any compensatory time earned beginning April 5, 1986 shall be accrued in a compensatory time bank separate from any compensatory time accrued by employees prior to April 5, 1986. The maximum amount of compensatory time which may be accrued in the April 5, 1986 compensatory time bank shall be four hundred and eighty (480) hours. Any employee who has a balance of four hundred and eighty (480) hours in his/her April 5, 1986 compensatory time bank shall receive any subsequent overtime earned in cash, until the balance once again drops below four hundred and eighty (480) hours. Use of time from compensatory time banks shall be on a last-in first-out (LIFO) basis, beginning with the April 5, 1986 time bank. If no compensatory time is left in the April 5, 1986 time bank, the employee's pre-April 5, 1986 time banks may be used.

(d) Canine Handlers. Each employee regularly assigned as a Canine Handler is authorized to spend and shall be deemed to have spent fifteen (15) hours per month, over and above his/her regularly scheduled hours of work, in ordinary care and informal training of the assigned dog for such ordinary care and training that cannot be performed during regularly scheduled work hours. For those

hired on or after July 1, 1974, who has a signed contract of fixed duration upon his/her appointment to the Department for the duration of such contract.

F. Organization Leave.

(1) Except as provided below, no employee shall conduct Association business during his/her normal working hours.

(a) An Association representative processing a grievance shall be allowed a reasonable period of release time to do so, provided that no more than one such representative will be granted such release time to process each grievance.

(b) A reasonable number of Association representatives shall be allowed reasonable release time to engage in meet and confer discussions, or other discussions, with representatives of the City.

(2) Up to fifty (50) working days paid leave of absence shall be granted collectively to employees designated by the Association during each year of the term of this Memorandum, subject to approval of the department head, to attend seminars, conferences, or conventions at the local, state, and national level. The time is to be utilized by such persons when said seminars, conferences, or conventions are held at a time or location, which precludes attendance in addition to the performance of his/her regular duties.

(3) Association representatives who are designated by an authorized official of the Association may take Association Overtime Allowed (AOTA), subject to advance approval by the Chief of Police or his designated representative.

To establish a fund of Association Overtime Allowed (AOTA) for use as defined above, a represented employee may contribute his/her accumulated overtime to the Association, subject to the following conditions:

(a) An individual employee may contribute a maximum of eight (8) hours from his/her overtime account during each contract year.

(b) The AOTA account shall be contributed to, and drawn from, on an hour-for-hour basis, without regard for the rank of the person contributing to or using the time.

G. Compensatory Leave. In addition to such compensatory leave as may be earned by an employee pursuant to Article II, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this

Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.

H. Family Care Leave. Employees are entitled to Family Care Leave in accordance with terms and conditions mandated by Government Code Section 12945.2.

I. Holidays. The following days are designated as City holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September.

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th.

ARTICLE VI ALLOWANCES

A. Uniform Allowance.

1. Initial Uniform Allowance. City agrees to provide to an employee covered by this Memorandum, at the time of employment, an initial uniform allowance of two hundred and fifty dollars (\$250.00).

A new employee shall receive the annual uniform allowance payable at the time of employment; provided, however, that the annual uniform allowance at the beginning of the first full year of employment shall be prorated on the basis of service from the date of employment up to and immediately preceding the first full fiscal year, to the extent that such service period is less than a full fiscal year.

The annual allowance shall be paid in combination with Longevity Premium Pay. Such payment shall be by separate check, payable on the first Friday, in the month of July, which is not a payday.

EXHIBIT I

**ACTIVE POLICE CAPTAIN AND DEPUTY CHIEF (OPMA)
HOLIDAY PAY CREDITED ABOVE 2080 HOURS
FOR FY 2014-2015, 2015-2016, 2016-2017 AND 2017-2018**

Exhibit I

City of Oakland Police and Fire Retirement System

Active Police Captain and Deputy Chief (OPMA) Holiday Pay Earned Above 2080 Hours

Fiscal Years 2014/2015 - 2017/2018

FY 2014-2015						
Count	TITLE	Total Active Holiday Hours (a)	Holiday Vacation Accrual ¹	Total Holiday Hours	Current PFRS Holiday Pay Hours above 2080 Base Pay	Variance between Active and Current Retiree Holiday Pay
1	Captain of Police (PERS)	-	N/A	-	144	144
2	Captain of Police (PERS)	-	N/A	-	144	144
3	Captain of Police (PERS)	-	N/A	-	144	144
4	Captain of Police (PERS)	-	N/A	-	144	144
5	Captain of Police (PERS)	-	N/A	-	144	144
6	Captain of Police (PERS)	-	N/A	-	144	144
7	Captain of Police (PERS)	-	N/A	-	144	144
8	Deputy Chief of Police (PERS)	-	N/A	-	144	144
9	Deputy Chief of Police (PERS)	-	N/A	-	144	144
10	Deputy Chief of Police (PERS)	-	N/A	-	144	144
TOTAL HOURS		0	0	0	1440	1440
AVERAGES		0	0	0	144	144

(a) Summary of Holiday pay in addition to Base Pay. Excludes HDP which is considered part of the 2080 base pay for the purpose of this analysis

¹ Holiday Vacation Accrual provision not enacted until 2015-2019 MOU

FY 2015-2016						
Count	TITLE	Total Active Holiday Hours (a) ¹	Holiday Vacation Accrual ²	Total Holiday Hours	Current PFRS Holiday Pay Hours above 2080 Base Pay	Variance between Active and Current Retiree Holiday Pay
1	Captain of Police (PERS)	8	0	8	144	136
2	Captain of Police (PERS)	8	0	8	144	136
3	Captain of Police (PERS)	8	0	8	144	136
4	Captain of Police (PERS)	8	0	8	144	136
5	Captain of Police (PERS)	8	0	8	144	136
6	Captain of Police (PERS)	8	0	8	144	136
7	Captain of Police (PERS)	8	0	8	144	136
8	Deputy Chief of Police (PERS)	8	0	8	144	136
9	Deputy Chief of Police (PERS)	8	0	8	144	136
10	Deputy Chief of Police (PERS)	8	0	8	144	136
TOTAL HOURS		80	0	80	1440	1360
AVERAGES		8	0	8	144	136

(a) Summary of Holiday pay in addition to Base Pay. Excludes HDP which is considered part of the 2080 base pay for the purpose of this analysis

¹ Received HOL because 4th of July Holiday fell outside of the regular work schedule

² MOU implemented in November 2015, no Holiday Vacation Accrual reported in FY 2015/2016

Exhibit I

City of Oakland Police and Fire Retirement System

Active Police Captain and Deputy Chief (OPMA) Holiday Pay Earned Above 2080 Hours

Fiscal Years 2014/2015 - 2017/2018

FY 2016-2017						
Count	TITLE	Total Active Holiday Hours (a) ¹	Holiday Vacation Accrual	Total Holiday Hours	Current PFRS Holiday Pay Hours above 2080 Base Pay	Variance between Active and Current Retiree Holiday Pay
1	Captain of Police (PERS)	24	0	24	144	120
2	Captain of Police (PERS)	24	12	36	144	108
3	Captain of Police (PERS)	24	0	24	144	120
4	Captain of Police (PERS)	24	10	34	144	110
5	Captain of Police (PERS)	24	7	31	144	113
6	Captain of Police (PERS)	24	0	24	144	120
7	Captain of Police (PERS)	24	0	24	144	120
8	Captain of Police (PERS)	8	0	8	144	136
9	Captain of Police (PERS)	24	11	35	144	109
10	Deputy Chief of Police (PERS)	24	7	31	144	113
11	Deputy Chief of Police (PERS)	16	0	16	144	128
12	Deputy Chief of Police (PERS)	24	0	24	144	120
TOTAL HOURS		264	47	311	1728	1417
AVERAGES		22	4	26	144	118

(a) Summary of Holiday pay in addition to Base Pay. Excludes HDP which is considered part of the 2080 base pay for the purpose of this analysis

¹ Received HOL/HCT hours because Christmas, New Years Day, and Lincoln's Birthday Holiday fell outside of the regular work schedule

FY 2017-2018						
Count	TITLE	Total Active Holiday Hours (a) ¹	Holiday Vacation Accrual	Total Holiday Hours	Current PFRS Holiday Pay Hours above 2080 Base Pay	Variance between Active and Current Retiree Holiday Pay
1	Captain of Police (PERS)	8	16	24	144	120
2	Captain of Police (PERS)	16	7	23	144	121
3	Captain of Police (PERS)	16	0	16	144	128
4	Captain of Police (PERS)	16	0	16	144	128
5	Captain of Police (PERS)	16	0	16	144	128
6	Captain of Police (PERS)	16	0	16	144	128
7	Captain of Police (PERS)	16	0	16	144	128
8	Captain of Police (PERS)	16	0	16	144	128
9	Captain of Police (PERS)	16	0	16	144	128
10	Deputy Chief of Police (PERS)	16	5	21	144	123
11	Deputy Chief of Police (PERS)	16	0	16	144	128
12	Deputy Chief of Police (PERS)	16	0	16	144	128
TOTAL HOURS		184	28	212	1728	1516
AVERAGES		15.33	2.33	17.67	144	126

(a) Summary of Holiday pay in addition to Base Pay. Excludes HDP which is considered part of the 2080 base pay for the purpose of this analysis

¹ Received HOL/HCT hours because Admission's Day and Veteran's Day fell outside of the regular work schedule

EXHIBIT J

**LETTER DATED JUNE 20, 2018 FROM ROPOA SECRETARY
MR. ROBERT W. NICHELINI ON BEHALF OF THE
RETIRED OAKLAND POLICE OFFICERS ASSOCIATION**

RETIRED OAKLAND POLICE OFFICERS ASSOCIATION

8 Yorkshire Drive
Oakland, CA 94618-2022
707 333-6071

June 20, 2018

Members of the Oakland Police and Fire Retirement Board
c/o David Low
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Dear Members of the Oakland Police and Fire Retirement Board:

Holiday Pay/Holiday Premium Pay for Members of the
Oakland Police and Fire Retirement System

Set forth below is the Retired Oakland Police Officers Association's (ROPOA) response to Item D, which was scheduled for the May 30, 2018 meeting of the Police and Fire Retirement System (PFRS) Board, before that meeting was moved to the June 27, 2018 meeting -- A Supplemental Report Comparing the Current Method of Calculating PFRS Police Retiree Holiday Pay Against the Holiday Pay Received by Active Officers During the Last Three Fiscal Years.¹ This response is meant to supplement the November 15, 2017 Response from Retired Oakland Police Officers Association & Petitioners to October 16, 2017 PFRS Agenda Report on Holiday Pay previously submitted to the PFRS Board (see attached).

BACKGROUND

For more than 45 years, the holiday premium pay earned by Oakland police officers for working on holidays has been held to be "compensation attached to the rank" under the City's Charter and must therefore be included in calculating retirees' pensions. (*City of Oakland v. Oakland Police & Fire Retirement Sys.* (2014) 224 Cal.App.4th 210, 222, 231-33, fn.1 [*OPFRS*]; *Buck v. City of Oakland* (Cal.Ct.App. 1971, No. 1-Civ-28402) [nonpub. Opn.]; *Oakland Police & Fire Retirement Association v. City of Oakland* (Alameda Sup. Ct. 1996, No. 763859-O) [nonpub. opn.])

All officers in all ranks, Police Officer through Deputy Chief, receive holiday pay. The July 1, 2006-June 30, 2015 MOU provided that active officers in patrol could

¹ After the submission of this response, if the agenda report is subsequently modified or the agenda changed, ROPOA will supplement the record as necessary.

no longer work an 8-hour day: they were required to work at least 10-hour days. Accordingly, their holiday pay (for working or not working on a holiday) was calculated based on a 10-hour day or 12-hour day. Similarly, the 2015-19 MOU also requires officers in patrol to work at least a 10-hour day; again, holiday pay for active officers in patrol and others working 10- or 12-hour shifts is also calculated based on a 10- or 12-hour day. At issue in the current litigation brought by ROPA is the PFRS Board's failure to include holiday premium pay in retirement allowances paid to all similarly-situated retirees based on a 10-hour day.

In response, on October 25, 2017, the Plan Administrator submitted an agenda report which was subsequently supplemented by the item scheduled for the May and then for the June 27, 2018, meeting. Unfortunately, this report is fundamentally flawed.

- **Retired PFRS police members are entitled to holiday pay/holiday premium pay as if the retiree worked every available holiday.**

It was never argued in *Buck* (or any subsequent litigation) that active officers worked every available holiday. The number of holidays actually worked by active officers is not dispositive to retirement allowance calculations.

By its nature, police work does not pause for holidays— “[b]eing subject to working on holidays as regular work days is normal for police officers.” (*City of Fremont v. Bd. of Admin. of the PERS* (1989) 214 Cal.App.4th 1026, 1031.) When officers are scheduled to work on a holiday, they do not have discretion on whether to work or not. If they want the day off, they are required to request and receive permission from their superior officer—and such permission is rarely granted. Retired police officers who are now collecting pensions regularly worked holidays while they were active and made contributions to PFRS based on the premium pay they received for this hardship. Current, active police officers regularly work holidays and earn premium pay for doing so. They also receive holiday pay when they do not work on holidays. (See 2006-15 & 2015-19 MOUs, art. VI.G.3.)

The Board is required to liberally construe ambiguous language in favor of retirees. Given the consistent, forty-five year practice of paying holiday premium pay as if retirees *worked* the holiday, the Board is obligated to interpret the phrase in a manner favorable to the pensioners.

It is particularly egregious that the Administrator's retirement reduction proposal comes at a time are already litigating these issues and exploring settlement. ROPOA will have to take all immediate legal action necessary to protect the interests of its members if the Board adopts the Administrator's proposal.

AGENDA REPORT

The Plan Administrator's Agenda Report:

- Ignores the basic premise that the majority of active officers work and are compensated for 10 or 12-hour holidays with a combination of holiday pay and holiday premium pay resulting in significant retirement allowance underpayments. Even though the Board determined 12-hour holidays are “compensation attached to the rank” for one retired member, other similarly situated retirees have not been paid.
- Fails to recognize the number of holidays actually worked by active officers is not dispositive to the calculation of retirement allowances. No one as far back as *Buck* has alleged all active officers worked all holidays. Rather, it is undisputed all active officers are required to work holidays unless relieved from duty and receive additional holiday pay whenever a holiday falls on their regular day off.
- Fails to analyze holiday pay separately and attempts to attack the number of hours that retired members are currently credited with by comparing averages of the combined base pay and holiday pay of active officers. This deeply flawed methodological approach ignores the fact that retired members are entitled to be compensated for 2080 hours of base pay and compounds this issue by excluding a subset of active officers with higher relative base pay. Similarly, it is unclear if active officers that did not work the full year or were on unpaid leave were wrongly included.
- Does not attempt to answer the simple question of how many holidays active officers work (even if this were to be dispositive). If, based on a 10-hour shift, an active officer worked just *half* of the holidays, they would receive **158 hours** of holiday pay, rather than the 144 hours received by retired members.
- Fails to address the inconsistencies in the self-reported payroll data, which the City has admitted is the source of great confusion among active officers with respect to how holiday pay is supposed to be reported.
- Fails to address inherent flaws in calculating retirement allowances based on averages: such averages would be a moving target depending on available staffing, the day of the week the holiday falls on, anticipated or unanticipated workloads, emergency situations, and other factors. The averages would need to be re-computed on a regular basis – maybe even monthly. This is why, construing the Charter liberally in favor of retirees, Courts have held for over 45 years that compensation should be based on an assumption that retirees worked all holidays.

- Attempts to “cherry-pick” Police Management Association holiday benefits that favor the Plan Administrator’s recommendation while ignoring new benefits (e.g., additional compensation for POST Management Certificates, Management Leave, and Vacation Buy Back) that favor the retired member.
- Fails to acknowledge “floating holiday” hours are “posted” to each active member’s compensatory time bank and can be converted to cash payments. It is simply untrue that “floating holiday” hours are lost if not used.
- Does not provide a plan to fairly compensate members who retired with “split ranks” represented by both to OPOA and the OPMA.
- Does not consider the result of “deferred payment” or holidays worked in exchange for compensatory time (that may be “cashed out” at some later date). This fact alone renders the City’s data flawed and incomplete.

The Plan Administrator’s agenda report claims Oakland Police Department shift schedule modifications resulted in changed circumstances requiring a reevaluation of holiday pay/holiday premium pay calculations. However, the Plan Administrator likely does not know and/or cannot determine the number of holidays worked by active officers when holiday pay/holiday premium pay issues were previously litigated. Accordingly, the Plan Administrator has articulated no basis (or starting point) from which to determine the number of holidays worked by active members has “changed.”

CAPTAINS AND DEPUTY CHIEFS

It is important to recognize no retired member holding the rank of Captain or Deputy Chief was ever a member of or represented by the OPMA and his or her compensation and benefits were always attached to the OPOA MOU.

In approximately 1990, a similar situation had the potential to adversely affect pensions for retired Chiefs of Police. In order to avoid such an outcome, a determination was made that pension allowances for retired Chiefs would henceforth be attached to the OPOA MOU (and likewise, retired Fire Chiefs are attached to the Local 55 MOU). There is no logical reason retired Captains and Deputy Chief should not be treated in the same manner.

Reviving Prior Arguments Rejected by the Court of Appeal

The Plan Administrator is attempting to revive the City's 2010 assertion that the 2006-2010 MOU changed how holidays are paid. The Board thoroughly reviewed that claim with a series of hearings running from October 2010 through about January 2011. After these hearings, and following the receipt of a 13-page legal

opinion from the Board's independent counsel, the Board concluded that holidays were being paid correctly and in accordance with *Buck*. Then the City sued in 2011 on the same issue, using the same argument. The appellate court rejected that claim with very clear language in *OPFRS*. Now, the Plan Administrator is making related arguments without offering any logical explanation as to why the Board is not precluded from adopting the report's recommendations by that prior litigation. Previous court decisions over the past 47 years clearly preclude the Board from pursuing this issue again. By contrast, the issue of active officers working ten-hour days was not part of the Board's hearings or Court decision in *OPFRS*. Retirees are entitled to relief from this continuing failure to pay holidays in accordance with the length of days worked by retirees.

CONCLUSION

The Board should reject the Plan Administrator's recommendations. The Plan Administrator's proposal is a disguised attempt to reduce retirees' base pay from 2080 hours to less than 2080 hours.

ROPOA is, however, remains willing to discuss settlement of the present litigation and is willing to discuss representation unit and/or revision of retirement benefits for Captains and Deputy Chiefs based on the "compensation attached to the rank" elements included in the OPMA MOU.

/s/ Robert W. Nichelini

Robert W. Nichelini
Secretary

McCRACKEN, STEMERMAN & HOLSBERRY, LLP

Counselors and Attorneys at Law

November 15, 2017

San Francisco

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415.597.7200
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Via E-Mail (DLow@oaklandnet.com) and U.S. Mail

Oakland Police and Fire Retirement System Board
c/o David Low
150 Frank Ogawa Plaza, Ste. 3332
Oakland CA 94612

- Steven L. Stemerma (CA, NV)
- Richard G. McCracken (CA, NV)
- W. David Holsberry (CA, NV)
- John J. Davis, Jr. (CA)
- Florence E. Culp (CA, NV)
- Kristin L. Martin (CA, NV, HI)
- Eric B. Myers (CA, NV)
- Paul L. More (CA, NV, MA)
- Sarah Varela (CA, AZ, NV)
- Sarah Grossman-Swenson (CA, NV)
- Yuval Miller (CA, NV)
- David L. Barber (CA, NV)
- Kimberley C. Weber (CA, NV)
- Yonina Alexander (CA)
- A. Mirella Nieto (CA)

Re: **Response from Retired Oakland Police Officers Association & Petitioners to October 16, 2017 PFRS Agenda Report on Holiday Pay**

Dear Oakland Police and Fire Retirement System Board:

Retired Oakland Police Officers Association (“ROPOA”), Ronald B. Gunar, Ned S. Ubben, Raymond T. Miller, Robert L. Aven, and Nita G. Balousek (“Petitioners”), hereby submit this response to the PFRS Staff Report from October 16, 2017.

Summary of Material Facts

1. Compensation Attached to the Rank

As you know, PFRS is a fluctuating pension system: under the Charter, retirement benefits are calculated as a fraction of the amount of compensation paid to *active* police officers of the same rank—known as compensation “attached to the rank.” The purpose of a fluctuating system is to maintain a standard of living and equality of position between the retired and active officers.

The Charter sets PFRS pensions at a fixed fraction of “compensation attached to the average rank held.” (Charter § 2608.) Compensation, as defined in the Charter, is the “monthly remuneration payable in cash, by the City, . . . but excluding remuneration paid for overtime and for special details or assignments” (Charter § 2607.) Whether compensation is “attached to the average rank” is based on the compensation paid to active sworn peace officers (“actives”), and is determined by the City’s actual pay practices for actives, including but not limited to as provided for in the Memoranda of Understanding (“MOUs”) between the City and the Oakland Police Officers Association. (*City of Oakland v. Oakland Police & Fire Retirement Sys.* (2014) 224 Cal.App.4th 210, 231, 217 [“OPFRS”].)

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- Robert P. Cowell (1931-1980)
- Philip Paul Bowe (CA) (Ret.)
- Barry S. Jellison (CA) (Ret.)



2. Holiday Pay Based on 10-Hour Days

All officers in all ranks, Police Officer through Deputy Chief, receive holiday pay. The July 1, 2006-June 30, 2015 MOU provided that active officers in patrol could no longer work an 8-hour day: they were required to work at least 10-hour days. Accordingly, their holiday pay (for working or not working on a holiday) was calculated based on a 10-hour day or 12-hour day. Similarly, the 2015-19 MOU also requires officers to work at least a 10-hour day; again, holiday pay for active officers in patrol and others working 10- or 12-hour shifts is also calculated based on a 10- or 12-hour day. At issue in the court case is the PFRS Board's ("Board's") failure to include holiday premium pay in retirement allowances paid to all similarly-situated retirees based on a 10-hour day.

The MOUs require that all officers be paid for twelve holidays per year at "straight time" (their regular rate of pay or regular holiday pay) regardless of whether or not they are working. (2006-15 & 20 15-19 MOUs, art. VI.G.3.) This pay is referred to as "holiday pay." Active officers are also paid holiday premium pay in addition to their regular holiday pay. When an active officer works on a holiday, holiday premium pay is paid in addition to the regular pay at the rate of time-and-one-half. (2006-15 & 2015-19 MOUs, art. VI.G.3.) The 2015-19 MOU describe this practice as follows: "in addition to the straight-time holiday pay, if the holiday is worked, the officer shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off; or by employer request, the officer will be paid holiday pay at the straight time rate. In the event that a holiday falls on an officer's day off, the officer may take the holiday in pay or comp time at straight time, at his/her election." (2015-19 MOU, art. VI.G.3.) The 2006-15 MOU uses identical language, except that it uses the words "employee" or "member" in place of "officer." (2006-15 MOU, art. VI.G.3.)

3. Board Determination that Holiday Pay Based on 12-Hour Day Attached to Rank for One Retiree

In November 2013, the Board determined that holiday pay based on a 12-hour day *was* compensation "attached to the rank" for one active PFRS member who was in the process of retiring, and determined that holiday pay based on a 12-hour day should be included in calculating that retiree's benefits. A resolution was adopted by the Board that held, in a 6-0 vote, with one abstention, that "Holiday Pay retirement allowance shall be based on ... twelve hours per holiday." (PFRS Resolution No. 6776, Nov. 13, 2013.)

Despite requests from ROPOA on behalf of Petitioners and other retirees, the Board refused to award holiday pay based on a 10- or 12-hour day to all other similarly-situated PFRS retirees and beneficiaries. Indeed, the Board flatly refused to address the issue.

Legal Analysis

A. Pension provisions must be liberally construed in favor of pensioners.

Retirees have contractual rights in their pensions, which are protected by the California Constitution, and benefits may not be changed to their detriment. Under the California Constitution, “the duty of a public retirement board ‘to its participants and their beneficiaries shall take precedence over any other duty,’ including minimizing employment contributions and defraying administrative costs.” (*Id.* [citing Cal. Const., art. XVI, § 17, subd. (b)].) Pension provisions must be liberally construed in favor of the pensioners, and benefits provisions must be applied “fairly and broadly.” (*Eichelberger v. City of Berkeley* (1956) 46 Cal.2d 182, 188.) A “retired employee has a contractual right, protected by constitutional guarantees, in a pension ...’ and such benefits ‘may not be changed to [that employee’s] detriment.’” (*OPFRS*, 224 Cal.App.4th at pp. 226-27 [alteration in original] [citing *Dunham v. City of Berkeley* (1970) 7 Cal.App.3d 508, 513].)

Although fluctuating pension plans like PFRS are not static, their purpose is to “guarantee the pensioner a fairly constant standard of living despite inflation,” (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 54) and to “maintain equality of position between the retired member and the members currently holding the rank the pensioner attained before retirement.” (*OPFRS*, *supra*, 224 Cal.App.4th at p. 227.) Accordingly, California courts have repeatedly held that cities with fluctuating retirement systems, such as Oakland’s PFRS, may not escape from their promises to pay retirement benefits.

B. Where a court can determine whether a retiree met the criteria necessary to receive premium pay, that pay attaches to the rank.

Construing the Oakland City Charter, courts have repeatedly determined that where a “court [can] determine whether the retired plaintiff met the criteria necessary to receive the additional pay,” that pay attaches to the rank. (*Kreeft*, *supra*, 68 Cal.App.4th at pp. 60-61; see also *OPFRS*, *supra*, 224 Cal.App.4th at pp. 231-33 & fn. 12 [PFRS holiday premium pay attached to the rank] [citing *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. op.) (same)]; *OPFRS*, *supra*, 224 Cal.App.4th at pp. 222 & 240 [PFRS “line-up pay,” extra pay for working in patrol, was judicially determined to be attached to the rank; “any PFRS retiree who had been assigned to patrol ... at any time during the final three years of employment was given credit for ‘the amount of line-up pay received by active police officers similarly assigned.’”] [citing *Arca v. City of Oakland* (Super. Ct. Alameda County, 1984, No. 579832-8) (“*Arca I*”)].

Retirement systems must pass along pay increases to retirees even when those increases are based on new, non-rank-specific criteria. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 214-15 [“merit” and “longevity” bonuses attached to

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the rank]; *City of Long Beach v. Allen* (1956) 143 Cal.App.2d 35 [new salary ordinance providing for “merit” increases to be given only on recommendation of the chief of police must be awarded to retirees even though they had retired prior to the adoption of the ordinance and could not comply with the merit evaluation]; *Estes v. City of Richmond* (1967) 249 Cal.App.2d 538, 541, 546 [“hazardous duty pay” for completing one “tour of duty” each month was attached to the rank]; *Dunham, supra*, 7 Cal.App.3d at pp. 512, 515 [new incentive program for training was a “system of general pay raises” and thus compensation attached to the rank, because retirees “performed the services, including training, required of them; they are entitled to their deferred compensation ... based on the benefits now received by their active counterparts”].) To provide otherwise would allow municipalities to escape their promises to pay retirees based on the compensation due to actives.

C. Holiday premium pay is attached to the rank.

For more than 45 years, the holiday premium pay earned by Oakland police officers for working on holidays has been held to be “compensation attached to the rank” under the City’s Charter and must therefore be included in calculating retirees’ pensions. (*OPFRS*, 224 Cal.App.4th at pp. 222, 231-33, fn. 1 *Buck v. City of Oakland* (Cal.Ct.App. 1971, No. 1-Civ-28402) [nonpub. Opn.]; *Oakland Police & Fire Retirement Association v. City of Oakland* (Alameda Sup. Ct. 1996, No. 763859-O) [nonpub. opn.] .)

By its nature, police work does not pause for holidays— “[b]eing subject to working on holidays as regular work days is normal for police officers.” (*City of Fremont v. Bd. of Admin. of the PERS* (1989) 214 Cal.App.4th 1026, 1031.) When officers are scheduled to work on a holiday, they do not have discretion on whether to work or not. If they want the day off, they are required to request and receive permission from their superior officer—and such permission is rarely granted. Retired police officers who are now collecting pensions regularly worked holidays while they were active and made contributions to PFRS based on the premium pay they received for this hardship. Current, active police officers regularly work holidays and earn premium pay for doing so. They also receive holiday pay when they do not work on holidays. (See 2006-15 & 2015-19 MOUs, art. VI.G.3.)

Because active police officers are regularly scheduled to work on holidays—and have no discretion on whether to take those days off—the holiday premium pay that they receive for this hardship is “compensation attached to the rank.” It “adhere[s] to the rank, as an appertaining quality or circumstance.” (*Kreeft, supra*, 68 Cal.App.4th at p. 57.) An active police officer is entitled to holiday premium pay not based on “his individual efforts over and above what are required to obtain the rank” but rather in the normal course of his scheduled work. Holiday premium pay is no different from other forms of variable pay that courts have held to “attach” to a rank for pension purposes. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 213-214 [longevity and merit pay attached to the rank, even

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though not all members of the rank were entitled to them, and even though retirees entitled to varying amounts of the pay].)

As this Court recognized in *Kreeft*, the term “compensation attached to the rank” is ambiguous. Given the Charter’s ambiguous language—and the consistent, forty-five year practice of paying holiday premium pay as if retirees *worked* the holiday, the Board is obligated to interpret the phrase in the manner most favorable to the pensioners. (*Rose, supra*, 126 Cal.App.3d at p. 940 [“If an ambiguity or uncertainty exists, the foregoing statutory provisions are to be construed in favor of the pensioner.”]; *City of Oakland, supra*, 95 Cal.App.4th at p. 39 [pension “laws are to be interpreted in favor of the employee or beneficiary when a semantic ambiguity is presented by the statute at issue”].)

The Court of Appeal in *OPFRS*, 224 Cal.App.4th 212, recently described the long history of holiday premium pay being attached to the rank:

The question of whether holiday pay is “compensation attached to rank” for purposes of calculating PFRS retirement benefits was first addressed by Division Four of the First Appellate District in 1971 in the case of *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. opn.) (*Buck*). When *Buck* was decided, the compensation payable to active members of the Department was set by salary ordinance. (See Oakland Ord. No. 4817, amending § 1.19 of Oakland Ord. No. 4727 (the 1971 Ordinance).) With respect to holiday pay, the 1971 Ordinance provided in relevant part: “Time worked by any officer or member of the Police Department ... in excess of 40 hours during any one-week period shall be deemed overtime work; provided, however, that ... whenever any legal holiday, as herein designated, shall fall within any such one-week period, the said officer or member of the Police Department shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” (*Ibid.*)

...

The court went on to determine that remuneration for holiday work did not constitute overtime and therefore was not excluded from the Charter's definition of “compensation.” (*Buck, supra*, 1 Civ. 28402; see Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

OPFRS, 224 Cal.App.4th at pp. 217-18. The Court in *Buck* held that retirees must be compensated as if they worked each holiday. The Court explained that after *Buck*, the City tried to avoid paying holiday pay to retirees by providing compensatory time off in lieu of actual holiday pay:

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In the wake of *Buck*, the City reportedly tried to avoid the inclusion of holiday pay in PFRS retirement benefits by altering the holiday pay structure for active members of the Department. Specifically, the Department began giving active officers compensatory time off in lieu of actual holiday pay. In response to this change, lawsuits were filed and eventually the City was permanently enjoined from enforcing any “ordinance, resolution or directive which decreases or attempts to decrease the holiday pay ... received by Oakland police officers or firemen as ‘monthly compensation comprising salary.’” (*Doan v. City of Oakland* (Super. Ct. Alameda County, 1972, No. 426926) (*Doan*)). In addition, the City was ordered to pay active members retroactively for any lost holiday pay and was directed “to pay the increased retirement allowances based thereon pursuant to the [*Buck*] decision.” (*Ibid.*)

Id. at pp. 218-19. The Court went on to explain that subsequent litigation in *Arca II* was initiated because retirees were being compensated based on 8 hours of premium pay, while actives were being credited with 12 hours of pay:

Based on the language of the MOU’s, PFRS retirees only received credit for eight hours of holiday premium pay in the calculation of their retirement benefits from 1976 through 1996. In contrast, active members of the Department received 12 hours of holiday pay during this same period. ... Holiday premium pay was again the subject of litigation in 1996. (See *Oakland Police & Fire Retirement Assn. v. City of Oakland* (Super. Ct. Alameda County, 1996, No. 763859) (*Arca II*)). *Arca II* was a class action lawsuit filed on behalf of PFRS retirees and their beneficiaries challenging the MOU language that excluded retirees from receiving credit for the additional four hours of holiday pay that was being paid to active members of the Department. In that case, the City did not contest the holding in *Buck*, but argued that the additional four hours of holiday pay was “overtime” pay and therefore expressly excluded from the calculation of PFRS retirement benefits. (See Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

Id. at pp. 219-20. After reviewing the relevant case history, the Court of Appeal again held in 2014 that retirees had to be paid as if they worked the holidays:

Similarly, the inclusion in the 2006-2015 MOU of express language defining the rights of active members to certain holiday pay when they *do not* work on a holiday has no bearing on active members' continuing entitlement to receive extra compensation when they do. Although the amount of remuneration has changed over the years, for over four decades active members of the Department have possessed an unbroken right to holiday pay for working on

holidays. And, based on *Buck*, PFRS retirees have been entitled — during that same period — to have such holiday pay included in the calculation of their retirement allowance.

Id. at p. 229.

Accordingly, retirees and beneficiaries must be compensated as if they worked the holidays.

D. Compensating retirees as if they worked the holiday, as required by *Buck*, entitles them to 188 hours of holiday pay rather than the current 144 hours they are receiving.

1. Retirees' holiday pay should be based on the 10-hour and 12-hour shifts worked by actives.

Active officers working in patrol are *required* to work a 4/10 schedule, meaning that they work at least 10 hours per shift rather than 8 hours per shift. A substantial number of officers, including patrol officers, work 12-hour shifts.¹ Accordingly, when actives receive holiday premium pay for working on a holiday, they receive 10 hours at 1.5x pay, or 15 hours of pay, or 12 hours at 1.5x, or 18 hours of pay, respectively. (When they do not work on a holiday, they receive 10-12 hours of holiday pay.)²

However, despite the fact that actives are now being paid holiday pay based on 10-hour or 12-hour days, retirees are still being paid based on 8-hour days, so they are receiving just 12 hours of pay per holiday. Instead, pursuant to *Buck*, they should be paid as if they worked the holiday:

- o 12 holidays x 15 hours for holidays worked = **180 hours**
- o floating holiday = 8 hours³

¹ The City's own numbers suggest that approximately 10% of active police work 12-hour shifts.

² This means that even if an active officer didn't work any holidays—extremely unlikely unless they were out on leave—they would still receive 120-144 hours of holiday pay. Contrary to the assertion in the PFRS Staff Report, holiday pay that is paid when actives do not work a holiday is not paid *in lieu* of base pay; actives do not receive base pay for days on which they do not work. It is pay in addition to base pay. (See 2006-15 & 20 15-19 MOUs, art. VI.G.3.)

³ As the Court held in *Doan, supra*, Alameda Superior Court Case No. 426926, the City cannot escape its holiday pay obligations to retirees by providing holiday pay to actives as “compensatory time off.”

188 hours of holiday pay

2. It is not workable to calculate compensation attached to the rank based on averages.

PFRS Staff have analyzed payroll data based on the total number of hours worked by active officers, but what is relevant here is pay for holidays. And, in looking at total hours worked, the Staff Report left out the 10% of active officers who had a base of 2184 hours, who received 18 hours for each holiday they worked, as 12 hours for each holiday they did not work, which obviously skews the entire analysis.

PFRS Staff have asserted that active officers work, on average, approximately 6-7 holidays per year. But compensation attached to the rank cannot be reasonably calculated based on averages: such averages would be a moving target depending on available staffing, the day of the week the holiday falls on, anticipated or unanticipated workloads, emergency situations, and other factors. The averages would need to be re-computed on a regular basis – maybe even monthly. This is why, construing the Charter liberally in favor of retirees, Courts have held for over 45 years that compensation should be based on an assumption that retirees worked all holidays.

Moreover, even if the Board were to accept the premise that holiday premium pay should be calculated based on the average number of holidays worked by actives, this *still* means retirees are owed additional pay according to the City’s own data:

- If, based on a 10-hour shift, an active officer worked just *half* of the holidays, they would receive **158 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 6 holidays x 15 hours for holidays worked = 90 hours
 - 6 holidays not worked x 10 hours for holidays falling on day off = 60 hours holiday pay
 - 8 hours floating holiday
- If an active officer worked 7 holidays, they would receive **163 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 7 holidays x 15 hours for holidays worked = 105 hours
 - 5 holidays not worked x 10 hours for holidays falling on day off = 50 hours holiday pay
 - 8 hours floating holiday

Even if the Board finds that holiday pay should be calculated based on the average number of holidays worked by actives, this still means that retirees are owed additional compensation.

Figure 1. Holiday Pay & Holiday Premium Pay for Active Officers

Holiday	January 1	MLK Day (3rd Monday in Jan.)	Lincoln Day (Feb. 12)	Feb. – 3rd Monday	Memorial Day (last Monday May)	July 4th
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

Holiday	Labor Day (1st Monday Sept.)	Sept. 9 (Admission Day)	November 11 (Veterans Day)	Thanksgiving (Thurs in Nov.)	Friday after Thanksgiving (Nov.)	Christmas (Dec. 25)
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

E. Holiday pay should not be changed for captains and deputy chiefs.

- 1. PFRS Captain and Deputy Chief Ranks are obsolete and compensation should be determined by looking at the OPOA MOU.**

Captain of Police (PFRS) and Deputy Chief of Police (PFRS) are obsolete ranks and compensation attached to those ranks must be calculated in the same manner as other obsolete ranks including Chief of Police, Inspector of Police and Director of Police Services.

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Approximately 25 years ago, the PFRS Board decided retirement allowances for Chiefs of Police, Inspectors of Police and subsequently a Director of Police Services would henceforth be based on cost of living adjustments and other wage increases received by members of the Oakland Police Officers Association (OPOA). At that time, every member of the Oakland Police Department, except the Chief of Police, was a member of and represented by the OPOA (the Chief was an unrepresented member of the OPOA).

It is, therefore, illogical to base retirement allowances, including holiday and holiday premium pay, for retired PFRS captains and deputy chiefs on provisions of the Police Management Association Memorandum of Understanding (PMA MOU) while retired Chiefs of Police, Inspectors of Police and a Director of Police Services remain attached to the OPOA MOU. No retired PFRS captain or deputy chief was ever a member of or represented by the PMA.

Furthermore, there is no longer any community of interest between retired and currently employed captains and deputy chiefs. Many responsibilities of PFRS deputy chiefs have been transferred to the new rank of Assistant Chief and CalPERS captains no longer regularly work in the field at night or on weekends and holidays, unlike PFRS captains. Salary and benefit provisions of the PMA MOU reflect current working conditions and responsibilities.

Retired PFRS captains and deputy chiefs should remain attached to the OPOA MOU for calculation of retirement allowances.

2. Even if PFRS relies on the PMA MOU, it is fundamentally unfair to “cherry pick” the PMA MOU for provisions that are detrimental to PFRS retirees and ignore those that are of benefit.

It is undisputed that the Police Management Association agreed to modify holiday and holiday premium pay provisions for CalPERS captains and deputy chiefs to reflect current assignments, working conditions and membership in the CalPERS retirement system. However, it is also undisputed that the PMA received other benefits to offset any loss of holiday or holiday premium pay.

Specifically:

- **Vacation Buy Back – 120 Hours:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and is clearly compensation attached to the rank. No individual effort is required to obtain this benefit.
- **Management Leave – 15 Days:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and must be considered compensation attached to the rank. No individual effort is required to obtain this benefit.

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- **POST Management Certificate – 5% of pay:** It is undisputable that every CalPERS captain and deputy chief has qualified for a POST Management Certificate by virtue of their tenure in the Department and completion of required training. Every retired PFRS captain and deputy chief also holds a POST Management Certificate and should be paid accordingly.
- **Bachelor's Degree – 5% of pay:** While we do not yet have access to supporting data, it is likely that every CalPERS captain and deputy chief holds a bachelor's degree. This results in a cash benefit and compensation attached to the rank for PFRS retirees.

If the Board decides to modify the historic manner in which holiday and holiday premium pay is calculated for retired captains and deputy chiefs based on the PMA MOU, all other PMA cash benefits must be classified as compensation attached to the rank and paid to retirees.

Conclusion

Retirees should be compensated for holiday premium pay as if they worked the holiday, and should be awarded 188 hours of holiday pay rather than the current 144 hours. The PFRS Staff Report calculations do not analyze the hours actually worked and paid on each holiday, but instead, improperly focus on the average number of hours worked by active officers each year. Moreover, in calculating averages, the PFRS Staff Report improperly disregards the 10% of police officers who are paid 18 hours per holiday worked (resulting in 216 hours of holiday pay if all holidays worked, or 180 hours holiday pay even if just *half* of holidays are worked), obviously skewing the numbers. Even if the Board fails to pay retirees as if they worked all holidays, and even if the Board determines that retirees should be compensated as if they are working only 6-7 holidays, retirees are still being undercompensated. Finally, PFRS cannot cherry pick provisions from the PMA MOU that disadvantage retirees while ignoring those provisions that benefit retirees.

We urge the Board to take all necessary steps to compensate retirees and beneficiaries for 188 hours of holiday pay rather than the 144 hours currently being paid. Thank you for your time and consideration.

Very truly yours,



Sarah Grossman-Swenson

APPENDIX 1



AGENDA REPORT

TO: Oakland Police and Fire
Retirement Board

FROM: Katano Kasaine

SUBJECT: An Analysis Comparing The Current
Method of Calculating PFRS Police
Retiree Holiday Pay Benefits Against the
Holiday Pay Received by Active Police
Officers During The Last Three Fiscal
Years

DATE: October 16, 2017

EXECUTIVE SUMMARY

The purpose of this memo is to compare the current method of calculating PFRS Police retiree holiday pay benefits against the holiday pay received by active police officers during the last three fiscal years. This memo also addresses two related issues: (1) an adjustment of the way holiday pay retirement benefits are being calculated with respect to police retirees who retired at the rank of captain or above; and (2) whether the floating holiday is compensation attached to rank. Our report shows:

- The current method of calculating PFRS police retiree holiday pay benefits credits retirees with higher relative pay than the majority of active police officers receive.
- Police retirees who retired at the rank of captain and above are erroneously being credited Holiday Premium Pay at time-and-a-half, which is higher than what is granted under the current OPMA (Oakland Police Management Association) MOU.
- The Floating Holiday is not compensation attached to the rank for police retirees, because it is compensatory time that is not payable in cash.

BACKGROUND

At its March 29, 2017 Board Meeting, the PFRS Board passed a motion to set a hearing on August 30, 2017 to examine police holiday pay adjustments asserted by plaintiffs in Alameda County Superior Court Case No. RG16838274. At the June 28, 2017 Board meeting, the Board passed a motion to reschedule the August 30, 2017 board hearing to the October 25, 2017 Board meeting.

For this report, Staff has analyzed payroll records for active police officers for fiscal years (July through June) 2014/2015, 2015/2016 and 2016/2017, to determine how much holiday pay active police typically receive, and the combined number of hours of base and holiday pay active police officers actually received, compared to the number of hours that PFRS police retirees and

Agenda Item **B**
PFRS Board Meeting
October 25, 2017

Board of Administration, Oakland Police and Fire Retirement System

Subject: An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Actually Received by Active Officers During The Last Three Fiscal Years

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beneficiaries are credited under the current method of calculating police retiree benefits. The results are summarized in the attachments to this report.

ANALYSIS

In accordance with the City Charter, the PFRS police retirees are paid based on compensation “attached to the average rank held”. The benefits PFRS retirees receive are intended to maintain parity with the pay deemed attached to the rank that active sworn personnel receive. The active police pay elements currently being paid to retirees include (1) Base Pay (2) Holiday Pay, (3) Uniform Pay, and (4) Longevity Pay.

The current method of calculating police retiree benefits relating to Base Pay and Holiday Pay is as follows: As a starting point for the calculation, police retirees are credited an amount that is based on an active police officer’s annual Base Pay of 2080 hours (40 hours X 52 weeks). In addition to the 2080 hours, police retirees are credited with 144 hours relating to Holiday Pay, for a total of 2224 hours.

The 144 hours relating to Holiday Pay is a holdover from prior Department General Order (DGO) D-8,¹ when active police were paid at a Holiday Premium Pay rate of 1.5X (8 hours X 1.5 = 12 hours) per holiday in addition to their Base Pay, regardless of whether they actually worked the holiday. Thus, if there were 12 paid holidays in the MOU, active police would receive 144 hours (12 holidays X 12 hours) in Holiday Premium Pay. PFRS therefore also credited the police retirees with 144 hours of Holiday Premium Pay.

However, since 2006 and subsequent OPOA (Oakland Police Officer Association) MOUs, active police are no longer paid additional holiday pay at a premium rate of 1.5X per holiday regardless of whether they actually work the holiday. Active OPOA police officers (below the rank of captain) receive additional Holiday Premium Pay at the premium rate (1.5X) only if they actually work the holiday. DGO D-8 has since been rescinded.

In addition, effective with the 2006-2015 OPMA (Oakland Police Management Association) MOUs (applicable to members at the rank of captain and above) active police OPMA officers only receive 8 hours of straight time Holiday Pay whether they work the holiday or not. OPMA Officers who actually work on a holiday are compensated Holiday Premium Pay at straight time, in the form of additional vacation under the new 2015-2019 contract.

In summary, under the current MOUSs, active police officers must work a holiday on their normal scheduled work day to receive additional Holiday Premium pay. Staff analyzed the total number of hours of Base Pay and Holiday Pay active police have been credited with in the last three fiscal years, in order to compare that to the total number of hours of Base Pay and

¹ See Department General Order D-8 Holidays, section II.B.5., 6., and 7, attached hereto as Exhibit A.

Board of Administration, Oakland Police and Fire Retirement System

Subject: An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Actually Received by Active Officers During The Last Three Fiscal Years

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Holiday Pay (2224) that PFRS Police Retirees are credited with.²

ANALYSIS OF ACTIVE POLICE HOLIDAY PAY (TABLES)

Staff analyzed hourly Base Pay as well as all Holiday Pay for active Oakland Police Officers below the rank of captain for the past three years (FY 2014/2015 through FY 2016/2017). The results of the analysis are included in **Tables 1, 2, and 3.** (see attachments.)

Tables 1, 2, and 3 reflect the total hours credited for each active Oakland sworn OPOA police member who works an 80-hour schedule, or who worked a combination of an 80-hour schedule for part of the year and an 84-hour schedule the other part of the year. We did not include the relatively small number of officers (approximately 10% of the force over the three years) who worked an 84-hour schedule exclusively for the entire year. The tables include hours worked for each eligible element, excluding Workers Compensation hours and Leave Without Pay elements. The tables also reflect hours at the Holiday Premium Pay rate of 1.5X for each holiday that fell during an active sworn officer's regular schedule which the active OPOA police officer worked.

In **Table 4** below, Staff summarized the total three-year average hours credited to active police officers (ranks below captain) who were assigned to 80-hour schedules and credited at least 2080 hours during the year. Staff compared this total to the 2224 hours (2080 base pay hours + 144 holiday hours) that PFRS police retirees are credited with in calculating holiday retirement benefits. Staff's analysis shows that for these active sworn officers working 80 hour assignments: (1) the average number of hours credited was less than 2224; and (2) the clear majority (approximately 74.0%) of these officers were credited with fewer than 2224 hours.

Table 4			
Active Police Officers with 80 HR Schedules (only)			
FY 2014/2015 to FY 2016/2017			
Fiscal Year	Officer Count Hours Credited Greater than or Equal to 2080 total Hours	Avg Total Hours Credited for Officers with Greater than or Equal to 2080 total Hours	Percentage of Active Officers credited less than 2224 Hours
FY 2014/2015	316	2176	79.4%
FY 2015/2016	450	2198	66.7%
FY 2016/2017	443	2191	75.8%
Averages	403	2188.3	74.0%

² It is necessary to look at the *combined* total of Base Pay and Holiday Pay because when a holiday falls during an officer's regular work schedule, the officer's regular (straight time) Holiday Pay is in lieu of Base Pay for that day.

Board of Administration, Oakland Police and Fire Retirement System

Subject: An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Actually Received by Active Officers During The Last Three Fiscal Years

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CAPTAINS AND ABOVE – STRAIGHT PAY FOR HOLIDAYS WORKED

PFRS' is currently paying retirement benefits to police retirees who retired at the rank of captain and above on the same basis as police retirees who retired below the rank of captain. Namely: 12 Holidays at 8 hours @ 1.5X = 144 hours. The current method does not take into account the fact that the two OPMA MOUs (commencing in 2006 and in 2015) provided lesser holiday benefits for captains and above compared to the lower ranks.

OPMA members were entitled to no extra holiday pay at all under the 2006-2015 MOU. Under the 2015-2019 MOU, OPMA members are entitled to one hour of vacation credit for each hour actually worked on a holiday, which means that their Holiday Premium Pay rate is 1.0X (straight time), not 1.5X. (see section VII.H.3 on the relevant MOU pages in attached **Exhibits E and G**) Retirees at ranks of captain and above are being overpaid.

FLOATING HOLIDAY PAY

Staff has also addressed at the question of whether PFRS retirees should receive an additional retirement benefit based on the "Floating Holiday" that active police officers receive. Under the OPOA and OPMA MOUs, the Floating Holiday is an award of eight hours of compensatory leave that active police receive each year. Currently PFRS members are not credited for the Floating Holiday. The benefit is described in the OPOA and OPMA MOUs of 2006-2015 and 2015-2019:

OPOA MOU (section VI.G.2.)

Floating Holiday - In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave. (See **Exhibits D and F.**)

OPMA MOU (section VII.H.2.)

Floating Holiday - The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect. (See **Exhibits E and G.**)

It is staff's position that Floating Holiday is not compensation attached to any rank for PFRS purposes because it does not fit the definition provided by the Charter. Charter Section 2607 defines compensation as "monthly remuneration payable in cash". The Floating Holiday is eight hours of compensatory time credit, not remuneration payable in cash. There is no convertible monetary value to this compensatory time award. When the member's employment with the City

Agenda Item **B**
PFRS Board Meeting
October 25, 2017

Board of Administration, Oakland Police and Fire Retirement System

Subject: An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Actually Received by Active Officers During The Last Three Fiscal Years

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terminates, this eight hours is subtracted from the member's compensatory leave balance in their bank, unless the member has first used all compensatory leave on the books after said eight hours was credited and subsequently earned additional compensatory leave.

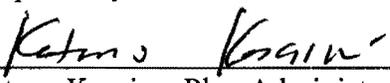
Additionally, Oakland City Administrator's Administrative Instruction (AI) No. 520 (attached hereto as **Exhibit B**) states that Floating Holidays can only be used in place of a regularly scheduled work day. Police Department General Order D-8 at section III.A.1 and 2 stated the same limitation on the Floating Holiday. It does not increase an employee's overall compensation, but simply substitutes for a regularly scheduled paid work day. For all of these reasons, it is staff's position that the Floating Holiday is not compensation attached to the rank for any PFRS police retiree.

CONCLUSION

The annual 2224 hours that PFRS retirees are currently credited with for Base Pay and Holiday Pay is higher than the average number of hours full-time active police are credited with for Base Pay and Holiday Pay. During the past three fiscal years, an overwhelming majority of these active police officers (74.0%) were credited with fewer than 2224 hours of Base Pay and Holiday Pay. PFRS retirees who retired as police captains and higher ranks have been receiving more Holiday Premium Pay at a higher level than what is currently being paid to active police in those ranks based on the OPMA MOU. Finally, the Floating Holiday is not compensation attached to the rank for any PFRS police retirees, because it is compensatory leave that is not payable in cash.

Staff requests direction from the Board on next steps for Board action to (1) propose a method to calculate police retiree holiday benefits to be in line with OPOA and OPMA MOUs and (2) change holiday benefits calculation method for OPMA Ranks (Captain and above) in order to be the same as active OPMA members as provided by the OPMA MOU.

Respectfully submitted,



Katano Kasaine, Plan Administrator
Oakland Police and Fire Retirement System

For questions please contact Teir Jenkins, Investment Officer, at 510-238-6481.

(cont'd)

Agenda Item **B**
PFRS Board Meeting
October 25, 2017

Board of Administration, Oakland Police and Fire Retirement System

Subject: An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Actually Received by Active Officers During The Last Three Fiscal Years

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Attachments (8):

1. Tables 1, 2, and 3
2. **Exhibit A:** Police Department General Order D-8
3. **Exhibit B:** Administrative Instruction No. 520
4. **Exhibit C:** Assumptions for Analysis
5. **Exhibit D:** OPOA MOU - Effective July 1, 2015 through June 30, 2019
6. **Exhibit E:** OPMA MOU - Effective July 1, 2015 through June 30, 2019
7. **Exhibit F:** OPOA MOU - Effective July 1, 2006 through June 30, 2015
8. **Exhibit G:** OPMA MOU - Effective July 1, 2006 through June 30, 2015

Table 1

Oakland Police and Fire Retirement System

Analysis of Active Police Actual Hours Credited

Key Data Summary

Fiscal Year 2014-2015

Officers who worked 80 Hr Schedule Only During Fiscal Year				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
467	316	2,176	65	79.4%

Officers who worked 80 and 84 Hr Schedules During Fiscal Year ¹				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
236	183	2,211	69	62.3%

Note: Analysis does not include Officers who worked 84 hour shift the entire year (2184 hours)

¹Includes Sworn Officers who worked both an 80 Hr schedule with a total of 2080 hours and an 84 Hr schedule with a total of 2184 hours during the fiscal year

²PFRS Current Rate: 2224 Hrs = 2080 + 144 (12 Holidays @ 8 x 1.5)

Table 2

Oakland Police and Fire Retirement System

Analysis of Active Police Actual Hours Credited Key Data Summary

Fiscal Year 2015-2016

Officers who worked 80 Hr Schedule Only During Fiscal Year				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
656	450	2,198	150	66.7%

Officers who worked 80 and 84 Hr Schedules During Fiscal Year ¹				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
61	56	2,248	32	42.9%

Note: Analysis does not include Officers who worked 84 hour shift the entire year (2184 hours)

¹ Includes Sworn Officers who worked both an 80 Hr schedule with a total of 2080 hours and an 84 Hr schedule with a total of 2184 hours during the fiscal year

² PFRS Current Rate: 2224 Hrs = 2080 + 144 (12 Holidays @ 8 x 1.5)

Table 3

Oakland Police and Fire Retirement System

Analysis of Active Police Actual Hours Credited

Key Data Summary

Fiscal Year 2016-2017

Officers who worked 80 Hr Schedule Only During Fiscal Year				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
571	443	2,191	107	75.8%

Officers who worked 80 and 84 Hr Schedules During Fiscal Year ¹				
OPD			OPD at PFRS Current Rate (2224 hrs) ²	
Active Officer Count	Officer Count Hrs Credited Greater Than or Equal to 2080 total hrs	Avg Total Hrs Greater Than or Equal to 2080 total hrs	Officer Count Hrs Credited Greater Than or Equal to 2224	Percentage of Active Officers Credited Less Than 2224 Hrs
188	147	2,247	93	36.7%

Note: Analysis does not include Officers who worked 84 hour shift the entire year (2184 hours)

¹ Includes Sworn Officers who worked both an 80 Hr schedule with a total of 2080 hours and an 84 Hr schedule with a total of 2184 hours during the fiscal year

² PFRS Current Rate: 2224 Hrs = 2080 + 144 (12 Holidays @ 8 x 1.5)

EXHIBIT A

OPD GENERAL ORDER D-8 (RESCINDED)

*(EXHIBIT-A PASSED OUT AND SUBSTITUTED
AT THE OCT 25, 2017 BOARD MEETING)*

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 22 Mar 00

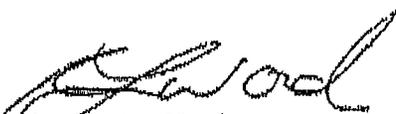
SUBJECT: Revision of Departmental General Order D-8
HOLIDAYS (15 Feb 85)

General Order D-8 has been revised to update time card reporting codes and the treatment of holiday duty pay for employees working alternative 4/10 work schedules.

The evaluation coordinator for this order shall be the Personnel Section Commander, who, without further notice, shall forward the required report to the Chief of Police on or by 22 Sept 00.

Personnel shall place the revised order in their General Order Manuals and make the necessary changes to the Table of Contents and Index.

By order of



Richard L. Word
Chief of Police

GOS1/D-8



DEPARTMENTAL
GENERAL
ORDER

Rev.
22 Mar 00

D-8

Index as:

Ref: CALEA
Standard 22.1.1

Holidays

HOLIDAYS

The purpose of this order is to identify holidays and to set forth holiday compensation and reporting.

LIST OF HOLIDAYS

<u>DESIGNATED HOLIDAYS</u>	<u>DATE</u>
New Year's Day	1 Jan
Martin Luther King Day	3 rd Mon in Jan
Lincoln Day	12 Feb
Presidents' Day	3 rd Mon in Feb
Memorial Day	Last Mon in May
Independence Day	4 Jul
Labor Day	1 st Mon in Sep
Admission Day	9 Sep
Veterans' Day	11 Nov
Thanksgiving Day	A designated Thu in Nov
Friday after Thanksgiving Day	A designated Fri in Nov
Christmas Eve*	24 Dec (Employees only)
Christmas Day	25 Dec
New Year's Eve*	31 Dec (Employees only)
Floating Holiday	Individually selected (Employees only)

*Refer to Part II, C, 7

I. REGULATIONS

A. General Regulations

1. Holiday Time off (HDP) shall be calculated at the hourly base rate for the regular 7.5, 8, or 10 hour shift.
2. Unit commanders shall require members and employees to take HDP whenever practicable.

B. Regulations Pertaining to Members

1. **Vacation Leave** – If a holiday falls within a member's vacation period, the holiday shall be counted as part of the vacation and 12 hours of accrued compensatory time will be granted.
2. **On-Duty Injury Leave** – If a holiday falls within the period when a member is on on-duty injury leave, the member shall be granted 12 hours of pay or 12 hours of accrued compensatory time.
3. **Death Leave** – If a holiday falls within the period when a member is on death leave, the member shall be granted HDP for the holiday.
4. **Other Leave** – If a holiday falls within a period when the member is on other leaves (other than vacation, on-duty injury or death leave), the holiday shall be counted as part of the leave and no HDP or other compensation shall be granted. (This applies to sick leave, off-duty injury leave and other leaves of absence.)
5. **Holiday on Regular Day Off** - Regardless if a member is assigned to an 8 or 10-hour shift, if a holiday falls on a member's regular day off and the member is not required to work, the member shall be compensated for 12 hours of pay or accrued compensatory time.
6. **Holiday Duty on Regular Work Day** - If a holiday falls on a member's regular work day, the member shall be granted 8 or 10 hours (8 or 10-hour shift) of pay *plus*, 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time.

7. **Holiday Duty on Regular Day Off** - If a holiday falls on a member's regular day off and the member is required to work, the member shall be granted 12 hours of pay or accrued compensatory time *plus*, 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time. Advance approval from the Chief of Police is needed when requiring a member to work on a holiday on his/her regular day off.
8. **Chief of Police** - The Chief of Police is eligible to receive only standard HDP for holidays.

C. Regulations Pertaining to Employees

1. All full-time employees in units B, C, D, H and W shall be eligible to receive overtime compensation in pay or accrued compensatory time when required to work on a holiday. Any shift that includes five or more hours on a holiday (excluding lunch) shall be considered a holiday shift. Employees in unit M are eligible to receive only standard HDP for holidays.
2. **Alternative (4/10) Work Schedule Holiday.** – When a holiday falls on an employee's work day in cases where the employee is working an alternative work schedule, and the employee is given the day off in observance of the holiday, the employee is entitled to HDP only for the standard number of work day hours (7.5 or 8 hours.) associated with the employee's representation unit. An employee working a 9.0, 9.5 or 10.0 alternative work plan and wishing to take "HDP" the entire shift must account for all (9.0, 9.5 or 10.0) hours by supplementing the 7.5 or 8 hours of HDP with some other form of paid or unpaid leave (i.e., CTU – comp time off or ANP – authorized leave without pay).
3. **Vacation, Sick, or Death Leave** – If a holiday falls within a period of any one of these leaves, HDP will be granted for the holiday.
4. **Other Leave** – If a holiday falls within a period when the employee is on other leaves (other than vacation, sick or death leave), the holiday shall be counted as part of the leave and no HDP or other compensation shall be granted.

5. **Holiday Duty on Regular Work Day.** If a holiday falls on an employee's regular work day, the employee shall be granted 7.5 or 8 hours of pay or accrued compensatory time *plus* 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time. For employees working an alternative (4/10) work plan, the remaining hours of the shift shall be paid on a straight time basis.
6. **Holiday on Regular Day Off.** If a holiday falls on an employee's *first regular day off*, the employee shall receive one day's vacation credit (7.5 or 8 hours). If the holiday falls on an employee's *second or third regular day off*, the employee shall receive time off for the following work day. If the employee is required to work on a regular day off, the employee shall be granted 7.5 or 8 hours of pay or accrued compensatory time *plus* 1.5 times of base pay or 1.5 times of hours worked of accrued compensatory time.
7. If 24 and 31 Dec fall on an employee's regular work schedule, the employee shall be entitled to paid time off for one-half of the work shift (3.75 or 4 hours) on both days or paid time off for one full work shift (7.5 or 8 hours) on either day. If the employee is required to work instead of receiving time off, the employee shall receive 1.5 times base pay or 1.5 times of hours worked of accrued compensatory time. In the event an employee is required to work on only one of the days (*either 24 or 31 Dec*), the employee shall receive straight pay plus compensatory time equal to the number of hours worked.

II. EMPLOYEES' FLOATING HOLIDAY

A. Entitlement and Selection of Floating Holiday

1. Each employee is entitled to one floating holiday per fiscal year. Eligibility to take a floating holiday commences upon employment with the Department. **Employees must take their floating holiday during the fiscal year it is earned or lose it.**
2. Each employee shall select a regular work day of his/her choice as a floating holiday with the approval of the employee's unit commander.

III. PERSONNEL SECTION

It is the responsibility of the Personnel Section to ensure holiday reporting is accurate for all members and employees transferred to the Personnel Section on extended leave status.

IV. ACCOUNTING SECTION

It is the responsibility of the Accounting Section to process the holiday hours reported on the timesheets.

By order of

Richard L. Word
Chief of Police

GO51/D-8

HOLIDAY CODING FOR SWORN MEMBERS

Normal Work Day	Worked	8 hrs HDP and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs HDS or SOH	Pays 2.5x's
Normal Work Day	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Regular Day Off	Worked	CT Holiday Straight (for time) or HOL Holiday Police (for pay)	CT Holiday Straight (for time) or HOL Holiday Police (for pay)	CT Holiday Straight (for time) or HOL Holiday Police (for pay)	Pays 2.5x's
Regular Day Off	Not Worked	OT Slip indicating # of hours worked	OT Slip indicating # of hours worked	OT Slip indicating # of hours worked	Pays 1x's
Scheduled Vacation	Worked	8 hrs HDP (in lieu of VAC)	10 hrs HDP (in lieu of VAC)	12 hrs HDP (in lieu of VAC)	Pays 2.5x's
Scheduled Vacation	Not Worked	8 hrs HDS or SOH 8 hrs of HDP ONLY	10 hrs HDS or SOH 10 hrs of HDP ONLY	12 hrs HDS or SOH 12 hrs of HDP ONLY	Pays 1x's
Out-Jury Duty (CPS (4850 pay)	Not Worked	8 hrs ICH	10 hrs ICH	12 hrs ICH	Pays 1x's Pays 1x's
Paid Administrative Leave (OPA)	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
All Other Paid Leaves	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Normal Work Day	Worked Acting	8 hrs HDP and 8 hrs AHR and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs AHR and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs AHR and 12 hrs HDS or SOH	Pays 2.5 x's at Acting Higher

APPENDIX A
Attachment: 19
Document: Holiday Payroll Worksheets

revised 6/21/10

HOLIDAY CODING FOR SWORN MEMBERS

Holiday falls on:	Situation	8 Hr Shift	10 Hr Shift	12 Hr Shift	Comments
Normal Work Day	Worked	8 hrs HDP and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs HDS or SOH	Pays 2.5x's
Normal Work Day	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Regular Day Off	Worked	Hrs worked OTS or SOR and 8 hrs HDS or SOH	Hrs worked OTS or SOR and 8 hrs HDS or SOH	Hrs worked OTS or SOR and 8 hrs HDS or SOH	Pays 3x's
Regular Day Off	Not Worked	8 hrs HDS or SOH	8 hrs HDS or SOH	8 hrs HDS or SOH	Pays 1.5x's
Scheduled Vacation	Worked	8 hrs OTS or SOR and VAC	10 hrs OTS or SOR and VAC	12 hrs OTS or SOR and VAC	Pays 4x's
Scheduled Vacation	Not Worked	8 hrs HDS or SOH	8 hrs HDS or SOH	8 hrs HDS or SOH	Pays 2.5x's
Scheduled Vacation	Not Worked	8 hrs VAC and 8 hrs HDS or SOH	10 hrs VAC and 8 hrs HDS or SOH	12 hrs VAC and 8 hrs HDS or SOH	Pays 2.5x's
On-Duty Injury (LV1- Worker's Comp	Not Worked	12 hrs ICH and 8 hrs LV1 or ICFS	12 hrs ICH and 8 hrs LV1 or ICFS	12 hrs ICH and 8 hrs LV1 or ICFS	Pays 2.5x's
Paid Administrative Leave (OPA)	Not Worked	8 hrs HDP	8 hrs HDP and 2 hrs OPA	8 hrs HDP and 4 hrs OPA	Pays 1x's
Family Death Leave	Normal Work Day	8 hrs HDP (in lieu of FDL)	10 hrs HDP (in lieu of FDL)	12 hrs HDP (in lieu of FDL)	Pays 1x's
Family Death Leave	Normal Day Off	8 hrs HDS or SOH	8 hrs HDS or SOH	8 hrs HDS or SOH	Pays 1.5x's
All Other Paid Leaves	Not Worked	8 hrs HDP	10 hrs HDP	12 hrs HDP	Pays 1x's
Voluntary Leave (VTN) up to 60 days per calendar year	Not Worked	8 hrs HDP	8 hr HDP and 2 hrs VTN	8 hrs HDP and 4 hrs VTN	Pays 1x's
Normal Work Day	Worked Acting	8 hrs HDP and 8 hrs AHR and 8 hrs HDS or SOH	10 hrs HDP and 10 hrs AHR and 10 hrs HDS or SOH	12 hrs HDP and 12 hrs AHR and 12 hrs HDS or SOH	Pays 2.5 x's at Acting Higher

Code	Title	Description
AHR	Acting Higher Rank	Employee Acting in a position of higher classification
GTU	Compensatory Time Used	Compensatory Time Taken
FDL	Family Death Leave	Leave Pay for Death in the Immediate Family
HDP	Holiday Pay	
HDS	Holiday Overtime Pay	Holiday Overtime Pay @ 1.5%
ICH	Worker's Compensation / Holiday Pay	Holiday Pay for Employees on Worker's Compensation
ICFS	Worker's Compensation / Free Period	Worker's Compensation Pay for Free Period
LV1	Worker's Compensation / Leave Without Pay	
OPA	Paid Administrative Leave	
OTS	Overtime Pay	
SOH	Holiday Compensatory Time Earned	Holiday Compensatory Time Earned
SOR	Compensatory Time Earned	
VAC	Vacation Leave Taken	Vacation Leave Used
VTN	Voluntary Leave Without Pay	

EXHIBIT B

**CITY OF OAKLAND
ADMINISTRATIVE INSTRUCTION NO 520
FLOATING HOLIDAY PAY**

CITY OF OAKLAND
ADMINISTRATIVE INSTRUCTION

Subject: Floating Holiday

Number: 520

Reference: None

Effective Date: October 1999

Supercedes: 520

Responsible Department: Office of Personnel
Resource Management

I. PURPOSE

The purpose of this Administrative Instruction is to explain the "Floating Holiday" benefit, specifically, who is eligible, and under what circumstances and timeframes it may be taken.

II. POLICY

Eligible employees are granted one "floating holiday" each fiscal year. It is allocated the first pay period of the fiscal year. The following rules apply to the individual employee's choice and observance of his/her floating holiday:

1. It must be taken in the fiscal year in which it is earned. This means that it must be taken between July 1 and June 30.
2. The floating holiday is eliminated from the employee's record if it is not used within the allowable time period.
3. Prior department/agency approval is required, and the selected day must meet departmental scheduling requirements. Normally, the request must be submitted in advance.
4. The day selected will be a day on which the employee is otherwise regularly scheduled to work. The employee will not be permitted to work the day in order to obtain premium pay or compensatory time, where applicable.
5. The floating holiday may be taken by itself, or added to another holiday, approved day off or vacation.
6. An employee who terminates during the fiscal year and has not used the floating holiday by his/her date of separation should be scheduled to take the floating holiday prior to terminating, or should be paid at his/her straight time rate for the number of hours normally scheduled.

Eligibility

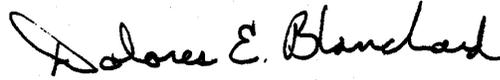
All unrepresented and represented full-time and permanent part-time employees receive the "Floating Holiday" benefit. Represented employees should refer to their respective Memorandum of Understanding for the terms and conditions under which the floating holiday may be taken. Hours for the holiday concur with the number of regularly scheduled hours in the employee's workday, and are prorated for permanent part-time employees.

II. PROCEDURES AND GUIDELINES

Responsible Parties

- | | |
|---|---|
| Employee | <ol style="list-style-type: none"> 1. Specifies desired day to observe the holiday, and submits request to supervisor in advance. 2. Using the appropriate code, records the day taken as the Floating Holiday on the weekly timecard. |
| Supervisor | <ol style="list-style-type: none"> 1. Approves the employee's request to use the Floating Holiday. 2. Assures that the employee's weekly timecard is correctly coded to reflect use of the Floating Holiday. |
| Department/Agency
Payroll Representative | <ol style="list-style-type: none"> 1. Records the Floating Holiday taken in TAMS (Time and Attendance Management System) |
| OPRM/HRIS | <ol style="list-style-type: none"> 1. Checks that the coding of the Floating Holiday has been correctly recorded and that its use is reflected in the employee's paycheck for that pay period. 2. Annually, issues the Floating Holiday to all eligible employees at the start of the fiscal year, and removes it from the employee's record if the holiday has not been used by June 30. |

Questions regarding the Floating Holiday benefit may be answered by referencing applicable Memoranda of Understanding, or contacting OPRM, HRIS Operations at (510) 238-3274.

A handwritten signature in black ink, appearing to read "Robert C. Bobb". The signature is written in a cursive style with a large initial 'R'.

Robert C. Bobb
City Manager

EXHIBIT C

ASSUPMTIONS FOR ANALYSIS

EXHIBIT C

ASSUMPTIONS FOR ANALYSIS

Below are our assumptions in the analysis of Active Oakland Police Holiday Base Pay and Holiday Pay for FY 2014/2015 through FY 2016/2017.

- A. HDS Holiday OT taken in pay were converted to regular hours by multiplying by a factor of 1 ½ hrs for every hour worked.
- B. SOH Holiday OT taken in compensatory time (banked) was converted to regular hours by multiplying by a factor of 1 ½ hrs for every hour worked.
- C. For the averages on the summary sheets, we excluded individual officers who were credited with a total of less than or equal to 2080 hours for the year.
- D. We also excluded officers who worked an 84-hour shift the entire year.
- E. The analysis is for REP bargaining unit PP1 represented by the OPOA (Oakland Police Officers Association) comprised of sworn police ranks below captain.
- F. Pay Elements **INCLUDED**

ADSO Sworn Administrative Leave	CTU Sworn CT Taken	FDL Sworn Death Lv	FMLA Comp Day Taken
FMLA Sick Taken	FMLA Comp Time Taken	FMLA Vacation Taken	HDS Holiday Sworn
HDP Holiday	HOL Holiday Police	MSW SWN Mod Duty Work	VAC Vacation Lv Taken
REG Sworn Earnings	SCK Sick Leave Taken	SOH Hol Comp Time Sworn	HCT Comp Time Hol Straight

- G. Pay Elements **EXCLUDED**: All Workers Compensation, Leave Without Pay, and Special Leave hours are excluded from the spreadsheet. In addition, staff excluded all premium pays, not included in Base Pay, with the exception of Holiday Pay.

EXHIBIT D

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE OFFICERS ASSOCIATION
EFFECTIVE JULY 1, 2015 THROUGH JUNE 30, 2019**

MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
OAKLAND POLICE OFFICERS' ASSOCIATION

Effective July 1, 2015 through June 30, 2019

does not elect to continue coverage during military leave, the employee retains the right to be reinstated to the City's health insurance plan when the employee is reemployed.

Any bargaining unit member, who has completed one full year of service with the department, or one full year of service with OPD and active military service combined, shall be entitled to receive his or her salary for the first 300 hours of a military leave period.

Military pay shall not exceed 300 hours in any one fiscal year.

An employee may elect to use accrued vacation time or personal time off in lieu of unpaid leave for the portion of military leave which is paid. The period of city compensation for military which is unpaid. The period of city compensation for military may be extended by resolution of the city council. This provision shall be governed by Oakland City Council Resolution #77044, Attachment 4, in the absence of specific provisions set forth in this section.

F. Family Care and Medical Leave

The City's Family and Medical Leave policy is set forth in the City's Administrative Instruction No. 567 as may be amended from time to time.

This provision is not subject to the MOU grievance procedure.

G. Holidays

1. Designated Holidays

The following days are designated as holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September known as "Labor Day"

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th

The Chief or designee shall determine which positions shall be filled on each designated holiday. However, all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw.

2. Floating Holiday

In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.

3. Holiday Pay

All qualifying bargaining unit employees will be paid straight time for the full length of their regularly scheduled shift for each holiday as designated in Article VI Section G. In order to qualify for receipt of compensation for a designated holiday, a unit member must be in paid status the work day before and the work day after the designated holiday.

Pursuant to Article III, Section E, in addition to the straight-time holiday pay, if the holiday is worked, the employee shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off, or by employer request, employee will be paid holiday pay at the straight time rate. In the event that a holiday falls on a member's day off, the member may take the holiday in pay or comp time at straight time, at his/her election.

ARTICLE VII ALLOWANCES

A. Uniform Allowance

1. Initial Uniform Allowance

The City agrees to provide to an employee covered by this Memorandum, at the time of employment, an initial uniform allowance of four hundred dollars (\$400.00).

EXHIBIT E

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE MANAGEMENT ASSOCIATION
EFFECTIVE JULY 1, 2015 THROUGH JUNE 30, 2019**

MEMORANDUM OF UNDERSTANDING

Between

CITY OF OAKLAND

And

OAKLAND POLICE MANAGEMENT ASSOCIATION

Effective July 1, 2015 through June 30, 2019

not elect to continue coverage during military leave, the employee retains the right to be reinstated to the City's health insurance plan when the employee is reemployed.

Although the USERRA does not require that the City pay an employee during a military leave of absence, pursuant to state law, the City will compensate employees for up to thirty (30) calendar days of paid military leave, at the normal base rate of pay for the employee's assigned classification, for each fiscal year the employee is formally ordered to active military service, so long as the employee has completed a minimum of one year of service with the City or one full year of combined active military service and City service at the time the leave is granted. (Cal. Mil. & Vet. Code section 389 *et. seq.*) An employee may elect to use accrued vacation time or personal time off in lieu of unpaid leave for the portion of military leave which is unpaid. The period of city compensation for military may be extended by resolution of the city council. This provision shall be governed by Oakland City Council Resolution #77044, Attachment 1, in the absence of specific provisions set forth in this section.

G. Family Care and Medical Leave

The City's Family and Medical Leave policy is set forth in the City's Administrative Instruction No. 567 as may be amended from time to time. This provision is not subject to the MOU grievance procedure.

H. Holidays

1. Designated Holidays

The following days are designated as holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September, known as Labor Day

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th.

2. Floating Holiday

The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect.

3. Holiday Pay

All bargaining unit members will be paid eight (8) hours of straight time for each holiday as defined in Article VII Section H.

In addition to the straight-time holiday pay, if the member works on the holiday, the employee shall accrue one hour of extra vacation for every hour worked on a holiday.

ARTICLE VIII ALLOWANCES

A. Annual Uniform Allowance

Effective the first pay period after July 1, 2008, the City shall provide an annual uniform allowance of eight hundred dollars (\$800.00) to represented employees covered by this Memorandum.

In the event that an employee separates from City service, for whatever cause (except in the case of death resulting from on-the-job injury), during the fiscal year for which the annual uniform allowance has been paid, such payment shall be adjusted on a pro rata basis in relationship to the period of service in the final fiscal year of employment.

The annual Uniform Allowance shall be paid in combination with Longevity Premium Pay, as a separate check.

B. Uniform Boots

An employee who becomes regularly assigned as a motorcycle officer after the effective date of this MOU shall receive one pair of approved boots which shall meet specifications set forth in the pertinent Police Department General Order.

C. Body Armor

Employees who elect to purchase body armor in-lieu-of standard City issued body armor shall receive a voucher for the cost of standard City issued body armor provided however that all body armor worn by employees and eligible for reimbursement under this provision must meet minimum safety requirements set

EXHIBIT F

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE OFFICERS ASSOCIATION
EFFECTIVE JULY 1, 2006 THROUGH JUNE 30, 2015**

MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
OAKLAND POLICE OFFICERS' ASSOCIATION



July 1, 2006 through June 30, 2015

Pursuant to the March 11, 2008 Interest Arbitration Decision and Award

Issued by Arbitrator Barry Winograd

EXHIBIT F

This provision is not subject to the MOU grievance procedure.

G. Holidays

1. Designated Holidays

The following days are designated as holidays:

January 1st.

The third Monday in January, known as "Martin Luther King Day."

February 12th, known as "Lincoln Day".

The third Monday in February.

The last Monday in May.

July 4th.

The first Monday in September.

September 9th, known as "Admission Day."

November 11th, known as "Veterans Day".

The Thursday in November appointed as "Thanksgiving Day".

The Friday after Thanksgiving.

December 25th

The Chief or designee shall determine which positions shall be filled on each designated holiday. However, all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no additional holiday pay for September 9th, known as "Admission Day." Employees who work Admission Day will receive straight time pay. Those employees who do not work Admission Day will not receive holiday compensation.

2. Floating Holiday

In addition to such compensatory leave as may be earned by an employee pursuant to Article III, Section E, hereof, City agrees to credit each employee with eight (8) hours compensatory leave for each year this Agreement is in effect. Said compensatory leave shall be credited to each employee's record at the beginning of the City's fiscal year. An employee whose employment with the City terminates during the

fiscal year shall be paid termination pay, in accordance with established City procedures, for his/her accrued compensatory leave, less the said eight (8) hours, unless he/she first uses all compensatory leave on the books after said eight (8) hours is credited and subsequently earns additional compensatory leave.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no credit of eight (8) hours of compensatory time at the beginning of each fiscal year.

3. Holiday Pay

All qualifying bargaining unit employees will be paid straight time for the full length of their regularly scheduled shift for each holiday as designated in Article VI Section G. In order to qualify for receipt of compensation for a designated holiday, a unit member must be in paid status the work day before and the work day after the designated holiday.

Pursuant to Article III, Section E, in addition to the straight-time holiday pay, if the holiday is worked, the employee shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off, or by employer request, employee will be paid holiday pay at the straight time rate. In the event that a holiday falls on a member's day off, the member may take the holiday in pay or comp time at straight time, at his/her election.

4. Unpaid Holidays During FY 2009-2010, 2010-2011, and 2011-2012

For six holidays in the three fiscal years cited above, employees shall receive no pay for holidays that are not worked and shall only receive straight time pay for holidays that are worked.

The six unpaid holidays shall be designated by the Chief of Police after consultation with the Union.

This provision shall not preclude members from receiving overtime when working a holiday if the total hours worked in the pay period otherwise qualify the individual member for overtime.

This entire provision (VII.H.4) will expire on June 30, 2012.

ARTICLE VII ALLOWANCES

A. Uniform Allowance

1. Initial Uniform Allowance

The City agrees to provide to an employee covered by this Memorandum, at the time of employment, an initial uniform allowance of four hundred dollars (\$400.00).

EXHIBIT G

**MEMORANDUM OF UNDERSTANDING
OAKLAND POLICE MANAGEMENT ASSOCIATION
EFFECTIVE JULY 1, 2006 THROUGH JUNE 30, 2015**

MEMORANDUM OF UNDERSTANDING
Between
CITY OF OAKLAND
and
OAKLAND POLICE MANAGEMENT ASSOCIATION



July 1, 2006 through June 30, 2015

EXHIBIT G

1. With certain exceptions, the cumulative leave must not have exceeded five years;
2. The employee must have provided proper advance notice to the City of the employee's military service;
3. The employee must report back to work or submit an application for reemployment in a timely manner after conclusion of military service; and
4. The employee must not have been separated from military service with a disqualifying discharge or under other than honorable conditions.

If an employee is eligible to be reemployed, the employee must be restored to the job and benefits the employee would have attained if the employee had not been absent due to military service. An employee taking military leave retains all of his/her seniority-based benefits as if continuously employed. The employee returning from military leave is also entitled to pension benefits as if continuously employed throughout the leave period.

During a leave for military service, an employee has the right to elect to continue his/her existing health insurance plan for up to 24 months. If the employee does not elect to continue coverage during military leave, the employee retains the right to be reinstated to the City's health insurance plan when the employee is reemployed.

Although the USERRA does not require that the City pay an employee during a military leave of absence, pursuant to state law, the City will compensate employees for up to thirty (30) calendar days of paid military leave, at the normal base rate of pay for the employee's assigned classification, for each fiscal year the employee is formally ordered to active military service, so long as the employee has completed a minimum of one year of service with the City or one full year of combined active military service and City service at the time the leave is granted. (Cal. Mil. & Vet. Code section 389 *et. seq.*) An employee may elect to use accrued vacation time or personal time off in lieu of unpaid leave for the portion of military leave which is unpaid. The period of city compensation for military may be extended by resolution of the city council.

G. Family Care and Medical Leave

The City's Family and Medical Leave policy is set forth in the City's Administrative Instruction No. 567 as may be amended from time to time. This provision is not subject to the MOU grievance procedure.

H. Holidays

1. Designated Holidays

The following days are designated as holidays:

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The third Monday in January, known as "Martin Luther King Day."
February 12th, known as "Lincoln Day".
The third Monday in February.
The last Monday in May.
July 4th.
The first Monday in September.
September 9th, known as "Admission Day."
November 11th, known as "Veterans Day".
The Thursday in November appointed as "Thanksgiving Day".
The Friday after Thanksgiving.
December 25th.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no additional holiday pay for September 9th, known as "Admissions Day." Employees who work Admissions Day will receive straight time pay. Those employees who do not work Admission Day will not receive holiday compensation.

2. Floating Holiday

The City agrees to credit each employee with eight (8) hours of compensatory leave at the beginning of each year this MOU is in effect.

For Fiscal Years 2012/2013, 2013/2014, and 2014/2015 employees shall receive no credit of eight (8) hours of compensatory time a the beginning of each fiscal year.

3. Holiday Pay

All bargaining unit members will be paid eight (8) hours of straight time for each holiday as defined in Article VII Section H.

4. Unpaid Holidays During FY 2009-2010, 2010-2011, and 2011-2012

For six holidays in the three fiscal years cited above, employees shall receive no pay for holidays that are not worked and shall only receive straight time pay for holidays that are worked.

The six unpaid holidays shall be designated by the Chief of Police after consultation with the Union.

This entire provision (VII.H.4) will expire on June 30, 2012.

APPENDIX 2



AGENDA REPORT

TO: Oakland Police and Fire
Retirement Board

FROM: Katano Kasaine

SUBJECT: Receive responses to October 25, 2017
Staff Agenda Report Regarding
Calculation of Police Retiree Holiday Pay
Benefits

DATE: November 20, 2017

SUMMARY

On October 25, 2017, the PFRS Board received and considered a report from PFRS staff *“Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Received by Active Police Officers During The Last Three Fiscal Years.”* The item is still under consideration by the Board. Two written comments have been received, and are attached here.

BACKGROUND

At the October 25, 2017 PFRS Board meeting, staff presented an Agenda Report which provided an analysis comparing the current method of calculating PFRS police retiree holiday pay benefits against the holiday pay received by active police officers during the last three fiscal years. Public Speaker Sarah Grossman-Swenson, Attorney for the Retired Oakland Police Officers’ Association (ROPOA), stated she would provide comments to this report sometime following the October 25, 2017 meeting. On November 15, 2017 Staff received a “Response dated November 15, 2017” (**Attachment 1**) from Ms. Grossman-Swenson for submission to the PFRS Board.

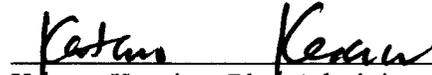
Additionally, PFRS Board Member Robert J. Muszar submitted a memorandum dated November 15, 2017 (**Attachment 2**) on this subject and asked that it be published to the PFRS Board as part of the November 29, 2017 Board Meeting agenda.

Agenda Item B
PFRS Board Meeting
November 29, 2017

RECOMMENDATION

That the PFRS Board accept Attachment #1 and Attachment #2 into the record of its ongoing consideration of the current method of calculating PFRS police retiree holiday pay benefits against the holiday pay received by active police officers during the last three fiscal years.

Respectfully submitted,



Katano Kasaine, Plan Administrator
Oakland Police and Fire Retirement System

Attachments (2):

1. *Response dated November 15, 2017 from Retired Oakland Police Officers Association & Petitioners to October 16, 2017 PFRS Agenda Report on Holiday Pay*
2. *Memorandum from PFRS Board Member Robert J. Muszar dated November 15, 2017 regarding the Calculation of Holiday Pay and Holiday Premium Pay for Active Members of the Police Department and Holiday Premium Pay for PFRS Police Retirees and Widows.*

ATTACHMENT 1
(to the 11/20/17 Agenda Report)

McCRACKEN, STEMERMAN & HOLSBERRY, LLP

Counselors and Attorneys at Law

November 15, 2017

San Francisco

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Kristin L. Martin (CA, NV, HI)
Eric B. Myers (CA, NV)
Paul L. More (CA, NV, MA)
Sarah Varela (CA, AZ, NV)
Sarah Grossman-Swenson (CA, NV)
Yuval Miller (CA, NV)
David L. Barber (CA, NV)
Kimberley C. Weber (CA, NV)
Yonina Alexander (CA)
A. Mirella Nieto (CA)

Via E-Mail (DLow@oaklandnet.com) and U.S. Mail

Oakland Police and Fire Retirement System Board
c/o David Low
150 Frank Ogawa Plaza, Ste. 3332
Oakland CA 94612

**Re: Response from Retired Oakland Police Officers Association
& Petitioners to October 16, 2017 PFRS Agenda Report on
Holiday Pay**

Dear Oakland Police and Fire Retirement System Board:

Retired Oakland Police Officers Association (“ROPOA”), Ronald B. Gunar, Ned S. Ubben, Raymond T. Miller, Robert L. Aven, and Nita G. Balousek (“Petitioners”), hereby submit this response to the PFRS Staff Report from October 16, 2017.

Summary of Material Facts

1. Compensation Attached to the Rank

As you know, PFRS is a fluctuating pension system: under the Charter, retirement benefits are calculated as a fraction of the amount of compensation paid to *active* police officers of the same rank—known as compensation “attached to the rank.” The purpose of a fluctuating system is to maintain a standard of living and equality of position between the retired and active officers.

The Charter sets PFRS pensions at a fixed fraction of “compensation attached to the average rank held.” (Charter § 2608.) Compensation, as defined in the Charter, is the “monthly remuneration payable in cash, by the City, . . . but excluding remuneration paid for overtime and for special details or assignments” (Charter § 2607.) Whether compensation is “attached to the average rank” is based on the compensation paid to active sworn peace officers (“actives”), and is determined by the City’s actual pay practices for actives, including but not limited to as provided for in the Memoranda of Understanding (“MOUs”) between the City and the Oakland Police Officers Association. (*City of Oakland v. Oakland Police & Fire Retirement Sys.* (2014) 224 Cal.App.4th 210, 231, 217 [“OPFRS”].)

Las Vegas

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Robert P. Cowell (1931-1980)
Philip Paul Bowe (CA) (Ret.)
Barry S. Jellison (CA) (Ret.)

2. Holiday Pay Based on 10-Hour Days

All officers in all ranks, Police Officer through Deputy Chief, receive holiday pay. The July 1, 2006-June 30, 2015 MOU provided that active officers in patrol could no longer work an 8-hour day: they were required to work at least 10-hour days. Accordingly, their holiday pay (for working or not working on a holiday) was calculated based on a 10-hour day or 12-hour day. Similarly, the 2015-19 MOU also requires officers to work at least a 10-hour day; again, holiday pay for active officers in patrol and others working 10- or 12-hour shifts is also calculated based on a 10- or 12-hour day. At issue in the court case is the PFRS Board's ("Board's") failure to include holiday premium pay in retirement allowances paid to all similarly-situated retirees based on a 10-hour day.

The MOUs require that all officers be paid for twelve holidays per year at "straight time" (their regular rate of pay or regular holiday pay) regardless of whether or not they are working. (2006-15 & 20 15-19 MOUs, art. VI.G.3.) This pay is referred to as "holiday pay." Active officers are also paid holiday premium pay in addition to their regular holiday pay. When an active officer works on a holiday, holiday premium pay is paid in addition to the regular pay at the rate of time-and-one-half. (2006-15 & 2015-19 MOUs, art. VI.G.3.) The 2015-19 MOU describe this practice as follows: "in addition to the straight-time holiday pay, if the holiday is worked, the officer shall be paid for all hours worked at the overtime rate of time and one-half (1.5). If the holiday is not worked because of a regular day off; or by employer request, the officer will be paid holiday pay at the straight time rate. In the event that a holiday falls on an officer's day off, the officer may take the holiday in pay or comp time at straight time, at his/her election." (2015-19 MOU, art. VI.G.3.) The 2006-15 MOU uses identical language, except that it uses the words "employee" or "member" in place of "officer." (2006-15 MOU, art. VI.G.3.)

3. Board Determination that Holiday Pay Based on 12-Hour Day Attached to Rank for One Retiree

In November 2013, the Board determined that holiday pay based on a 12-hour day *was* compensation "attached to the rank" for one active PFRS member who was in the process of retiring, and determined that holiday pay based on a 12-hour day should be included in calculating that retiree's benefits. A resolution was adopted by the Board that held, in a 6-0 vote, with one abstention, that "Holiday Pay retirement allowance shall be based on ... twelve hours per holiday." (PFRS Resolution No. 6776, Nov. 13, 2013.)

Despite requests from ROPOA on behalf of Petitioners and other retirees, the Board refused to award holiday pay based on a 10- or 12-hour day to all other similarly-situated PFRS retirees and beneficiaries. Indeed, the Board flatly refused to address the issue.

Legal Analysis

A. Pension provisions must be liberally construed in favor of pensioners.

Retirees have contractual rights in their pensions, which are protected by the California Constitution, and benefits may not be changed to their detriment. Under the California Constitution, “the duty of a public retirement board ‘to its participants and their beneficiaries shall take precedence over any other duty,’ including minimizing employment contributions and defraying administrative costs.” (*Id.* [citing Cal. Const., art. XVI, § 17, subd. (b)].) Pension provisions must be liberally construed in favor of the pensioners, and benefits provisions must be applied “fairly and broadly.” (*Eichelberger v. City of Berkeley* (1956) 46 Cal.2d 182, 188.) A “retired employee has a contractual right, protected by constitutional guarantees, in a pension ...’ and such benefits ‘may not be changed to [that employee’s] detriment.’” (*OPFRS*, 224 Cal.App.4th at pp. 226-27 [alteration in original] [citing *Dunham v. City of Berkeley* (1970) 7 Cal.App.3d 508, 513].)

Although fluctuating pension plans like PFRS are not static, their purpose is to “guarantee the pensioner a fairly constant standard of living despite inflation,” (*Kreeft v. City of Oakland* (1998) 68 Cal.App.4th 46, 54) and to “maintain equality of position between the retired member and the members currently holding the rank the pensioner attained before retirement.” (*OPFRS*, *supra*, 224 Cal.App.4th at p. 227.) Accordingly, California courts have repeatedly held that cities with fluctuating retirement systems, such as Oakland’s PFRS, may not escape from their promises to pay retirement benefits.

B. Where a court can determine whether a retiree met the criteria necessary to receive premium pay, that pay attaches to the rank.

Construing the Oakland City Charter, courts have repeatedly determined that where a “court [can] determine whether the retired plaintiff met the criteria necessary to receive the additional pay,” that pay attaches to the rank. (*Kreeft*, *supra*, 68 Cal.App.4th at pp. 60-61; see also *OPFRS*, *supra*, 224 Cal.App.4th at pp. 231-33 & fn. 12 [PFRS holiday premium pay attached to the rank] [citing *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. op.) (same)]; *OPFRS*, *supra*, 224 Cal.App.4th at pp. 222 & 240 [PFRS “line-up pay,” extra pay for working in patrol, was judicially determined to be attached to the rank; “any PFRS retiree who had been assigned to patrol ... at any time during the final three years of employment was given credit for ‘the amount of line-up pay received by active police officers similarly assigned.’”] [citing *Arca v. City of Oakland* (Super. Ct. Alameda County, 1984, No. 579832-8) (“*Arca I*”)].

Retirement systems must pass along pay increases to retirees even when those increases are based on new, non-rank-specific criteria. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 214-15 [“merit” and “longevity” bonuses attached to

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the rank]; *City of Long Beach v. Allen* (1956) 143 Cal.App.2d 35 [new salary ordinance providing for “merit” increases to be given only on recommendation of the chief of police must be awarded to retirees even though they had retired prior to the adoption of the ordinance and could not comply with the merit evaluation]; *Estes v. City of Richmond* (1967) 249 Cal.App.2d 538, 541, 546 [“hazardous duty pay” for completing one “tour of duty” each month was attached to the rank]; *Dunham, supra*, 7 Cal.App.3d at pp. 512, 515 [new incentive program for training was a “system of general pay raises” and thus compensation attached to the rank, because retirees “performed the services, including training, required of them; they are entitled to their deferred compensation ... based on the benefits now received by their active counterparts”].) To provide otherwise would allow municipalities to escape their promises to pay retirees based on the compensation due to actives.

C. Holiday premium pay is attached to the rank.

For more than 45 years, the holiday premium pay earned by Oakland police officers for working on holidays has been held to be “compensation attached to the rank” under the City’s Charter and must therefore be included in calculating retirees’ pensions. (*OPFRS*, 224 Cal.App.4th at pp. 222, 231-33, fn. 1 *Buck v. City of Oakland* (Cal.Ct.App. 1971, No. 1-Civ-28402) [nonpub. Opn.]; *Oakland Police & Fire Retirement Association v. City of Oakland* (Alameda Sup. Ct. 1996, No. 763859-O) [nonpub. opn.] .)

By its nature, police work does not pause for holidays— “[b]eing subject to working on holidays as regular work days is normal for police officers.” (*City of Fremont v. Bd. of Admin. of the PERS* (1989) 214 Cal.App.4th 1026, 1031.) When officers are scheduled to work on a holiday, they do not have discretion on whether to work or not. If they want the day off, they are required to request and receive permission from their superior officer—and such permission is rarely granted. Retired police officers who are now collecting pensions regularly worked holidays while they were active and made contributions to PFRS based on the premium pay they received for this hardship. Current, active police officers regularly work holidays and earn premium pay for doing so. They also receive holiday pay when they do not work on holidays. (See 2006-15 & 2015-19 MOUs, art. VI.G.3.)

Because active police officers are regularly scheduled to work on holidays—and have no discretion on whether to take those days off—the holiday premium pay that they receive for this hardship is “compensation attached to the rank.” It “adhere[s] to the rank, as an appertaining quality or circumstance.” (*Kreeft, supra*, 68 Cal.App.4th at p. 57.) An active police officer is entitled to holiday premium pay not based on “his individual efforts over and above what are required to obtain the rank” but rather in the normal course of his scheduled work. Holiday premium pay is no different from other forms of variable pay that courts have held to “attach” to a rank for pension purposes. (See, e.g., *Abbott v. City of Los Angeles* (1960) 178 Cal.App.2d 204, 213-214 [longevity and merit pay attached to the rank, even

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though not all members of the rank were entitled to them, and even though retirees entitled to varying amounts of the pay].)

As this Court recognized in *Kreeft*, the term “compensation attached to the rank” is ambiguous. Given the Charter’s ambiguous language—and the consistent, forty-five year practice of paying holiday premium pay as if retirees *worked* the holiday, the Board is obligated to interpret the phrase in the manner most favorable to the pensioners. (*Rose, supra*, 126 Cal.App.3d at p. 940 [“If an ambiguity or uncertainty exists, the foregoing statutory provisions are to be construed in favor of the pensioner.”]; *City of Oakland, supra*, 95 Cal.App.4th at p. 39 [pension “laws are to be interpreted in favor of the employee or beneficiary when a semantic ambiguity is presented by the statute at issue”].)

The Court of Appeal in *OPFRS*, 224 Cal.App.4th 212, recently described the long history of holiday premium pay being attached to the rank:

The question of whether holiday pay is “compensation attached to rank” for purposes of calculating PFRS retirement benefits was first addressed by Division Four of the First Appellate District in 1971 in the case of *Buck v. City of Oakland* (Aug. 25, 1971, 1 Civ. 28402) (nonpub. opn.) (*Buck*). When *Buck* was decided, the compensation payable to active members of the Department was set by salary ordinance. (See Oakland Ord. No. 4817, amending § 1.19 of Oakland Ord. No. 4727 (the 1971 Ordinance).) With respect to holiday pay, the 1971 Ordinance provided in relevant part: “Time worked by any officer or member of the Police Department ... in excess of 40 hours during any one-week period shall be deemed overtime work; provided, however, that ... whenever any legal holiday, as herein designated, shall fall within any such one-week period, the said officer or member of the Police Department shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” (*Ibid.*)

...

The court went on to determine that remuneration for holiday work did not constitute overtime and therefore was not excluded from the Charter's definition of “compensation.” (*Buck, supra*, 1 Civ. 28402; see Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

OPFRS, 224 Cal.App.4th at pp. 217-18. The Court in *Buck* held that retirees must be compensated as if they worked each holiday. The Court explained that after *Buck*, the City tried to avoid paying holiday pay to retirees by providing compensatory time off in lieu of actual holiday pay:

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In the wake of *Buck*, the City reportedly tried to avoid the inclusion of holiday pay in PFRS retirement benefits by altering the holiday pay structure for active members of the Department. Specifically, the Department began giving active officers compensatory time off in lieu of actual holiday pay. In response to this change, lawsuits were filed and eventually the City was permanently enjoined from enforcing any “ordinance, resolution or directive which decreases or attempts to decrease the holiday pay ... received by Oakland police officers or firemen as ‘monthly compensation comprising salary.’” (*Doan v. City of Oakland* (Super. Ct. Alameda County, 1972, No. 426926) (*Doan*)). In addition, the City was ordered to pay active members retroactively for any lost holiday pay and was directed “to pay the increased retirement allowances based thereon pursuant to the [*Buck*] decision.” (*Ibid.*)

Id. at pp. 218-19. The Court went on to explain that subsequent litigation in *Arca II* was initiated because retirees were being compensated based on 8 hours of premium pay, while actives were being credited with 12 hours of pay:

Based on the language of the MOU’s, PFRS retirees only received credit for eight hours of holiday premium pay in the calculation of their retirement benefits from 1976 through 1996. In contrast, active members of the Department received 12 hours of holiday pay during this same period. ... Holiday premium pay was again the subject of litigation in 1996. (See *Oakland Police & Fire Retirement Assn. v. City of Oakland* (Super. Ct. Alameda County, 1996, No. 763859) (*Arca II*)). *Arca II* was a class action lawsuit filed on behalf of PFRS retirees and their beneficiaries challenging the MOU language that excluded retirees from receiving credit for the additional four hours of holiday pay that was being paid to active members of the Department. In that case, the City did not contest the holding in *Buck*, but argued that the additional four hours of holiday pay was “overtime” pay and therefore expressly excluded from the calculation of PFRS retirement benefits. (See Charter, art. XXVI, § 2607 [“[c]ompensation” defined as monthly remuneration excluding overtime].)

Id. at pp. 219-20. After reviewing the relevant case history, the Court of Appeal again held in 2014 that retirees had to be paid as if they worked the holidays:

Similarly, the inclusion in the 2006-2015 MOU of express language defining the rights of active members to certain holiday pay when they *do not* work on a holiday has no bearing on active members' continuing entitlement to receive extra compensation when they do. Although the amount of remuneration has changed over the years, for over four decades active members of the Department have possessed an unbroken right to holiday pay for working on

holidays. And, based on *Buck*, PFRS retirees have been entitled — during that same period — to have such holiday pay included in the calculation of their retirement allowance.

Id. at p. 229.

Accordingly, retirees and beneficiaries must be compensated as if they worked the holidays.

D. Compensating retirees as if they worked the holiday, as required by *Buck*, entitles them to 188 hours of holiday pay rather than the current 144 hours they are receiving.

1. Retirees’ holiday pay should be based on the 10-hour and 12-hour shifts worked by actives.

Active officers working in patrol are *required* to work a 4/10 schedule, meaning that they work at least 10 hours per shift rather than 8 hours per shift. A substantial number of officers, including patrol officers, work 12-hour shifts.¹ Accordingly, when actives receive holiday premium pay for working on a holiday, they receive 10 hours at 1.5x pay, or 15 hours of pay, or 12 hours at 1.5x, or 18 hours of pay, respectively. (When they do not work on a holiday, they receive 10-12 hours of holiday pay.)²

However, despite the fact that actives are now being paid holiday pay based on 10-hour or 12-hour days, retirees are still being paid based on 8-hour days, so they are receiving just 12 hours of pay per holiday. Instead, pursuant to *Buck*, they should be paid as if they worked the holiday:

- o 12 holidays x 15 hours for holidays worked = **180 hours**
- o floating holiday = 8 hours³

¹ The City’s own numbers suggest that approximately 10% of active police work 12-hour shifts.

² This means that even if an active officer didn’t work any holidays—extremely unlikely unless they were out on leave—they would still receive 120-144 hours of holiday pay. Contrary to the assertion in the PFRS Staff Report, holiday pay that is paid when actives do not work a holiday is not paid *in lieu* of base pay; actives do not receive base pay for days on which they do not work. It is pay in addition to base pay. (See 2006-15 & 20 15-19 MOUs, art. VI.G.3.)

³ As the Court held in *Doan, supra*, Alameda Superior Court Case No. 426926, the City cannot escape its holiday pay obligations to retirees by providing holiday pay to actives as “compensatory time off.”

188 hours of holiday pay

2. It is not workable to calculate compensation attached to the rank based on averages.

PFRS Staff have analyzed payroll data based on the total number of hours worked by active officers, but what is relevant here is pay for holidays. And, in looking at total hours worked, the Staff Report left out the 10% of active officers who had a base of 2184 hours, who received 18 hours for each holiday they worked, as 12 hours for each holiday they did not work, which obviously skews the entire analysis.

PFRS Staff have asserted that active officers work, on average, approximately 6-7 holidays per year. But compensation attached to the rank cannot be reasonably calculated based on averages: such averages would be a moving target depending on available staffing, the day of the week the holiday falls on, anticipated or unanticipated workloads, emergency situations, and other factors. The averages would need to be re-computed on a regular basis – maybe even monthly. This is why, construing the Charter liberally in favor of retirees, Courts have held for over 45 years that compensation should be based on an assumption that retirees worked all holidays.

Moreover, even if the Board were to accept the premise that holiday premium pay should be calculated based on the average number of holidays worked by actives, this *still* means retirees are owed additional pay according to the City’s own data:

- If, based on a 10-hour shift, an active officer worked just *half* of the holidays, they would receive **158 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 6 holidays x 15 hours for holidays worked = 90 hours
 - 6 holidays not worked x 10 hours for holidays falling on day off = 60 hours holiday pay
 - 8 hours floating holiday
- If an active officer worked 7 holidays, they would receive **163 hours** of holiday pay, rather than the 144 hours received by retirees:
 - 7 holidays x 15 hours for holidays worked = 105 hours
 - 5 holidays not worked x 10 hours for holidays falling on day off = 50 hours holiday pay
 - 8 hours floating holiday

Even if the Board finds that holiday pay should be calculated based on the average number of holidays worked by actives, this still means that retirees are owed additional compensation.

Figure 1. Holiday Pay & Holiday Premium Pay for Active Officers

Holiday	January 1	MLK Day (3rd Monday in Jan.)	Lincoln Day (Feb. 12)	Feb. – 3rd Monday	Memorial Day (last Monday May)	July 4th
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

Holiday	Labor Day (1st Monday Sept.)	Sept. 9 (Admission Day)	November 11 (Veterans Day)	Thanksgiving (Thurs in Nov.)	Friday after Thanksgiving (Nov.)	Christmas (Dec. 25)
Holiday Premium Pay if worked	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours	15-18 hours
Holiday Pay if not worked	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours	10-12 hours

E. Holiday pay should not be changed for captains and deputy chiefs.

- 1. PFRS Captain and Deputy Chief Ranks are obsolete and compensation should be determined by looking at the OPOA MOU.**

Captain of Police (PFRS) and Deputy Chief of Police (PFRS) are obsolete ranks and compensation attached to those ranks must be calculated in the same manner as other obsolete ranks including Chief of Police, Inspector of Police and Director of Police Services.

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Approximately 25 years ago, the PFRS Board decided retirement allowances for Chiefs of Police, Inspectors of Police and subsequently a Director of Police Services would henceforth be based on cost of living adjustments and other wage increases received by members of the Oakland Police Officers Association (OPOA). At that time, every member of the Oakland Police Department, except the Chief of Police, was a member of and represented by the OPOA (the Chief was an unrepresented member of the OPOA).

It is, therefore, illogical to base retirement allowances, including holiday and holiday premium pay, for retired PFRS captains and deputy chiefs on provisions of the Police Management Association Memorandum of Understanding (PMA MOU) while retired Chiefs of Police, Inspectors of Police and a Director of Police Services remain attached to the OPOA MOU. No retired PFRS captain or deputy chief was ever a member of or represented by the PMA.

Furthermore, there is no longer any community of interest between retired and currently employed captains and deputy chiefs. Many responsibilities of PFRS deputy chiefs have been transferred to the new rank of Assistant Chief and CalPERS captains no longer regularly work in the field at night or on weekends and holidays, unlike PFRS captains. Salary and benefit provisions of the PMA MOU reflect current working conditions and responsibilities.

Retired PFRS captains and deputy chiefs should remain attached to the OPOA MOU for calculation of retirement allowances.

2. Even if PFRS relies on the PMA MOU, it is fundamentally unfair to “cherry pick” the PMA MOU for provisions that are detrimental to PFRS retirees and ignore those that are of benefit.

It is undisputed that the Police Management Association agreed to modify holiday and holiday premium pay provisions for CalPERS captains and deputy chiefs to reflect current assignments, working conditions and membership in the CalPERS retirement system. However, it is also undisputed that the PMA received other benefits to offset any loss of holiday or holiday premium pay.

Specifically:

- **Vacation Buy Back – 120 Hours:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and is clearly compensation attached to the rank. No individual effort is required to obtain this benefit.
- **Management Leave – 15 Days:** This is a cash benefit payable to all CalPERS captains, deputy chiefs and the Chief of Police and must be considered compensation attached to the rank. No individual effort is required to obtain this benefit.

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- **POST Management Certificate – 5% of pay:** It is undisputable that every CalPERS captain and deputy chief has qualified for a POST Management Certificate by virtue of their tenure in the Department and completion of required training. Every retired PFRS captain and deputy chief also holds a POST Management Certificate and should be paid accordingly.
- **Bachelor's Degree – 5% of pay:** While we do not yet have access to supporting data, it is likely that every CalPERS captain and deputy chief holds a bachelor's degree. This results in a cash benefit and compensation attached to the rank for PFRS retirees.

If the Board decides to modify the historic manner in which holiday and holiday premium pay is calculated for retired captains and deputy chiefs based on the PMA MOU, all other PMA cash benefits must be classified as compensation attached to the rank and paid to retirees.

Conclusion

Retirees should be compensated for holiday premium pay as if they worked the holiday, and should be awarded 188 hours of holiday pay rather than the current 144 hours. The PFRS Staff Report calculations do not analyze the hours actually worked and paid on each holiday, but instead, improperly focus on the average number of hours worked by active officers each year. Moreover, in calculating averages, the PFRS Staff Report improperly disregards the 10% of police officers who are paid 18 hours per holiday worked (resulting in 216 hours of holiday pay if all holidays worked, or 180 hours holiday pay even if just *half* of holidays are worked), obviously skewing the numbers. Even if the Board fails to pay retirees as if they worked all holidays, and even if the Board determines that retirees should be compensated as if they are working only 6-7 holidays, retirees are still being undercompensated. Finally, PFRS cannot cherry pick provisions from the PMA MOU that disadvantage retirees while ignoring those provisions that benefit retirees.

We urge the Board to take all necessary steps to compensate retirees and beneficiaries for 188 hours of holiday pay rather than the 144 hours currently being paid. Thank you for your time and consideration.

Very truly yours,



Sarah Grossman-Swenson

ATTACHMENT 2
(to the *11/20/17 Agenda Report*)

To: PFRS Board Via November 29, 2017 Agenda Package
Katano Kasaine, Plan Administrator

From: Robert J. Muszar, PFRS Board Member

Date: November 15, 2017

Subject: October 16, 2017 Agenda Report Related to Alameda County Superior Court Case No. RG16838274 and the Calculation of Holiday Pay and Holiday Premium Pay for Active Members of the Police Department and Holiday Premium Pay for PFRS Police Retirees and Widows.

Introduction

On October 25, 2017 the PFRS Board received an Agenda Report from the System's Plan Administrator which was titled *An Analysis Comparing The Current Method of Calculating PFRS Police Retiree Holiday Pay Benefits Against The Holiday Pay Received By Active Police Officers During the Last Three Fiscal Years*. Following that meeting I requested a copy of the data upon which the Agenda Report was based for just one (1) of the three (3) years covered by the report. However, the Plan Administrator has refused to provide that information. I also requested a meeting with the Plan Administrator to discuss what I fear could be some significant unintended consequences associated with the apparent direction suggested in the Agenda Report. The Plan Administrator also declined to meet indicating it would be best for me to request information, address concerns and ask questions through the Board's meeting processes. The purpose of this memorandum is to do as the Plan Administrator suggested and to give PFRS Board members ample opportunity to review these materials prior to the Board's November 29, 2017 meeting.

Issues before the Board

When the issues raised by: the Retired Oakland Police Officers Association (ROPOA) in its 2014 letter and 2016 Petition for a Writ of Mandate; PFRS outside legal counsel in his 2017 Demurrer; and, the PFRS Plan Administrator in the August 2015 and October 2017 Agenda Reports are combined; it appears the following questions are before the Board for possible resolution:

- Should police retirees continue to be compensated for holidays as though they had worked each of the holidays available to active members of the department, or should holiday pension benefits be paid on some other basis?
- Should holiday pension benefits be based on 8, 10 or 12-hour shifts or, perhaps some average?
- Is the Floating Holiday "compensation" and "compensation attached to the average rank held" for the purposes of calculating pension benefits?
- Should Captains and Deputy Chiefs receive pension benefits based on the OPMA MOU rather than the OPOA MOU or on some other basis?

Discussion

1. Should police retirees continue to be compensated for holidays as though they had worked each of the holidays available to active members of the department, or should holiday pension benefits be paid on some other basis?

For nearly half a century, pursuant to various court decisions and various actions of the PFRS Board, police and fire¹ retirees have been compensated for holidays as though they had worked each of the holidays available to active members of the respective departments.

The number of holidays available to active members of the Police Department has changed (including a temporary reduction in holidays) and the rate of holiday premium pay has changed; but, *the practice of compensating retirees as though they had worked each of the holidays available to active members has been unbroken.*

Throughout this time, it also has been universally recognized that not all police officers work all holidays.

1971. Holiday Pay and Holiday Premium Pay were first determined to be “compensation” and “compensation attached to the average rank held” in *Buck v. City of Oakland* (“*Buck*”), an unpublished appellate court decision which was decided in August 1971. In examining the question of holiday premium pay the *Buck* court wrote:

“According to the salary ordinance, the policeman or fireman who works on a “legal holiday” which falls during his regular 40-hour work week “shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” The “credit” does not amount to “pay” as such; in practice, however, almost every employee so “credited” is paid his “credit’s” cash equivalent, on a per-hour basis and as a supplement to the monthly salary paid him for the period of time involved. He is thereby paid, in cash and at appropriate monthly intervals, “extra compensation” for having worked on a “legal holiday.” “Accordingly, it [the extra compensation for having worked on a legal holiday] must be included in the computation of retirement allowances...”

In December 1971, the court ordered the City to comply with *Buck* and threatened City representatives with contempt proceedings for any further delays/failures.

1972: In early 1972, in an attempt to avoid the *Buck* mandate, the City unilaterally eliminated holiday pay (and uniform allowance) for active members thereby eliminating any prospective holiday pay to retirees as well. The City’s unilateral actions resulted in the filing of at least two (2) secondary lawsuits (*Doan v City of Oakland* and *Gray v City of Oakland*. In *Doan*, the City was permanently enjoined from enforcing any:

...ordinance, resolution or directive which decreases or attempts to decrease holiday pay...received by Oakland police officers or firemen as “monthly compensation comprising salary” and “to pay the increased retirement allowances based thereupon pursuant to the Buck decision.

¹ Firefighters now receive Holiday In-Lieu pay rather than compensation for individual holidays. Based on the plain language of the MOU, it appears that the value of two (2) Floating Holidays may be included.

1973: The City and the OPOA entered into the first MOU between the parties in 1973. The one-page document provided in part:

“...Retroactive restoration of holiday pay and uniform allowance, abolished by Council action, to June 29, 1972; application of Proposition C percentage increase to uniform allowance and holiday pay effective July 1, 1972, and annually thereafter; computation of retirement benefits under the Buck Decision upon the holiday pay and uniform allowances as so adjusted...”. (Emphasis added)

Since 1973, holiday pension benefits have been calculated “under the Buck Decision” and paid as though retirees had worked each of the holidays available to active members. It is important to note that holiday pay practices of the Department during this period of time were essentially the same as they are today. It is perhaps even more important to note that the City, the PFRS Board and the *Buck* Court were certainly all aware that not every officer worked every holiday. Nonetheless, the practice of paying retirees as though they had worked each of the holidays available to actives went unchallenged until approximately 2010.

1996: In approximately 1976 the City and the OPOA entered into an MOU that increased holiday premium pay from straight-time to time and one-half. This MOU included contingency language which excluded PFRS retirees from receiving the additional half-time holiday premium pay. Thus, active members who did not work the holiday continued to be compensated at straight time while actives who worked holidays received holiday premium pay at the rate of 1.5 times base pay which was paid in addition to their regular pay for the day. PFRS retirees continued to be paid holiday premium pay at the rate of straight time for each of the holidays available to active members.

In 1996, the Alameda County Superior Court, in *Oakland Police and Fire Retirement Association and Jon Arca vs. City of Oakland et al (“Arca II”)*, ruled that the above-described additional holiday premium pay was “compensation” and “compensation attached to the average rank held” and ordered this higher rate of pay be used to calculate pension benefits. The court wrote:

“Respondents are compelled in determining and computing the amount of the retirement allowances due to Petitioners and the class they seek to represent to take all actions necessary to include as “compensation” and “compensation attached to the average rank held” the full twelve hours holiday pay received by current Oakland Police Officers... and to compute and pay such corrected retirement allowance amounts in future years”.

Again, the City, the PFRS Board and the court were all aware that not every officer worked every holiday. They were equally aware of how holiday benefits for retirees were being calculated. But again, neither the City nor the PFRS Board argued this point and the court did nothing to invalidate the existing practice. Instead, the court’s order directing PFRS to include the “full twelve hours holiday pay received by current Oakland Police Officers” kept the practice of calculating pension benefits based on all of the holidays available to actives intact. Thus, following *Arca II*, retirees continued to be compensated for holidays as though they had worked each of the holidays available to actives.

2002: In approximately 2002, the City and the OPOA entered into an MOU covering the period from July 1, 2001 to June 30, 2006. It is believed that this is the first MOU which incorporated 10-hour shift scheduling in the Department. It is further believed that all

compensation for holidays, including holiday premium pay, continued to be based on an 8-hour workday. I have not been able to locate a copy of the 2001-06 MOU to verify this information.

2006: Based on a Chronology of Communications which was prepared by the Plan Administrator and presented to the PFRS Board at its January 26, 2011 meeting, it appears the City first asserted police retirees were being overcompensated for holidays at the Board's April 26, 2006 meeting. In 2006, the Plan Administrator, supported by the deputy city attorney assigned to the PFRS Board asserted that retirees should be compensated for holidays as though they had not worked holidays. Later in 2006 the Plan Administrator reported that research into this issue was continuing and that the matter would be brought back to the Board at a later date. There is no indication that the issue was discussed following June 2006.

2008: Then in 2008, PFRS implemented the 2008 arbitration award and 2006-2010 MOU making no changes to how retirees were compensated for holidays. That is, the Board continued its practice of compensating police retirees as though they had worked each of the holidays available to active members.

2010: In October 2010 the City Administrator wrote to the PFRS Board asserting that police retirees/beneficiaries were being overcompensated for holidays. The City Administrator wrote:

The City of Oakland ("City") recently determined that for over two years, retired police officers who are members of the Police and Fire Retirement System ("PFRS") have been mistakenly paid for 12 annual holidays at the rate of 2.5 times the regular salary. Under the relevant MOUs, it should have been paid at a straight time (1.0) for these 12 days. This effectively increased annual compensated hours of the PFRS police retirees by 144 hours, from the base annual amount of 2,080 hours. City's records indicate that the overpayment has been in place since March 11, 2008.

The City Administrator's letter also indicated the City would be taking unilateral action to reduce pension benefits prospectively and sought Board direction to recover overpayments.

On November 2, 2010, pursuant to instructions received from the Board, PFRS' outside legal counsel wrote to the City Attorney's Office. Among other things, the letter acknowledged the Board's obligation to inquire into the City's assertions and informed the City Attorney's Office of the following:

The Board will place an item on its Audit Committee agenda for its meeting on November 17, 2010 for the purpose of providing the City with the opportunity to make a full factual and legal showing regarding its contention that an overpayment situation exists with respect to police holiday pay. The City's submission to PFRS must be made by Tuesday, November 9 at 2 PM to ensure its inclusion in the agenda materials in compliance with the City's Sunshine Ordinance.

Following the Audit Committee's consideration of the City's arguments, this issue will then be continued to the Committee's next meeting (tentatively scheduled for December 15 but subject to change), to give affected retirees the opportunity to respond to the City's contentions. Either at that meeting or its next meeting, the Audit committee will make a recommendation to the full Board for a determination.

On November 8, 2010 outside counsel for the City responded disagreeing with the legal contentions expressed by PFRS' counsel, agreeing to participate in further dialogue with the Board "along the general lines you outline in your letter" and representing the following:

The City will present two items for the Audit Committee agenda for its meeting on November 17, 2010:

- 1) An explanation of the overpayment, how it arose and the methodology for prospective correction. The City will be available to respond to questions from the Board with regards to prospective correction, and will be requesting the Board's concurrence on an expedited basis.*
- 2) A request for Board action on the manner and method of recovery of past overpayments, with a recommendation of deductions from future payments.*

Also on November 8, 2010, the ROPOA wrote to the Board essentially agreeing with the procedural recommendations expressed by PFRS legal counsel in the November 2, 2010 letter.

On November 9, 2010, the City provided the Board with a package of written materials further explaining and in support of its position that retirees should be compensated as though they had taken the day off on each of the holidays available to active officers. The City provided oral argument in support of its position to the Audit/Operations Committee and the full Board on November 17, 2010.

2011: On January 14, 2011, the ROPOA provided lengthy written materials in support of its position that retirees were being correctly compensated as though they had worked each of the holidays available to active officers. The ROPOA provided oral argument in support of its position to the Audit/Operations Committee and the full Board on January 26, 2011.

The City provided oral argument in rebuttal to the ROPOA's position to the Audit/Operations Committee and the full Board on January 26, 2011 as well. At the conclusion of oral arguments, both the ROPOA and the City agreed that the matter was "submitted". The Board then unanimously adopted a motion directing PFRS outside legal counsel to provide the Board an advice letter "for action on this Police Holiday Pay matter".

Thereafter, PFRS outside legal counsel prepared a 10-page advice letter which was presented to the PFRS board on March 3, 2011 indicating the following: "We have reviewed and considered all of the information provided by both the City and the ROPOA in evaluating the issues and in providing our advice to the Board". PFRS outside legal counsel opined as follows:

We have determined above that the 2008 Arbitration Award and the resulting 2006-2010 MOU did not change the payment of holiday premium pay for active sworn personnel. Since the City's argument that an overpayment for retired police personnel and their

beneficiaries was predicated on the assertion that the Award/MOU changed an existing practice for active personnel, their position fails. Even if the City had been correct in its assertion that there was a change in practice in 2008 that limited the payment of holiday premium pay to active sworn police personnel only to days actually worked, case law specifically applicable to PFRS and generally applicable to fluctuating pension systems demonstrate that holiday premium pay, even if only paid to active employees who actually work the holiday, is never the less compensation attached to the rank for retirement purposes. (Emphasis added)

Later in this opinion letter when referring to *Buck*, outside counsel wrote:

It is clear from the above that Buck stands for the proposition the extra compensation paid to active police officers for actually working a holiday constitutes compensation attached to the rank for retirement purposes even though, by definition, retired police officers do not work on holidays. As such, Buck stands in direct contrast to City's position that because retirees don't work holidays they are not entitled to have holiday premium pay treated as compensation attached to the rank. In accord is the minute order in the Arca case provided by ROPOA, which compels the treatment of the 12 hours of holiday premium pay as "compensation attached to the average rank held" for purposes of the calculation of retirement allowances.

Following outside counsel's presentation of the above-described opinion letter and after having received the written materials and oral arguments provided by both the City and the ROPOA over the course of several meetings the Board, by majority vote, determined there had been no overpayment and directed outside counsel to prepare a resolution consistent with the Board's determination.

On April 26, 2011 the Board unanimously adopted Resolution No. 6682 confirming its March 3, 2011 decision.

Throughout the above-described hearings, the City, relying upon the 2008 Arbitration Award and the resulting 2006-10 MOU, argued that rather than being compensated as though they had worked each of the holidays available to actives; retirees should be compensated as though they had worked none of them. In the end, the Board upheld the long-standing practice of compensating retirees as though they had worked each of the holidays available to actives.

In approximately June 2011 the City initiated court proceedings against the PFRS Board. Among other things, once again asserting that retirees should be compensated as though they had *not* worked holidays and once again relying upon the 2008 Arbitration Award and the resulting 2006-10 MOU. In this action, the City also relied upon the 2006-13 MOU.

In its opposition brief, PFRS vigorously defended its long-standing practice of compensating retirees as though they had worked each of the holidays available to active officers writing for example:

In sum, two previous writs² of mandate issued by the Alameda Superior Court compel the Board to calculate and pay pension benefits to PFRS members based on the hourly rate of holiday premium pay earned by active police who work on a paid holiday. The Board has a clear, present ministerial duty to comply with those court orders.

² Referring to *Buck and Arca II*

The City and PFRS later filed supplemental briefs at the request of the court. Specifically, the court invited further briefing regarding *Kreeft v. City of Oakland* (1998) 68 Cal.qpp.4th 46. The City's supplemental brief urged the court to apply a Kreeft-type standard to its analysis of this case and PFRS argued exactly the opposite.

2012: In approximately September 2012, the Superior Court, relying heavily on *Kreeft* found in the City's favor nonetheless finding that the straight-time holiday pay paid to all officers regardless of whether they worked the holiday was compensation attached to the rank and could result in additional compensation. Although the PFRS Board filed only a partial appeal which was later settled, the ROPOA as an intervener appealed the Superior Court's decision. The results of the appeal are discussed further below.

On October 16, 2012 the Board held a closed session regarding the Superior Court's ruling during which the Board took certain reportable actions. On October 17, 2012, at the request of the deputy city attorney assigned to the PFRS Board, outside legal counsel issued a memorandum detailing the reportable actions taken by the Board in closed session. Among those actions PFRS Counsel reported:

2) The Board voted to direct staff, in consultation with outside legal counsel, to provide the Board with the information and calculations necessary for the Board to take action to prospectively adjust benefits effective December 1, 2012 (January 1, 2013 benefit payments) based on the following criteria for holiday pay and shift pay:

- *Retirement benefits to be calculated based on the annual receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at the 100% of base pay per holiday times 13 paid holidays, instead of 150% of base pay per holiday times 12 paid holidays;*
- *No shift pay.*

The Board directed staff to bring back the above-referenced information and calculations to the Board at its November meeting for Board review and approval.

Thus, even though the Board directed that the rate of additional holiday pay for retirees was to be reduced from 150% to 100% of base pay, the Board directed that this additional compensation was to be based upon each of the 13 holidays available to active members.

The following month staff presented an Agenda Report to the Board which verified and complied with the above-described direction.

2013: In November 2013, the Board unanimously adopted Resolution No. 6766 setting the retirement benefits for the only remaining active police member of the System. Among other things, the Board based the holiday pay benefits for this retiree on a 12-hour work schedule and has since paid those benefits as though he had worked 12 hours *on each of the holidays available to active members.*

2014: In February 2014 the First District Court of appeal in, *City of Oakland v. Oakland Police and Fire Retirement System et al.*, 224 Cal. App. 4th 210 ("*City of Oakland*"), overturned the portion of the lower court's ruling which addressed the rate of holiday pay owed to retirees; rejecting the City's argument that retirees should be compensated as though they had *not* worked

holidays and finding this argument to be “specious”. The appellate court specifically rejected the Superior Court’s reliance on *Kreeft*. In addition to providing a very detailed review of the history of holiday pay benefits and the various litigations surrounding them, the appellate court’s references to other analogous court decisions make it clear the court was aware that not all officers work all holidays.

When addressing the subject of res judicata, the appellate court wrote:

The trial court summarily dismissed the doctrine of res judicata, remarking simply that Buck and Arca II concerned retiree rights when compensation for active members of the Department was “set by different MOUs.” We, in contrast, find the doctrine dispositive.

When addressing the preclusive nature of *Buck*, the court wrote:

Now, over 40 years later, the City is arguing under the exact same Charter provisions that the extra compensation payable to active members of the Department for working on a holiday should not be included in the calculation of PFRS retirement allowances. However, having had one chance to litigate this issue before the First District, the City is not now entitled to take another bite of the same apple; and,

*Similarly, the inclusion in the 2006-2015 MOU of express language defining the rights of active members to certain holiday pay when they do not work on a holiday has no bearing on active members’ continuing entitlement to receive extra compensation when they do. Although the amount of remuneration has changed over the years, for over four decades active members of the Department have possessed an unbroken right to holiday pay for working on holidays. And, based on *Buck*, PFRS retirees have been entitled—during the same period—to have such holiday pay included in the calculation of their retirement allowance; and,*

*In the present case, in contrast, the City has failed to make any showing that a material change in circumstances has occurred since *Buck* with respect to the holiday pay issue which would justify its relitigation. As stated above, neither the change in the underlying document providing the holiday pay benefit, nor the fact that the current MOU expressly discusses holiday pay for members who do not work holidays is a material change justifying relitigation. Further, the City’s specious argument—that retirees should not be compensated for working on holidays because they currently do not work—misses the point entirely and, regardless, has been true since *Buck* was decided. The appropriate inquiry is not whether retirees no longer work, but rather how active members are compensated for holiday work and whether this has changed significantly since *Buck*. (Emphasis added)*

The appellate court also addressed the superior court’s reliance on *Kreeft* and found it to be misplaced.

*Nor do we view the First District’s decision in *Kreeft* as materially changing the legal landscape with respect to the provisions in the Charter which govern the calculation of PFRS retirement benefits, including those based on holiday pay; and,*

*We view *Kreeft* as a commonsense application of the Charter provisions to particular facts rather than as a significant departure from existing precedent. Certainly, there is nothing in the statutory analysis engaged in by the *Kreeft* court that could not have been argued*

to the First District in Buck. For instance, it could easily have been urged that working on a holiday was based on individual effort and scheduling rather than rank. “A prior judgment is res judicata on matters which were raised or could have been raised (emphasis added), on matters litigated or litigable” (citation omitted). “Were the rule otherwise, litigation finally would end only when a party ran out of counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background” (citation omitted).

Although the appellate court determined that the “unanalyzed and incomplete” payroll data provided to the superior court by the city was “wholly insufficient” and “essentially useless” for the purpose of triggering relitigation, the court nonetheless examined the raw data and drew certain conclusions from it.

We have, however, reviewed the raw payroll data supplied by the City for the two-week pay period ending January 6, 2012. While we doubt that the two-week pay period encompassing a Sunday New Year’s holiday represents the typical experience of most Department members for most holidays, even a cursory review of the data in light of other information contained in the record permits certain conclusions to be drawn. First, it appears that the majority of active Department members work 10- or 12-hour shifts, rather than the traditional eight-hour shift (emphasis added). Second—although there were entries that we could not interpret with the information available in the record—it appears that essentially all active members receive between eight and 18 hours of holiday pay in connection with the occurrence of a holiday, based on the length of their usual shift. Thus, members who work on a holiday receive holiday pay of 12, 15, or 18 hours. Members for whom a holiday falls on a regular day off receive holiday pay of eight, 10 or 12 hours. And, finally, members who take a holiday off receive holiday pay of eight, 10, or 12 hours.

The above observation by the court is significant in that the court certainly would be aware that 10-plan and 12-plan type scheduling include changed day-off patterns.

Although the appellate court determined that *Kreeft* did not apply and that *Buck controlled*, the court nonetheless hypothesized regarding the likely outcome of a properly applied *Kreeft*-type analysis to the facts of the instant case.

Indeed, were we to throw out the holding in Buck and reconsider the holiday pay issue generally in light of Kreeft, it is not at all clear that a different outcome would result. As stated above, it appears that essentially all members of the Department currently receive between eight and 18 hours of holiday pay for every holiday simply for being on the force. Thus, holiday compensation seems to be incident to rank rather than individual effort. And, while it is true that there is variation in the amount of extra compensation paid to each member based on schedule, we disagree with the trial court that any such variability is fatal under Kreeft. In fact, Kreeft speaks of the FLSA pay at issue being “widely” varied. The variation in the present case, in contrast, is much more narrowly focused and predictable. Were a proper analysis to be done, we would not be surprised to find that the 12 hours of holiday currently used in the calculation of PFRS retirement benefits pursuant to Buck represents an average that is a “meaningful predictor of the experience of most” Department members.

When addressing the temporary reduction in holidays which resulted from the 2006-2013 MOU, the court concluded that holiday pay for retirees should be based on all of the holidays available to active members of the Department.

Although the total holiday compensation paid to active members of the Department was clearly reduced during this timeframe, the Board continued to calculate retirement benefits for PFRS retirees as if this temporary reduction had not occurred. Based on the plain language of the Charter and the 2006-2013 MOU, the trial court held that the reduction in holiday pay experienced by active members should have been reflected in PFRS benefits for the years in question. Specifically, retirees, during the relevant timeframe, should only have been credited with seven holidays, rather than 12 (emphasis added).

Again, the court certainly was aware that not all actives work all holidays, yet it decided that retirees should have been credited with all seven of the holidays available to actives.

2014 - 2016: In October 2014, the ROPOA wrote to the PFRS Board asserting that holiday pension benefits should be based on either 10 or 12-hour shifts and that the Floating Holiday should be included in retiree holiday pay calculations.

In August 2015, at the direction of the Board, the Plan Administrator submitted an Agenda Report analyzing the ROPOA's assertions.

In October 2016, the ROPOA petitioned for a Writ of Mandate and filed a Complaint for Declaratory Relief in Alameda County Superior Court (Case No. RG16838274) on behalf of the ROPOA and five (5) named plaintiffs. The petition asserts that retirees/beneficiaries should be compensated for holidays as though they worked 10-hour shifts rather than 8-hour shifts and that the Floating Holiday received by active officers should be included in retirement compensation. Central to the ROPOA petition is the assertion that retirees should be compensated as though they worked each of the holidays available to active members of the department.

The October 2014 letter, the 2015 Agenda Report and the 2016 Writ will be discussed in more detail below. They are included here to provide context to the actions taken on behalf of the Board in 2017.

2017: In February 2017, outside legal counsel for PFRS filed a demurrer to the ROPOA's Writ and alternatively filed a motion to stay the action. Both the demurrer and the motion to stay were denied by the court.

Without express direction or authorization from the Board, outside counsel proffered an argument which, on its face, represents a significant departure from the long-standing practices of this Board as they relate to the calculation of retiree holiday benefits pursuant to Buck, Arca II and City of Oakland. PFRS outside counsel argues that the 4-10 work schedule increases the likelihood a holiday will fall on one of an officer's regularly scheduled days-off; therefore retiree holiday premium pay should be based on a Kreeft-like standard rather than the decades-long Board practice of calculating pension benefits as though retirees had worked each of the holidays available to active members.

Summary: The practice of calculating holiday pension benefits as though retirees worked each of the holidays available to active members has been uninterrupted for more than 44 years. As indicated above, each time it has been reviewed, either by this Board or by the courts or by both, the practice has been validated.

The most recent set of challenges began in October 2010 and were based on the City's interpretation of the 2008 Arbitration Award and resulting 2006-2010 MOU. In early 2011, following hearings which spanned several months and the receipt of a detailed advice letter from legal counsel, the Board adopted Resolution No. 6682 upholding the practice.

When the City filed its 2011 Writ, the Board vigorously defended its 2011 decision. Even when the 2012 superior court decision reduced the rate of holiday pay, the Board's October 16, 2012 direction to staff was to pay the reduced rate on all, not some portion, of the holidays available to actives.

In late 2013, the Board set the holiday benefits for the last active member of the Department based on a 12-hour shift and has since paid them as though he had worked each of the holidays available to actives.

In early 2014, the appellate court overturned the lower court ruling that would have reduced the rate of pay upon which holiday pension benefits are to be based while upholding the lower court's ruling regarding the temporary reduction in the number of holidays available to actives; ruling that retirees should be credited with each of the seven (7) holidays temporarily available to actives. Based upon the textual content of the appellate court's decision, it is obvious the court was aware that most actives were working 10 or 12 hour shifts with their accompanying day-off patterns and that not all actives work all holidays.

Lastly, citing other decisions, the court wrote that "a prior judgment is *res judicata* on matters which were raised or could have been raised on matters litigated or litigable" (emphasis added) and, "Were the rule otherwise, litigation finally would end only when a party ran out of counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background". The 10-hour shift schedule used by the Department has been in place for about 16 years. The 12-hour shift schedule has been in place for approximately 10 years. Thus the argument now being made by PFRS outside legal counsel - that these shift patterns increased the likelihood a holiday would fall on a regularly scheduled day-off - was available and could have been raised by the City and/or PFRS in the court proceedings that began in 2011.

Only the Board should decide whether to modify its long-standing practice of calculating holiday pension benefits as though retirees had worked each of the holidays available to actives – the pay determined by the courts to be "attached". I, of course, would argue that we shouldn't and that our current practices are mandated by *Buck and Arca II* and were affirmed in *City of Oakland*. But, even if not mandated, the practice is a reasonable interpretation and application of those decisions given our duty to construe pension benefits liberally in favor of retirees and our obligation to administer the system efficiently. Certainly, none of the Board's advisers should be proffering arguments to the contrary until the Board decides.

This decision, to maintain or abandon the Board's decades-long practice of calculating holiday pension benefits as though retirees had worked each of the holidays available to actives, is the cornerstone to any other decisions the Board may make in this case.

2. Should holiday pension benefits be based on 8, 10 or 12 hour shifts or, perhaps some hybrid shift schedule?

As indicated above, *holiday premium pay* has been determined to be attached to the average rank held and is therefore required to be included in the calculation of pension benefits. The

ROPOA has questioned, actually challenged, the amount of holiday premium pay being included in pension calculations. We know that active members now receive holiday premium pay based on all hours worked, rather than a static eight (8) hours. We also know that the standard shifts utilized within the Department are 8-, 10- and 12-hour shifts rather than a singular 8-hour shift. The current OPOA MOU prohibits the use of 8-hour shifts in Patrol.

Clearly, everyone on the Department (setting aside the question of Captains and Deputy Chiefs which will be addressed below) who works on a holiday receives a minimum of eight (8) hours of holiday premium pay, which is paid at the rate of 1.5 times his/her base rate of pay. The courts have already determined and reaffirmed that the requirement for police officers to work holidays as a matter of routine is so commonplace that the compensation paid for doing so is "compensation attached to the average rank held" in fluctuating pension systems and compensation "earnable" in fixed systems. Most recently, in *City of Oakland*, the court has determined that the benefit structure mandated by the 2008 Arbitration Award and the resulting 2006-2010, 2006-2013 and 2006-2015 MOUs have done nothing to justify the relitigation of this issue. Hence, holiday premium pay based on 8-hours of work and paid on all holidays available to actives is our baseline. In my opinion any attempt to justify something less, is nothing more than folly, will be costly and will further drive a wedge between this Board and the retirees/beneficiaries we serve.

So, in my mind at least, the question then becomes: are enough officers assigned to 10- or 12-hour shifts so as to tip the scales to require that it is one of these shifts, rather than an 8-hour shift, which attaches to the rank? This will not be an easy question to answer. Therefore our inquiry should be as targeted as possible and the criteria by which we make our decision should be well articulated.

Secondary is essentially the same question, but answered only as to officers assigned to Patrol. The courts have twice decided that compensation paid to officers assigned to Patrol can "attach to the average rank held" by those officers. In *Arca*, the court determined that Patrol Division Half-Hour Pay attached to the rank. Although under appeal, the superior court also recently determined that Master Police Officer Pay, which was paid only to officers assigned to Patrol, was attached.

2012: On October 16, 2012, the Plan Administrator submitted a memorandum to the Board showing "estimated prospective pension payments and retroactive overpayments as mandate by the Writ of Mandate". This memorandum assumed that **all** retirees worked a Monday-Friday workweek and prospectively provided additional compensation only for those holidays that fell on weekends as follows:

1. *Payroll is based on a Monday-Friday week with additional compensation for holidays that fall on weekends.*

The report indicated that retroactive calculations also would assume a Monday-Friday workweek with additional compensation being provided only for holidays falling on a weekend.

The Board also met in closed session on October 16, 2012. As indicated earlier in this document, on October 17, 2012, at the request of the deputy city attorney assigned to the PFRS Board, outside legal counsel issued a memorandum detailing the reportable actions taken by the Board during its October 16, 2012 closed session. Among those actions was the criteria upon which holiday premium pay calculations were to be based. It would appear the October 16 closed session action was a conscious departure from the criteria recommended

by the Plan Administrator in her October 16 report. Among other things, PFRS Counsel reported:

“2) The Board voted to direct staff, in consultation with outside legal counsel, to provide the Board with the information and calculations necessary for the Board to take action to prospectively adjust benefits effective December 1, 2012 (January 1, 2013 benefit payments) based on the following criteria for holiday pay and shift pay:

- *Retirement benefits to be calculated based on the annual receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at the 100% of base pay per holiday times 13 paid holidays, instead of 150% of base pay per holiday times 12 paid holidays;*
- *No shift pay.*

The minutes of the October 16, 2012 Board meeting indicate the calculations in the Plan Administrator’s October 16 memorandum would be recalculated pursuant to action taken by the Board in closed session. The minutes indicate:

Katano Kasaine reported the previous calculations submitted by the staff of the PFRS board will change after consideration of the Board action today. Staff will provide revised calculations at a future meeting. Rich Miadich, PFRS outside counsel, provided explanation of the calculation methodology in consideration of the Judge’s order on this matter.

On November 14, 2012, a November 9, 2012 memorandum from the Plan Administrator appeared on the Board’s agenda and was included with distributed agenda materials. This memorandum indicated:

At the PFRS Board’s October 16, 2012 closed session meeting, the Board directed staff to meet with the Board’s outside attorney’s and to provide calculations necessary for the Board to prospectively adjust benefits effective December 1, 2012. The PFRS Board directed staff that the prospective change should be based on the following:

1. *Retirement benefits to be calculated based on receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at 100% of base pay per eligible holiday (emphasis added)*
2. *No Shift Differential pay.*

Based on instructions from PFRS outside attorney, Holiday Pay for Patrolmen are based on a value of 10 hours per day (emphasis added). All other ranks holiday pay is assumed to be based on 8 hours per day.

2013: In November 2013, the Board unanimously adopted Resolution No. 6766 setting the retirement benefits for the only remaining active police member of the System, a Sergeant who was assigned to Patrol at the time of retirement. Among other things, *the Board based the holiday pay benefits for this retiree on a 12-hour work schedule.* This action was not inconsistent with the Board’s November 2012 action to base holiday premium pay for Patrolmen on 10-hours per day.

2014: In February 2014, the appellate court published its decision in *City of Oakland*. As previously indicated the court reviewed raw data which was submitted by the City in support of its position. Among other things, the court found:

While we doubt that the two-week pay period encompassing a Sunday New Year's holiday represents the typical experience of most Department members for most holidays, even a cursory review of the data in light of other information contained in the record permits certain conclusions to be drawn. First, it appears that the majority of active Department members work 10- or 12-hour shifts, rather than the traditional eight-hour shift (emphasis added).

As indicated above, in October 2014, the ROPOA wrote to the PFRS Board asserting that holiday pension benefits should be based on either 10 or 12-hour shifts. Specifically, the ROPOA wrote:

Pay should reflect ten and twelve-hour shifts: *The Resolutions and the supporting staff reports also fail to recognize that active members routinely work either 10 or 12-hour shifts, and that pension benefits should be based on these work hours, even though some recognition of this requirement was included in a staff report which was dated November 9, 2012 (Exhibit 2). This staff report indicated: "Based on instructions from PFRS outside attorney, Holiday Pay for Patrolmen are based on the value of 10 hours per day".*

Although we disagree with the premise that only patrolmen should receive holiday pay based on a 10-hour shift, we believe outside counsel was correct in principle. First, the Court of Appeal recognized and set the standard for retiree holiday pay compensation when it wrote: "Further, the City's specious argument — that retirees should not be compensated for working on holidays because they currently do not work — misses the point entirely...The appropriate inquiry is not whether retirees no longer work, but rather how active members are compensated. . ." (City of Oakland v. Oakland Police & Fire Retirement System (2014) 224 Cal.App.4th 210, 231.)

- *Since 2006, the Board has been calculating holiday premium pay for retirees based on an 8-hour shift even though 10-hour and 12-hour shifts have become the norm throughout the Department. The Court of Appeal recognized the widespread use of these extended shifts when it wrote: "First, it appears that the majority of active Department members work 10- or 12-hour shifts rather than the traditional 8-hour shift." (224 Cal.App.4th at p. 231, fn. 11.)*
- ***Under the current MOU, 8-hour shifts are not even permitted for officers in Patrol; at least 10-hour shifts are required.*** *Article IX, Section L of the MOU provides: "For the duration of this MOU, the current 4/10 shift schedule shall be the core shift in patrol. There shall be no 5/8 shift schedule in patrol for the duration of this MOU." The use of 12-hour shifts is prevalent enough to warrant the modification of the salary schedule to account for them. (See Appendix G to the 2006 MOU.)*
- *Lastly, in November 2013, the Board directed that the holiday pay for a recently retired PFRS member be calculated based on a 12-hour shift.*

Given the above, it is clear that the Board cannot reasonably or permissibly assume that all retirees—all except one, that is—are only entitled holiday premium pay based on an 8-

hour day (12 hours of holiday pay). At a minimum, holiday premium pay should be based on a 10-hour day (15 hours of holiday pay). This means that all retirees have been undercompensated for more than seven years, and these underpayments must be included in the Board's calculations.

Even if the Board were to disagree with the above, it is inescapable that retirees of all ranks who were assigned to patrol during any portion of their final three years of employment are entitled to a minimum of 15 hours of holiday pay.

2015: In August 2015 the PFRS Plan Administrator submitted an Agenda Report titled *Informational Report regarding Retired Oakland Police Officers Association (ROPOA) claims of PFRS Police retiree underpayments stated in their October 27, 2014 memo to the PFRS Board.* Although fatally flawed because of the many obvious errors that carry through Exhibit 1 (explained more fully below), in my opinion, this is exactly the type of analysis needed by the Board to resolve the issue before it. This report indicates:

Staff has conducted research to determine how many active officers, sergeants, and lieutenants worked 8, 10, or 12 hour shifts over the last six fiscal years. Summarized below are the facts which are included in Exhibit 1 and Exhibit 2 herein.

Exhibit 1 reflects the shifts worked by active Oakland Police officers for the six Fiscal Years 2009-2010 through 2014-2015. The tables show the shifts worked by active Oakland Police assigned to Patrol, as well as the shifts worked for active Oakland Police in the entire department. The data shows that 10-hour shifts are most often worked by sergeants and officers assigned to patrol. However, the data also shows that other shifts, including 8-hour shifts, are also worked by a significant number of personnel assigned to patrol. The percentage of 8, 10, and 12 hour shifts worked varies from year to year, and from rank to rank (lieutenant, sergeant, and officer). What this inconsistency shows is that the data does not support the broad-brush assertion made by the ROPOA.

It is difficult to analyze the material in Exhibit 1 fully without having the data upon which it is based, however it is obvious that most of the numbers reflected in the exhibit are mistaken. Most of these mistakes are reflected in page 1 of the exhibit (Fiscal Year 2009-2010) and those mistakes then carry through the entire exhibit. For example:

The "Total Hours" columns for each of the ranks and for all of patrol reflect obviously mistaken numbers. It is universally accepted that an officer assigned to a 40-hour workweek (80 hours worked in a pay period) will typically work 2,080 hours in a year and an officer assigned to a 12-hour workday (84 hours worked in a pay period) will work 2,184 hours. Even if we were to assume that every officer assigned to patrol was on a 12-hour shift, for them to have worked 9,711,896 hours in a year (Total Patrol Hours column) would have required approximately 4,447 officers assigned to Patrol. Similarly, the numbers reported separately for Lieutenants, Sergeants and Officers would have required approximately 119 Lieutenants, 547 Sergeants, and 3,781 Officers.

The "Total Shifts" columns are similarly mistaken. The maximum number of shifts would be worked by Officers assigned to a 40-hour workweek. Without allowance for additional time off such as vacation, an Officer assigned to a 2080 hour work-year, will be scheduled to work 260 shifts if on an 8-hour shift and 208 shifts if on a 10-hour shift. Officers assigned to a 12-hour shift typically will be scheduled to work approximately 183 shifts per year. Even if we were to assume that every officer in Patrol was scheduled to work 260 shifts,

which they obviously were not, the numbers reported in Exhibit 1 would require about 94 Lieutenants, 464 Sergeants, and 3,100 Officers. Of course, the more reasonable divisor would have been 208 shifts which would simply make these numbers even more unrealistic.

The same mistakes seem apparent in the Total Hours and Total Shifts columns for the All Sworn portion of the exhibit. These mistakes then generally carry forward throughout the remainder of Exhibit 1.

Other mistakes appear that seem to be unique to the All Sworn portion of the exhibit for Fiscal Years 2011-2012 and 2014-2015. For example:

The Total Shifts columns in the 2011-2012 report reflect numbers that are impossibly low. For example it reflects that only 1,181 shifts were worked throughout the Department for the entire year. Assuming there are 260 scheduled shifts per year per officer, this number reflects fewer than five (5) individuals.

Setting aside the fact that the numbers generally are unrealistically high, the Grand Total rows of the Total Hours columns in the 2014-2015 report simply do not add. For example, the report shows a Grand Total of 10,620,904 hours worked department-wide. Those numbers add horizontally across the columns however, when the Total Hours column is added vertically, the total comes to 11,650,748. Likewise, each of the Total Hours columns in this report, when added vertically, reflect mistaken totals. Without having the data upon which the report is based, it is impossible to determine the exact nature of the mistakes but it is clear the numbers don't match.

Given the above-described issues, I made no attempt to examine Exhibit 2, except to say that any such analysis is of limited or no use when attempting to determine which work schedule attaches to the rank. Assuming the information is correct and is reflective of all the pay codes associated with holidays, the type of analysis reflected in Exhibit 2 goes to "compensation earnable"; not "compensation attached to the rank".

Lastly, given the express language in the MOU which prohibits the use of 8-hour shifts in Patrol, the report should explain its findings in this regard. Either the report is mistaken or there are exceptions to the MOU language which may or may not be authorized. If there are exceptions, they should be explained.

Having pointed out all of the above, I still believe that the type of analysis reflected in Exhibit 1 is essential to resolving the question before the Board both as to Patrol and as to the Department. **I therefore request that it be corrected and resubmitted for the Board's review and consideration. I further request that the corrected report include an explanation of its findings regarding the use of 8-hour shifts in Patrol.**

2016: As previously discussed, in October 2016, the ROPOA petitioned for a Writ of Mandamus and filed a Complaint for Declaratory Relief in Alameda County Superior Court (Case No. RG16838274) on behalf of the ROPOA and five (5) named plaintiffs. The petition asserts that retirees/beneficiaries should be compensated for holidays as though they worked 10-hour shifts rather than 8-hour shifts.

2017: On October 25, 2017 the Plan Administrator submitted an Agenda Report which was dated October 16, 2017. The report was titled: *An Analysis Comparing The Current Method*

of Calculating PFRS Police Retiree Holiday Pay Benefits Against the Holiday Pay Received by Active Police Officers During the Last Three Fiscal Years.

As to the question before the Board – should Holiday Premium Pay for retirees be based on an 8-, 10-, or 12-hour shift³ - both the methodology and the logic of this report miss the mark and, if adopted, would make it practically impossible to administer PFRS. Essentially, as explained below, the Agenda Report attempts to apply a “Fixed System” standard to a “Fluctuating System”.

In a fixed retirement system, pension benefits are based on what a retiree actually earned in those areas which have been determined to be “compensation earnable” for the purposes of calculating pension benefits. A fixed system works because it focuses on the individual and his/her compensation earnable only once – the day the individual retires. That is, an individual’s pension benefit is based on the pensionable compensation he/she *actually earned* over a fixed period of time, usually either 12 or 36 months, *and has absolutely nothing to do with the compensation earned by his/her peers either currently or prospectively*. The appropriate pension formula is then applied to this compensation earnable snapshot to determine the individual’s pension benefit. Thereafter, additions or deletions to those pay elements which are considered “compensation earnable” for actives and/or the compensation actually paid to actives have no impact on the individual’s future pension benefits. Hence, the pension is “fixed” based on the above-described snapshot. In the public sector, pension payments typically are adjusted periodically by whatever COLA formula might be applicable within the pension system but, again, these formulas have no connection to COLAs received by active employees.

In a fluctuating system, pension benefits are based on those items of pay that have been determined to be “compensation attached to rank”. In PFRS, a retiree’s pension is based on the compensation attached to the average rank held over either the final year of employment (disability retirements) or final three (3) years of employment for service retirements. Although a number of factors must be considered when determining whether a particular form of compensation “attaches to rank”, once it is decided that compensation attaches to the rank it is an all or nothing proposition. The compensation element is either attached and paid or it’s not attached and not paid. There is no middle ground.

Pension benefits then fluctuate, either up or down, based only on changes to the amounts of “attached” compensation that is available to those actives holding the same rank as the retiree but, not based on the amounts actually earned by actives within that rank. Any attempt to link pension benefits in a fluctuating system to individual performance, as implied by this Agenda Report, is contrary to the nature of the system and would be unmanageable.

Court decisions involving fluctuating systems have universally recognized this distinction. In every instance where a court has been asked to answer this question, the answer has been “attached” or “not attached”. There has never been what would amount to a compromise decision in this regard and there has never been a court decision mandating that the up and down movements applied to compensation once determined to be attached to the rank in a fluctuating system be based on individual performance.

³ The questions regarding the compensation paid to Captains and Deputy Chiefs and the issue of the Floating Holiday are addressed elsewhere in this memorandum

As indicated earlier, a fixed system can function based on individual performance because it only examines individual performance once. If benefits in a fluctuating system were to be adjusted based on individual performance, benefit levels would be constantly moving, impossible to determine with any degree of stability and impossible to administer effectively.

The October 16, 2017 Agenda Report is based on the same flawed assertion that was rejected by this Board in 2011 and by the appellate court in 2014. The report indicates:

However, since 2006 and subsequent OPOA (Oakland Police Officer Association) MOUs, active police are no longer paid additional holiday pay at a premium rate of 1.5X per holiday regardless of whether they actually work the holiday. Active OPOA police officers (below the rank of captain) receive additional Holiday Premium Pay at the premium rate (1.5X) only if they actually work the holiday. DGO D-8 has since been rescinded.

The City made this very same argument in October 2010. Following an exhaustive hearing process and upon detailed advice of its legal counsel, the Board rejected this notion in early 2011. The City made the same argument in the Writ it filed in June 2011 and the Board vigorously defended against it asserting its practice of paying holiday pension benefits as though retirees worked each of the holidays available to actives was mandated by the courts.

In February 2014 the appellate court, writing in significant detail, found the City's 2010 and 2011 arguments to be specious. Now, the Plan Administrator is attempting to resurrect the very same failed arguments.

Even if one were to disagree with all of the foregoing, the October 16, 2017 report is of little use in answering the question before the Board. For example:

- The report eliminates all officers who were paid less than 2080 hours without regard to the reason and without regard to the holiday premium pay they received. This eliminated approximately 29% of the records examined.
- The report eliminates all officers assigned to an 84-hour work-schedule even though, according to the report, they represent 10% of the workforce. These officers also are generally assigned to Patrol. The MOU provides "all officers assigned to Patrol shall report to work on any holiday which falls on one of their regularly assigned work days unless the officer has the day off through the holiday or vacation draw".
- The report eliminates officers who are off work on Workers Compensation even though those officers are compensated for holidays as though they worked the holiday.
- The document does nothing to inform the Board regarding the number officers who received holiday premium pay based on 8-, 10-, or 12-hour shifts.

Summary: The ROPOA, relying on MOU language and the previous actions of the Board, has asserted that holiday premium pay for retirees should be based on a 10-hour shift rather than an 8-hour shift.

In October 2012, the Board, in closed session, made certain decisions regarding the calculation of holiday premium pay for retirees. Among them, it would appear the Board

decided that holiday premium pay for patrolmen should be based on a 10-hour shift. The November 2012 Agenda Report which was intended to comply with the Board's October 2012 direction indicated:

Based on instructions from PFRS outside attorney, Holiday Pay for Patrolmen are based on a value of 10 hours per day. All other ranks holiday pay is assumed to be based on 8 hours per day.

In November 2013, the Board based the holiday premium pay pension benefit for the last active police member of the System on a 12-hour shift and has since paid pension benefits at this level based on each holiday available to active members.

In February 2014, the appellate court observed that most actives were now working either 10- or 12-hour shifts rather than the traditional 8-hour shift.

In August 2015, the Board received the only Agenda Report thus far that would help respond to the ROPOA's claims. But for the mistakes in this report, it represents the type of analysis needed by the Board. Again, I strongly urge that staff be directed to provide the Board with a corrected version of the August 2015 report.

I also urge the Board to reject the methodology and logic of the October 2017 Agenda Report. The methodology used to prepare this report is irrelevant to a fluctuating system and reliance upon it will be fraught with unintended consequences.

Before the Board receives the corrected report, I recommend that we engage in: a meaningful dialogue regarding what the Board's decision-making criteria should be; and, an exploration of the possible unintended consequences that may arise from implementation of any such criteria. I have found that developing decision-making criteria before attempting to decide the main issue can be useful to the development of consensus. Particularly, when attempting to determine whether something is "attached" or "not attached" to rank, where should the scales tip in favor of one or the other? When deciding the City's Holiday Pay Writ, the Superior Court decided that "any variability" and any degree of "individual effort" meant the compensation did not attach. In *City of Oakland*, the appellate court rejected this standard and included language suggesting that criteria which, identifies the experience of "most officers" might be acceptable. I don't believe the Board has ever tackled this question head-on.

3. Is the Floating Holiday "compensation" and "compensation attached to the rank" for the purposes of calculating pension benefits?

The ROPOA also has asserted that the Floating Holiday should be included as "Compensation" and "Compensation Attached to the Average Rank Held" for the purposes of calculating pension benefits.

2008: The benefit which currently is designated as a "Floating Holiday" first appeared as such in the 2006-2010 MOU which was the result of the 2008 Arbitration award. A very similar benefit appeared in earlier MOUs but it was not designated as a "Holiday". Actives currently receive 12 designated holidays and one (1) floating holiday.

2012: In October 2012 it appears the Board decided the Floating Holiday was compensation attached to the average rank held and decided to include the benefit in pension calculations. As previously indicated PFRS outside counsel reported:

Retirement benefits to be calculated based on the annual receipt of holiday pay, in addition to the 2080 hours of base pay, calculated at the 100% of base pay per holiday times 13 paid holidays, instead of 150% of base pay per holiday times 12 paid holidays;

This memorandum was drafted and distributed the day following the closed session and is consistent with the minutes of that meeting which were approved by the Board the following month. The reference to 13 paid holidays appears intentional rather than a mistake.

On November 14, 2012 the Board approved the minutes of the October 16, 2012 Board meeting. These minutes reported the "Recommendations from Final Decision made during Closed Session partially as follows:

Recommendations from Final Decision made during Closed Session – The regular meeting reconvened at 4:44 pm. Chris Waddell from Olson Hagel & Fishburn LLC, PFRS Outside Counsel, reported the following actions voted upon by the PFRS board during closed session. Mr. Waddell said, in closed session:

- 1. The PFRS board voted to...*
- 2. The PFRS board separately voted the prospective correction, in accordance with the Judge's order, begins effective December 2012 (impacting the benefits payment for January 2013). The calculations are to be based on the following: employees to receive 100% of base pay times 13 paid holidays prorated over the 12-month period instead of the current receipt of 150% of times 12 paid holidays. Also, this decision, effective with the December 2012 period, eliminates Shift Pay for the PFRS police retirees. He said the calculation should be performed by staff between now and the November 2012 PFRS board meeting in consultation with outside counsel. This report will be brought back to the board for approval and consideration before they are implemented...*

There is no recorded attempt by anyone present at the November 14 meeting to question the accuracy of or to correct the above described minutes.

On November 14, 2012, the following item appeared on the Board's Agenda:

- D. Subject: Board Action regarding the matter of City of Oakland vs. Oakland Police and Fire Retirement System, et al, (Superior Court of California for the County of Alameda, Case #RG11-580626)*

From: PFRS Legal Counsel (Olson Hagel & Fishburn, LLC) & Staff of the PFRS Board

Recommendation:

- 1. ACCEPT an informational report from staff regarding calculation of pension payment adjustments should the Board take action to prospectively adjust pension payments for police members and their dependents/beneficiaries as follows: (a) that the annual receipt of retirement benefits based on holiday pay, in addition to benefits based on 2080 hours of base pay, should be calculated at the rate of 100% of base pay multiplied by the number of paid holidays (including any floating holidays)*

(emphasis added) for which active police are currently entitled to receive holiday pay; and (2) the elimination of retirement benefits based on shift pay.

2. ACTION for PFRS Board approval on whether pension payments for police members and their dependents/beneficiaries should be adjusted, effective December 1, 2012 (i.e., for purposes benefits payments to be received in January 2013), to reflect annual receipt of retirement benefits based on holiday pay, in addition to benefits based on 2080 hours of base pay, calculated at the rate of 100% base pay multiplied by the number of paid holidays (including any floating holidays) (emphasis added) for which active police are currently entitled to receive holiday pay.

On November 14, 2012, the Board received the above referenced Agenda Report, which was dated November 9, 2012. It indicated in part as follows:

Staff calculated PFRS Police Holiday Pay in accordance with the Board's instructions based on the current active Police Holiday MOU schedule. Holidays in the Police MOU are based on a calendar year. Per the current schedule, active police officers were not compensated for the following holidays in calendar year 2012 (1) January 1, 2012 – New Years' Day, (2) February 12, 2012 – Lincoln's Birthday, (3) President's Day and (4) Floating Holiday. In addition, per Article VII Section H of the current Police MOU, active police employees were not compensated for September 9, 2012 – Admission Day. The attached calculation assumes that PFRS Retirees will be paid for 8 Holidays (13 Holidays – 5 Holiday Concessions) over a 12 month period for CY 2012. This calculation is presented on Table 1 (a). (Emphasis added)

The attached calculation also includes a calculation for CY 2013. Holiday Pay for CY 2013 will be based on 11 Holidays. Per the existing MOU, active police members will receive 11 Holiday in CY 2013. Active police will not be compensated for the Floating Holiday and Admission day. This calculation is presented on Table 1 (b).

In August 2015 the Board received an Agenda Report in which, among other things, the Plan Administrator indicated “staff will continue to research the floating holidays items to determine if it is attached to the rank and will bring it back at a future Board meeting. The 2015 report makes no mention of the Board’s previous decision or the calculations completed by staff pursuant to it.

In October 2017 the Plan Administrator provided the Board with the October 16, 2017 Agenda Report in which concludes:

The Floating Holiday is not compensation attached to the rank for police retirees, because it is compensatory time that is not payable in cash.

Although the October 2017 report addresses the OPOA and OPMA provisions related to the Floating Holiday, it too makes no mention of the 2012 decision of the Board or any of the public documents which flowed from it.

Summary: The question before the Board is whether the Floating Holiday is compensation and compensation attached to the average rank held for the purposes of calculating PFRS pension benefits.

First, it is clear from the record that the Board addressed this issue in October and November 2012. Unfortunately, the Board took this action in Closed Session so there is no clear record of the motion adopted or the discussion surrounding it. Nonetheless, the minutes of the October 16, 2012 Board Meeting and Outside Counsel’s October 17 memorandum are clear that the Board decided that holiday pay would be based on 13 holidays rather than 12 holidays. The November 14, 2012 Agenda is clear that the calculations presented pursuant to the Board’s direction included “any floating holidays”. And, the November 9, 2012 Agenda Report was clear that the Floating Holiday was included in the concessions to be applied to retirees.

The Floating Holiday obviously attaches to rank. Every sworn member of the Police Department is *credited* with the Floating Holiday (8 hours of compensatory time off) in July of each year by virtue of their employment with the City. The question, which appears to already have been answered by the Board in 2012, but is raised again by the Plan Administrator here is whether it is “compensation” and therefore “compensation attached to the average rank held” for PFRS purposes.

The Plan Administrator concludes the Floating Holiday is not compensation attached to the rank because it “is not payable in cash”. This assumption is incorrect. The language found in *Buck* is helpful:

“According to the salary ordinance, the policeman or fireman who works on a “legal holiday” which falls during his regular 40-hour work week “shall be credited with 8 hours of work in computing said 40 hours during said one-week period.” The “credit” does not amount to “pay” as such; in practice, however, almost every employee so “credited” is paid his “credit’s” cash equivalent, on a per-hour basis and as a supplement to the monthly salary paid him for the period of time involved. He is thereby paid, in cash and at appropriate monthly intervals, “extra compensation” for having worked on a “legal holiday.”

In July of each year actives are “credited” with 8 hours. Just as in *Buck*, this “credit” does not amount to “pay” as such, but when the Floating Holiday is taken, actives are paid “its cash

equivalent” on a per-hour basis and as a supplement to base pay. It is “extra” compensation in that it is paid for time not worked.

I recommend the Board, consistent with the decision it has already made in 2012, reaffirm that the Floating Holiday is Compensation Attached to the Average Rank held for the purposes of calculating pension benefits for each of the ranks that receive it and is therefore payable to retirees at the straight time rate for eight (8) hours.

4. Should Captains and Deputy Chiefs receive pension benefits based on the pay practices described in the Oakland Police Management Association (OPMA) MOU rather than the OPOA MOU?

This issue was first raised by the City in its June 2011 Writ. However the City abandoned its position. Therefore, neither the superior court nor the appellate court ever ruled on the issue. Clearly, the Board and staff, including the deputy city attorney assigned to the Board, have been aware of this issue for over six (6) years.

Now, the October 25, 2017 Agenda Report suggests that the Board look to the OPMA to decide the issue of holiday premium pay for retired Captains and Deputy Chiefs in isolation with no broader analysis of this MOU and with no consideration given as to how other “obsolete” ranks have been treated in the past and are being treated today.

In the end, if the Board decides that PFRS retirees who held the rank of Captain and Deputy Chief should be tied to the OPMA MOU, then the entire MOU should be examined to determine which benefits attach to the rank.

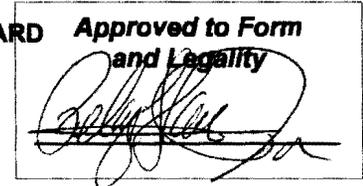
Summary: The Board should take up the possible application of the OPMA MOU to retired PFRS Captains and Deputy Chiefs as a separate matter. If it is decided that the OPMA MOU applies, the question of “compensation attached to the average rank held” must be examined on a broader scale. It certainly should not be used to decide a single issue in isolation.

Close

I wish to thank my fellow PFRS Board members for taking the time to read and consider the points raised in this document. I know it’s long. I know it’s complicated. But, the issues before the Board go to the core of our responsibilities.

OAKLAND POLICE AND FIRE RETIREMENT BOARD
CITY OF OAKLAND, CALIFORNIA

RESOLUTION NO. 7031



ON MOTION OF MEMBER _____ SECONDED BY MEMBER _____

RESOLUTION APPROVING DEATH BENEFIT PAYMENTS AND DIRECTING WARRANTS THEREUNDER IN THE TOTAL SUM OF \$1,000.00 PAYABLE TO THE BENEFICIARIES OF DECEASED MEMBERS AS FOLLOWS: (1) BRIAN W. ANDERSON, (2) SANDRA BOURASA AND SCOTT A. SPENCER, AND (3) GREGORY GAIN

WHEREAS, due proof having been received of the death of the persons named in Column (1) below, retired members of the Oakland Police or Fire Department, under Article XXVI of the Charter of the City of Oakland; and

WHEREAS, the beneficiaries to whom the death benefit provided in Charter Section 2612 are payable, are the persons whose names are stated in Column (2) opposite the respective names of the deceased retired member; and

WHEREAS, the amount of said death benefit is stated in Column (4) opposite said respective names; now, therefore, be it

RESOLVED: That the Retirement Board does hereby approve the Death Benefit payment to the persons named in Column (5); and be it

FURTHER RESOLVED: That the Director of Finance, be and is hereby directed to draw and sign warrants for the amount in Column (4) payable to the respective persons whose name(s) appear(s) in Column (2):

(1) Name of Deceased Member	(2) Name of Beneficiary(ies)	(3) Relationship of Beneficiary(ies)	(4) Death Benefit Amount
LELAND ANDERSON (P)	BRIAN W. ANDERSON	SON	\$1,000.00
ROGER L. SPENCER (P)	SANDRA BOURASA SCOTT A. SPENCER	CHILDREN	\$500.00 \$500.00
CHARLES R. GAIN (P)	GREGORY GAIN	SON	\$1,000.00

IN BOARD MEETING, CITY HALL, OAKLAND, CA _____ **OCTOBER 31, 2018**

PASSED BY THE FOLLOWING VOTE:

AYES: GODFREY, KASAIN, MELIA, MUSZAR, SPEAKMAN, WILKINSON,
AND PRESIDENT JOHNSON

NOES:

ABSENT:

ATTEST: _____
PRESIDENT

ATTEST: _____
SECRETARY

All persons wishing to address the Board must complete a speaker's card, stating their name and the agenda item (including "Open Forum") they wish to address. The Board may take action on items not on the agenda only if findings pursuant to the Sunshine Ordinance and Brown Act are made that the matter is urgent or an emergency.

Oakland Police and Fire Retirement Board meetings are held in wheelchair accessible facilities. Contact Retirement Systems, 150 Frank Ogawa Plaza, Suite 3332 or call (510) 238-7295 for additional information.



Retirement Systems
150 Frank H. Ogawa Plaza
Oakland, California 94612

AGENDA

RETIREMENT BOARD MEMBERS

Walter L. Johnson, Sr.
President

Jaime T. Godfrey
Vice President

Katano Kasaine
Member

Martin J. Melia
Member

Robert J. Muszar
Member

John C. Speakman
Member

R. Steven Wilkinson
Member

**CLOSED SESSION of the BOARD OF ADMINISTRATION
of the OAKLAND POLICE AND FIRE RETIREMENT SYSTEM ("PFRS")**

Wednesday, October 31, 2018—during regular meeting starting at 11:30 am
One Frank H. Ogawa Plaza, Hearing Room 1
Oakland, California 94612

- - - ORDER OF BUSINESS - - -

THE PFRS BOARD WILL MEET IN CLOSED SESSION DURING ITS SCHEDULED BOARD MEETING

Please see the meeting agenda for open session items. The board will convene in open session prior to the closed session. Speakers may address the items of business on the closed session agenda prior to closed session. All speakers must fill out a speaker's card and submit it to the Secretary to the Board. The Board will reconvene in open session following the closed session to report any final decisions that the board makes in closed session.

Pursuant to California Government Code Section 54956.9(a) and 54956.9(d)(1):

1. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION

Retired Oakland Police Officers Association v. Oakland Police and Fire Retirement System, et al.,
Alameda County Superior Court Action No. RG16838274

Pursuant to California Government Code Section 54956.9(c) and 54956.9(d)(4):

2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

One (1) item of anticipated litigation.