



CITY OF SACRAMENTO

SACRAMENTO CITY EMPLOYEES' RETIREMENT SYSTEM

801 NINTH STREET, ROOM 110
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5885

RICHARD E. SNYDER
RETIREMENT SYSTEM MANAGER
SECRETARY TO THE BOARD

August 5, 1985

Personnel and Public Employees' Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Staff Report Concerning Retirement Hearing Commission Proposed
Amendment to City Code Section 34.1404(c)

Summary.

During its June 3, 1985 Special Meeting, the Retirement Hearing Commission voted, on a 4-3 vote, to instruct the Secretary to the Commission to take all necessary steps to bring a proposed amendment to City Code Section 34.1404(c) to the City Council for its determination. The purpose of the amendment is to allow the Retirement Hearing Commission to generate such medical evidence it determines is lacking in the record, but is necessary to a decision of a disability retirement appeal. The Retirement Hearing Commission does not currently have such authority under the City Code.

This staff report discusses roles of the various components of the Sacramento City Employees' Retirement System (SCERS), describes the negotiation process which led to the current SCERS organization and details various disability retirement statistics which have been compiled for the period December 26, 1981 to May 31, 1985. The report recommends denial of the proposed change recommended by the Retirement Hearing Commission and adoption of an amendment to City Code Section 34.1404(c) which reflects that when the Retirement Hearing Commission perceives that further medical evidence is required to reach a decision concerning a disability retirement appeal, the Commission, by resolution, shall refer the matter to the Retirement System Manager who shall obtain such medical information.

Background.

Prior to November, 1976, the Sacramento City Employees' Retirement System (SCERS) was managed by a Retirement Board. This Board, which consisted of seven members - including three designated categories of employee members, was authorized by the City Charter to "be the sole authority and judge under the Charter and such general ordinances . . . to implement or maintain retirement plans of this system, to determine when members may receive and may continue

to receive benefits of any sort under the retirement system." The Retirement Board also had ". . . exclusive control of the administration of such fund or funds as may come into possession of the system . . ." Finally, the Retirement Board was authorized to grant or deny disability retirements and to hear appeals of members regarding such actions (See Article XXVIII, former City Charter).

In November, 1976, the citizens of Sacramento passed Measure E, a ballot measure which contained significant changes to the City Charter, as it regards the administration and management of SCERS. The current language of the City Charter provides for three major components of SCERS: The Administration, Investment and Fiscal Management (AIFM) Board, the Retirement Hearing Commission; and the Retirement System Manager. The following briefly describes the functions of each component.

AIFM Board

The AIFM Board has full authority under the City Charter and City Code to maintain and manage retirement plans of this system, including the adoption of investment standards, the fixing of contribution rates, the administration and investment of funds, the selection of investment advisors, the crediting of interest rates, and any action relating to the fiscal management of the system. (See Section 382, City Charter).

Retirement Hearing Commission

The Retirement Hearing Commission " . . . shall have jurisdiction only to hear appeals as hereinafter described. Any person who has a direct financial interest who is adversely affected by a decision of the retirement system manager with respect to such person's claim for benefits, or claim for a refund pursuant to Charter Section 436, shall have the right to appeal to the retirement hearing commission." (Section 388, City Charter) (emphasis added). It is important to note that prior to Retirement Hearing Commission action on an appeal, such appeal is heard by an Administrative Law Judge assigned to the Office of Administrative Hearings, State of California. The Administrative Law Judge prepares a recommendation concerning the appeal for the Retirement Hearing Commission, including proposed findings of fact and a proposed decision (See Section 388, City Charter).

Retirement System Manager

"The city manager shall appoint a retirement system manager who shall serve as secretary of the board and secretary of the commission. Subject to the provisions of section 388, the retirement system manager shall have full authority under the Charter and such general ordinances as may be lawfully adopted by the city council to determine when and to what extent members may receive or may continue to receive benefits of

any type or kind under the retirement system." (Section 391, City Charter)

To summarize the three component functions, the AIFM Board is charged with the responsibility to manage the various plans and assets of the retirement system, the Retirement System Manager provides day-to-day system administration and determines members' qualifications for benefits, and the Retirement Hearing Commission hears appeals of members who perceive they have been adversely affected by a decision of the Retirement System Manager.

Negotiations Regarding Current SCERS Organization.

Prior to placing Measure E on the November, 1976 ballot, extensive "meet and confer" negotiations were held during 1975-1976 with representatives of recognized City employee organizations. The City was represented during these negotiations by then Assistant City Attorney, David W. McMurtry. Mr. McMurtry has read this staff report and concurs with the background history and description of intent of various City Charter and City Code language, as described herein (See Attachment 1).

Medical Information Regarding Disability Retirement Application.

Specific medical information concerning a member's alleged disability is obtained from two sources. First, the member is required to provide the Retirement System Manager with the names of physicians who have treated the member. In addition, the member is required to sign a medical release form which authorizes the Retirement System Manager to obtain pertinent medical records from applicable physicians and/or medical facilities, in order to evaluate the merits of the disability retirement application (Section 34.1302(b), City Code). If, in the judgment of the Retirement System Manager, additional medical information is required to properly reach a decision, the Retirement System Manager may order the member to participate in such examination(s) (Section 34.1303, City Code).

A review of SCERS provisions contained in the City Charter and City Code clearly indicates that medical information related to a disability retirement application may be generated from only two sources: the member and/or the Retirement System Manager. The fact that the Retirement Hearing Commission does not currently have such authority is by design. This issue was discussed during the "meet and confer" process described above, and was rejected.

Discussion of Issue.

Recently, the Retirement Hearing Commission considered the appeal of the Retirement System Manager's denial of a member's application for industrial disability retirement. The Commission reasoned that it could not reach a decision in this case until a specific medical condition was examined and reported on by a physician. The inability of the Commission to arrive at a

decision because of lack of medical information is extremely rare. Staff believes that this is the only instance where such a situation has developed since the Commission's inception in January, 1977. The Commission directed its counsel to prepare an amendment to City Code Section 34.1404(c) which would remedy this situation (as described previously, the Commission does not presently have such authority). William Carnazzo, Deputy City Attorney and Counsel to the Commission, prepared a proposed amendment to City Code Section 34.1404(c) which provides that in the event that the Commission determines that further medical investigation is required in order to reach a decision, the matter shall be referred to the Retirement System Manager who will obtain such medical investigation (See Attachment 2).

Staff supports this resolution of the issue for the following reasons:

1. The process will expedite the decision making process regarding a member's disability retirement application.
2. The integrity of the SCERS organization and authority as negotiated during 1975-1976 and as defined in the City Charter and City Code will be preserved.

During its Special Meeting on June 3, 1985, the Retirement Hearing Commission modified the proposed amendment to City Code Section 34.1404(c) as follows:

" . . . In referring the matter to the retirement system manager, the commission's resolution shall, to the extent possible, specifically designate the medical issue or issues to be submitted to a physician or physicians to be selected by the retirement hearing commission . . ." (emphasis added).

The responsibility and authority for medical examination for determining disability retirement is clearly defined in Section 34.1303 of the City Code, which is quoted, in part, below:

If ordered to do so by the retirement system manager, any person on whose behalf an application for disability retirement has been filed shall present himself for examinations and be examined by one or more physicians appointed by the retirement system manager to make such examination for the purpose of determining the nature and extent of the alleged disability, injury or illness. All reports and recommendations shall be received and considered by the retirement system manager in acting upon the application for disability retirement. Upon receipt, the manager shall forthwith furnish copies of such reports to the applicant or member. If the member should refuse to appear for a medical examination, the application for disability retirement shall be deemed withdrawn, unless the application was filled by any person other than the member or unless it is determined that just cause exists for said failure or refusal (emphasis added).

In order to achieve consistency of application and impartiality in obtaining medical information concerning individual disability retirement applications, it is important that the authority and responsibility for this function rest with one individual. The City Charter and City Code designate the Retirement System Manager as the individual responsible for this function.

Recent Disability Retirement Actions.

Since the Retirement System Manager is designated to make decisions regarding disability retirements, on behalf of SCERS, it is proper to look, now, at statistical data regarding recent disability retirement actions. The incumbent Retirement System Manager was appointed by the City Manager on December 26, 1981. The following data are inclusive of that date through May 31, 1985.

During the past three years and five months, the Retirement System Manager has received 69 individual member/beneficiary applications for disability retirements and/or industrial death benefits. The Retirement System Manager took the following actions on these applications:

Industrial Disability Retirements Approved - - - - -	32
Industrial Disability Retirements Denied and Ordinary Disability Retirements Approved - - - - -	18
Industrial Disability Applications Denied - - - - -	8
Ordinary Disability Retirements Approved - - - - -	7
Ordinary Disability Retirements Denied - - - - -	1
Industrial Death Benefits Approved - - - - -	1
Industrial Death Benefits Denied - - - - -	2
Total Actions Taken	<u>69</u>

During the same period, 16 decisions of the Retirement System Manager were appealed. The results of these appeals before an Administrative Law Judge are as follows:

Retirement System Manager decisions upheld by Administrative Law Judge - - - - -	10
Retirement System Manager decisions overturned by Administrative Law Judge - - - - -	2
Appeals pending before Administrative Law Judge - - - - -	4
Total Appeals	<u>16</u>

Again, during the same period, the Retirement Hearing Commission considered the 12 appeals heard by the Administrative Law Judge, with the following results:

Retirement System Manager decisions upheld by Administrative Law Judge and the Retirement Hearing Commission - - - - -	4
Retirement System Manager decisions upheld by Administrative Law Judge and overturned by the Retirement Hearing Commission - - - - -	2
Retirement System Manager decisions overturned by Administrative Law Judge and the Retirement Hearing Commission - - - - -	2
Appeals pending before the Retirement Hearing Commission	3
Appeals withdrawn before Retirement Hearing Commission decision - - - - -	1
Total Appeals	12

Recommendation.

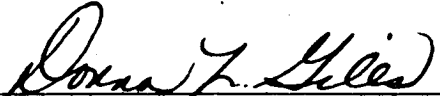
Based on the above, it is recommended that:

1. The Personnel and Public Employees' Committee recommend to the full City Council that Section 34.1404(c) of the City Code be amended as indicated in the proposed City Ordinance shown as Attachment 3.

Respectfully Submitted,

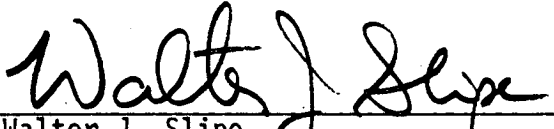

Richard E. Snyder
Retirement System Manager

RECOMMENDATION APPROVED:



Donna L. Giles
Director of Personnel

RECOMMENDATION APPROVED:



Walter J. Slipe
City Manager

Attachments

RES:jk

LAW OFFICES OF
DE LA VERGNE & McMURTRY
A PROFESSIONAL CORPORATION
901 H STREET, SUITE 503
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 441-1978

PLEASE REFER TO
OUR FILE NO. _____

August 5, 1985

RECEIVED

AUG 05 1985

EMPLOYEE SERVICES

Richard E. Snyder
Retirement System Manager
Sacramento City Employees'
Retirement System
801 9th Street, Room 110
Sacramento, CA 95814

Re: Proposed Amendment to City Code Section
34.1404(c)

Dear Dick:

At your request I reviewed the staff report concerning the proposed amendment to Section 34.1404(c) of the City Code.

As you know, in a period between 1975 and 1977, I represented the City of Sacramento in various negotiations relating to Measure E and Chapter 34 of the Sacramento City Code. I drafted the existing language of Section 34.1404(c) following lengthy negotiations with representatives of employee groups. These negotiations concerned the respective roles of the Retirement System Manager and the Retirement Hearing Commission in the processing of disability retirement applications.

It is no accident that under the provisions of Chapter 34 the role of the Retirement Hearing Commission is limited to that of appellate body. Prior to Measure E, the Retirement Board of the City had been directly involved in all matters relating to the processing of disability retirements. City management strongly believed that the new Commission, unlike its predecessor, should serve as an appellate body rather than an initial trier of facts.

LAW OFFICES OF
DE LA VERGNE & McMURTRY
A PROFESSIONAL CORPORATION

Richard E. Snyder
August 5, 1985
Page Two

Negotiations on this issue were heated. They ultimately resulted in an agreement that limited the Commission's powers to interject itself into the process by which medical evidence was obtained by the city staff to evaluate retirement applications. Since the applicant was able to present his or her own medical evidence to the System Manager for review, it was agreed that the applicant was adequately protected in any appeal taken to the Commission.

I personally view the proposed amendment as an attempt to undo a critical component of the negotiated compromises that were embodied in Measure E and the revised Chapter 34.

Very truly yours,

LAW OFFICES OF
de la VERGNE & McMURTRY
A PROFESSIONAL CORPORATION

BY



DAVID W. McMURTRY

DWM:sdb

CITY OF SACRAMENTO



DEPARTMENT OF LAW
812 TENTH STREET
SUITE 201
SACRAMENTO CA 95814
TELEPHONE (916) 449-5346

JAMES P. JACKSON
City Attorney
THEODORE H. KOBEY, JR.
Assistant City Attorney
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
Deputy City Attorneys

May 22, 1985

RECEIVED

MAY 22 1985

EMPLOYEE SERVICES

Retirement Hearing Commission
801 Ninth Street
Sacramento, CA 95814

Honorable Members in Session:

SUBJECT: Proposed Amendment to City Code §34.1404(c)

SUMMARY

It is recommended that the Commission consider the attached draft amendment to City Code §34.1404(c), and direct the Secretary to take the necessary steps to submit it to the City Council for its consideration.

BACKGROUND

At the Commission's last meeting, the City Attorney was requested to draft a proposed revision to City Code §34.1404(c) to allow the Commission to generate medical evidence it determines is lacking in the record but is necessary to a decision of the case.

The attached draft proposed revision addresses that request. While the added language (underlined) is mostly self-explanatory, there are several salient points worth emphasizing. First, where further medical evidence is necessary, the Commission must refer the case back to the retirement system manager with instructions as to the nature of the evidence required. Secondly, the Commission is given the power to order the applicant to undergo an examination, if appropriate, and the consequences of refusal are specified.


If the Commission approves this draft, it should instruct the Secretary to take the necessary steps to present it, in ordinance form, to the City Council. Such steps would include, of course, submitting it to the various labor organizations for their review and comment, in advance of presentation to the Council.

RECOMMENDATION

It is recommended that the Commission consider the attached draft amendment to City Code §34.1404(c), and direct the Secretary to take the necessary steps to submit it to the City Council for its consideration.

Respectfully submitted,

JAMES P. JACKSON, City Attorney


WILLIAM P. CARNAZZO
Deputy City Attorney

WPC:je
Att.

Underlined language to be added to §34.1404(c):

(c) The commission shall base its decision to adopt, modify or reject the proposed findings of fact and proposed decision of the hearing officer solely upon the record before it and any additional evidence which may be admitted by said commission. In the event that the commission, after its review of the record and any additional evidence it has admitted, determines by vote in accordance with Section 34.1414 that further medical investigation on a specific medical issue or issues is required in order to reach a decision, the matter shall by written resolution be referred to the retirement system manager for the purpose of obtaining the required medical information. In referring the matter to the retirement system manager, the commission's resolution shall, to the extent possible, specifically designate the medical issue or issues to be submitted to a physician or physicians to be selected by the retirement system manager. If resolution of the medical issue or issues requires a medical physical examination, the commission's resolution shall so specify and shall order the applicant to submit to the examination. If the applicant refuses to submit to the examination, the commission shall decide the matter in accordance with Section 34.1409(b). When the necessary medical information has been obtained by the retirement system manager, it shall become part of the record of proceedings, and it shall promptly be provided to each party. The matter shall then be calendared for the next regular commission meeting or, where appropriate, for a special meeting. At such meeting the commission shall decide the matter in accordance with Section 34.1409(b).

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE AMENDING SACRAMENTO CITY CODE §34.1404(c), RELATING TO THE RETIREMENT HEARING COMMISSION

BE IT ENACTED BY THE CITY COUNCIL OF SACRAMENTO AS FOLLOWS:

SECTION 1

Sacramento City Code §34.1404(c) is amended to read as follows:

(c) The commission shall base its decision to adopt, modify or reject the proposed findings of fact and proposed decision of the hearing officer solely upon the record before it and any additional evidence which may be admitted by said commission. In the event that the commission, after its review of the record and any additional evidence it has admitted, determines by vote in accordance with Section 34.1414 that further medical investigation on a specific medical issue or issues is required in order to reach a decision, the matter shall by written resolution be referred to the retirement system manager for the purpose of obtaining the required medical information. In referring the matter to the retirement system manager, the commission's resolution shall, to the extent possible, specifically designate the medical issue or issues to be submitted to a physician or physicians to be selected by the retirement system manager. If resolution of the medical issue or issues requires a medical physical examination, the commission's resolution shall so specify and shall order the applicant to submit to the examination. If the applicant refuses to submit to the examination, the commission shall decide the matter in accordance with Section 34.1409(b). When the necessary medical information has been obtained by the retirement system manager, it shall become part of the record of proceedings, and it shall promptly be provided to each party. The matter shall then be calendared for the next

regular commission meeting or, where appropriate, for a special meeting. At such meeting, the commission shall decide the matter in accordance with Section 34.1409(b).

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK