

## MEMORANDUM

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TO: Michael Doweary, Receiver for the City of Chester  
Vijay Kapoor, Chief of Staff to Receiver

FROM: John P. McLaughlin, Esquire, Counsel to Receiver

DATE: December 15, 2021

RE: Analysis of Documents Produced from Pension Administrator on December 13 and  
15, 2021

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On December 13, 2021, and December 15, 2021, James Kennedy, President of Thomas J. Anderson & Associates, Inc., provided me with the documents attached as Appendix A that he believed to be relevant to the Receiver's October 25, 2021 Order (the "Order") that found that the City's pension board was incorrectly calculating the final salary for police retirees hired after January 1, 1988, and directed the City of Chester ("City" or "Chester") Pension Board ("Pension Board") to utilize the correct final salary formula of the average earnings of the retiree's last three years.<sup>1</sup> My review of these documents confirms my previous conclusions that the pension board was improperly utilizing the incorrect final salary formula and raises new, serious concerns regarding actions that the Pension Board and other City officials took in 2009 and thereafter.

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<sup>1</sup> Thomas J. Anderson & Associates (TJA) has been the Pension Administrator for the City of Chester police pension plan since approximately 2009. Mr. Kennedy commenced working for TJA in 2013.

### **Background of Documents Provided on December 13, 2021**

The documents I received included:

- 1) Pension Board minutes which appear to be from an April 22, 2009 meeting where a Pension Board member expressed concern that “a deal is being done and someone getting a benefit that maybe he is not entitled to”;<sup>2</sup>
- 2) Several pension calculation worksheets from 2009 calculating pension benefits for DROP Participants based on their last 12 months of employment;
- 3) Correspondence dated March 15, 2010 from the City of Chester’s Controller, Dalinda Carrero-Papi, to Douglas G. Werley, of TJA office; and
- 4) Correspondence dated March 15, 2010 from Douglas Werley confirming that the firm of Thomas J. Anderson calculated the pension monthly pension benefits of several police and firefighters, per the City’s instructions, using the City’s purported past practice even though the method was contrary to the method stated in the applicable pension ordinances.
- 5) Email correspondence including letters attached to emails dated March 10 and 11, 2010 between Douglas Werley and the City of Chester’s Controller, Dalinda Carrero-Papi<sup>3</sup>

### **Analysis of Documents Provided on December 13, 2021**

After reviewing the documents, I have concluded that the information in the documents confirms the conclusions in my Memorandum of October 25, 2021, (the “Memorandum”).

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<sup>2</sup> The handwriting on the Pension Board minutes was in the original sent to the Receiver by Mr. Kennedy.

<sup>3</sup> The redacted information in the letter relates to personal financial information of individual employees and retirees and is not relevant to the issues discussed in this memorandum.

Additionally, the information in these document raises new, serious concerns regarding actions that the pension board and others took in 2009 and thereafter.

Nothing in the documents establishes that there was any negotiated or binding agreement between the City and the police union to change the final salary calculation from the average of the last three years (the “3 Year Formula”) to the last twelve months the “12 Month Formula”). To the contrary, the discussion in the Pension Board minutes indicates that no such binding agreement existed and, as noted in my Memorandum, no such change was ever made to the collective bargaining agreement language or pension ordinance to codify such a purported binding agreement. While it appears from the documents that the City Controller represented that the City and the Union purportedly wanted to create one pension formula for all officers hired before and after 1988 based on the officer’s last 12 months of employment, absent from the entire discussion was any reference to any collective bargaining agreement or ordinance that authorized any change to the pension benefit calculation formula. Local government does not operate in secret or behind closed doors, and without any such agreement that was properly approved by the City in accordance with applicable law, no one was authorized to make any change to the pension benefit calculation formula. This is particularly true with respect to a decision to significantly enhance a pension benefit at the end of an employee’s service.<sup>4</sup>

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<sup>4</sup> This memorandum mainly discusses the manner in which this change was made. However, the financial significance of this change and the timing of this benefit change cannot be overlooked. The change from the 3 Year Formula to the 12 Month Formula was a very significant pension benefit enhancement and it was being made 20 years after the two-tiered pension benefit structure was created based on officer hired before 1988, who benefited from the 12 Month Formula, and those hired after 1988, whose benefit was to be based on the 3 Year Formula. Thus, officers who were hired 15 or 20 years earlier who worked with the understanding that the 3 Year Formula would apply upon their retirement experienced a sudden benefit windfall. The City had also been funding the pension benefit for those individuals for 20 years based on the 3 Year Formula, which would produce a lower and less expensive benefit than the 12 Year Formula.

The representations by the City Controller that there was an agreement is at odds with the fact that no such written agreement exists and that, as noted in my Memorandum, we spoke with a number of individuals who could reasonably be expected to have knowledge of such an agreement – including the Act 47 Coordinator at the time – and no one had any such knowledge. To the contrary, the 2011 Act 205 Actuarial Valuation Report filed with the Commonwealth which was signed and certified to be correct on December 12, 2011 by Dalinda Carrero-Papi, the same City Controller that represented that there was agreement to change the formula, listed the final salary formula as the final three year average for police officers hired after December 31, 1987. [A copy of the 2011 Act 205 Actuarial Valuation Report is attached as Appendix B.].

Furthermore, there is no evidence that the City or its pension administrator ever performed a cost study to change the pension calculation as required by law. If the changes were made in compliance with the law, a cost study needed to have been performed – particularly on a change as costly as changing the final salary to 12 Month Formula, which is a formula that opened the door to pension spiking. The fact that a cost study was not performed and that there is no signed and properly approved collective bargaining agreement or ordinance reflecting the changes strongly suggests that the changes were never properly agreed upon.

Most concerning are the Pension Board minutes from the April 22, 2009 meeting. These minutes confirm that at least one member of the pension board noted that the contract language did not support the 12 Month Formula that other members of the Pension Board apparently wanted to utilize. The City Controller represented that the City and Union had agreed to the change and even though the pension documents had not been changed and even though the union (and also apparently the City) had not ratified the change, she wanted to go ahead with the new method of calculation and the pension board did so.

While the full minutes are attached to this memorandum, I believe it important to reproduce this section which is an exchange between City Controller Dalinda Carrero-Papi and Pension Board Member Thomas Bright:

“Turning to another matter, the Controller noted that the police ordinance states that any one hired on or after 1988 who becomes eligible for retirement shall have their salary calculated under the average of the last three years of employment as opposed to the last 52 weeks. It is her understanding that the union and the City wish to do away with this 2 tier system and simply allow all officers to retire using a 52 week salary calculation.

Mr. Bright asked whether a contract language change must occur before this can be implemented. Mr. Bright stated that you have an ordinance that states one thing and a CBA that says another. It needs to be changed to be in conformance with the language of the ordinance, right now you are not. There is a conflict. Ms. Carrero-Papi stated that the Union and the Solicitor’s Office on behalf of the City have been in negotiations and discussions with both fire and police and have come to the agreement that everybody desires it to be the 52 week calculation. It is the job of the actuary to prepare the proper paper work so that this 2 tier system can be eliminated. She stated that she does not want to put guys out because the language is one way and then have to change it because of some formality. Mr. Bright asked has anyone reviewed the police contract prior to Marlowe Freeman going out. Ms. Carrero-Bright stated that she met with a union representative and Officer Freeman and it was confirmed that this is the union intention. Mr. Bright stated that this change can't occur without a vote by union membership. Mr. Bright further stated that there is a deal being done and someone getting a benefit that maybe he is not entitled to because of additional language in the contract and he (Mr. Bright) has concerns about that. Ms. Carrero-Papi stated that the two-tier system has been eliminated just by the very fact that they have gone to the twenty and out. She stated that the only thing required is for the City to update their ordinances. Ms. Carrero-Papi states that the DROP indicates that a person is to be pensioned out pursuant to the normal retirement requirements under the contract; the normal retirement is 20 and out.”

From a legal perspective, this exchange is extremely troubling. First, a Pension Board member is raising concerns about the legality of a benefit calculation and is being told by the City Controller that there is an “agreement” by which “everybody desires” but no proof of such written agreement exists. Indeed, the minutes seem to suggest that the City Controller, who has no authority to bind the City to a collective bargaining agreement, met with the police union to

confirm that they wanted the 12 month calculation instead of the last three year calculation. Even if this occurred, it has no legal significance to bind the City to a change in pension benefits and instead raises the question of why the Controller was meeting with the union instead of with City officials, and even more troubling, why the City Controller felt legally authorized to calculate pension benefits in a manner that was inconsistent with the collective bargaining agreement and the ordinance. The minutes clearly confirm that the City Controller and the Pension Board appeared to be aware that the 12 Month Pension Formula that it was going to utilize was contrary to all written agreements and the ordinance.

Furthermore, the statement in the minutes attributed to the City Controller that “she does not want to put guys out because the language is one way and then have to change it because of some formality” is inexplicable. A City Controller, who again has no authority to bind the City to collective bargaining changes, must follow the language in the agreements. The “formality” that she appears to denigrate is in place precisely to avoid the situation that appears to have occurred here. This is not a question of interpretation of language – it is a wholesale benefit change to the way that the final salary is being calculated, one that was very costly to the City, and one that is direct opposition to language in the collective bargaining agreement and pension ordinance.

Additionally, the City Controller is simply wrong in her statement that “the two-tier system has been eliminated just by the very fact that they have gone to the twenty and out.” As noted in my Memorandum, the change in the 2005 MOU that established the 20 years and out had no impact on the final salary calculation which remained at the last three years. Indeed, the 2011 and 2013 Act 205 Actuarial Valuation Reports that were filed with the Commonwealth listed the final salary as the last three years, i.e. the 3 Year Formula, even as they accounted for

the 20 years and out provision. As noted earlier, Ms. Carrero-Papi even signed the 2011 valuation report certifying it to be correct on December 12, 2011. Her signature on the 2011 valuation report also contradicts her assertion that the pension benefit calculation formula was changed by a purported agreement, her stated intent to use the 12 Month Formula as reflected in the April 22, 2009 Pension Board Minutes, and her letter to the pension administrator to use the “usual method of calculation” for post-1988 hires.

Pension board members have an obligation to manage these funds in compliance with the law. No action should have been taken to change the final salary calculation until all legal “formalities” were met, including all requirements under Act 205.

### **Conclusion**

The documents provided confirm that based on this additional information, the Memorandum and the Receiver’s Order from October 25, 2021 are valid and even more necessary. None of the documents refer to any collective bargaining agreement, contract, ordinance, or pension cost impact study that would support let alone justify the expensive pension changes that the majority of the Pension Board wanted to and did implement in 2009-2010. That is precisely the conclusion of the Memorandum that supported the Order. In fact, there is no proof that any agreement was ever reached relating to changing the pension calculation formula, or that if it did exist, it was approved in accordance with applicable law. The documents reflect at best a cavalier approach to the management of the pension fund and raise questions about whether the Pension Board at the time and other City Officials fulfilled their fiduciary responsibility to the pension plan, the City, and retirees.

# Appendix A

## Documents Received on December 13, 2021

- 1) Pension Board minutes which appear to be from an April 22, 2009 meeting
- 2) Several pension calculation worksheets from 2009 calculating pension benefits for DROP Participants based on their last 12 months of employment;
- 3) Correspondence dated March 15, 2010 from the City of Chester's Controller, Dalinda Carrero-Papi, to Douglas G. Werley, of Mr. Kennedy's office; and
- 4) Correspondence dated March 15, 2010 from Douglas Werley confirming that the firm of Thomas J. Anderson calculated the pension monthly pension benefits of several police and firefighters, per the City's instructions, using the City's purported past practice even though the method was contrary to the method stated in the applicable pension ordinances.
- 5) Email correspondence including letters attached to emails dated March 10 and 11, 2010 between Douglas Werley and the City of Chester's Controller, Dalinda Carrero-Papi

# Appendix A1

DALINDA CARRERO-PAPI  
CONTROLLER



(610) 447-7766

CITY OF CHESTER PENSION FUND BOARD  
August 12, 2009

AGENDA

Call Meeting To Order

Roll Call: Mayor Wendell Butler  
Councilor Willie Wells  
Councilor Shepard Garner Jr.  
Councilor Walter Miles  
Thomas Bright  
Officer James Carr  
Battalion Chief Charles Bolgunas  
F.F. Michael Archacki  
John Mezzarone  
Irene Tucker  
Linda A. Cartisano, Esquire  
Dalinda Carrero-Papi

Minutes from Last meeting

Pensions to be approved

Old Business

Review of Quarterly Report

Questions

Mike Glackin

Adjournment

PENSION BOARD MINUTES  
April 22, 2009

A meeting of the City of Chester Aggregated Pension Fund Board was called to order by Dalinda Carrero-Papi, Esquire, Controller.

The following members were present and answered:

Mayor Wendell Butler  
Councilor Willie Wells  
Councilor Shepard Garner  
Councilor Walter Miles  
Officer James Carr  
Thomas Bright  
Battalion Chief Charles Bolgunas  
F.F. Michael Archacki  
John Mezzerrone  
Irene Tucker  
Dalinda Carrero-Papi

Minutes of last meeting were approved by all, with the exception of Mr. Thomas Bright who stated that he would like to discuss his April 22, 2009 vote for Officer Freeman with Ms. Carrero-Papi after the meeting. Ms. Carrero-Papi asked Mr. Bright to state his concerns before the Board. Mr. Bright responded that he wished to change his vote from a yes with respect to Officer Freeman's entry into the DROP program to an abstention. The Controller asked Mr. Bright to state his reasons for the record, but Mr. Bright declined stating that they were personal. The Board did not object to Mr. Bright's desire to change his vote to an abstention. Motion to approve the minutes was made by John Mezzerrone (with noted change) and seconded by Councilor Garner. All in favor. None opposed.

**PENSIONS TO BE APPROVED**

The quarterly report listing the pensions being submitted for Board approval was reviewed by the City Controller. She noted the following corrections: Charles Bolgunas' DROP entry date should be listed as May 1, 2009 with a separation date of April 30, 2014. John Powers' DROP retirement effective date should be May 1, 2009 and the separation date should be April 30, 2014.

The following proposed DROP entries/retirements were submitted to the Board: Battalion Chief Charles Bolgunas - Motion made by Firefighter Archacki to approve the DROP entry and future retirement of Battalion Chief Charles Bolgunas. This motion was seconded by Officer Carr. All in favor. None opposed. Motion carried.

Battalion Chief John Powers - Motion made by Firefighter Archacki to approve his DROP entry/future retirement and it was seconded by Battalion Chief Bolgunas. All in favor. None opposed. Motion carried.

Battalion Chief John Gresch. Motion made by Firefighter Archacki to approve Battalion Chief John Gresch's request to enter the DROP/retirement. Said motion was seconded by Counciler Willie Wells. All in favor. None opposed. Motion carried.

Firefighter Frank Samsel. A motion was made by Battalion Chief Charles Bolgunas to approve Firefighter Frank Samsel's DROP entry request and retirement. This was seconded by Officer James Carr. All in favor. None opposed.

The Controller noted that with respect to the pensions of Bolgunas, Powers, and Gresch, the numbers presented to the Board were based on the last 52 weeks dating back from April 2009. She further noted that she will be adjusting these calculations to take into account the 52 week pay period dating back from May 1, 2009.

### **NEW BUSINESS**

It was presented to the Board by the Controller that Firefighter Frank Debellis is seeking certification from the Pension Board as a necessary step to returning back to work. Specifically, under the firemen's ordinance, when an employee is attempting to return to work claiming that he or she is no longer restricted, he or she must make application to the City and provide medical documentation. The Board then certifies that the individual has provided the necessary medical documentation. It is then up to Mayor and Council to decide whether or not to rehire that individual. Mr. Debellis has provided two doctor's notes to the City. The requirement is three, but it is unclear whether or not Human Resources has the third. Councilor Wells asked if the doctor's notes were issued by doctors recommended by the City or doctors that Mr. Debellis independently visited. Ms Carrero-Papi believes that these are doctors engaged by the City to review Mr. Debellis' condition.

Mr. Bright asked if this is protocol for all City employees to follow the aforementioned procedure. The Controller responded that this is the procedure under the fire ordinance and she would have to look further to determine if the same requirement exists for Police and O&E.

Councilor Shepard Garner questioned whether or not the doctors, in reviewing Mr. Debellis's condition, had any information regarding the duties of a firefighter and whether he gave an opinion as to whether Mr. DeBellis would be able to meet those duties under the job description. Ms. Carrero-Papi noted that these questions go more toward the merit of whether or not Mr. Debellis should be brought back to work as opposed to whether or not he has met the requirement to provide the relevant doctor's notes. The Controller questioned

whether this matter should be tabled. Firefighter Archacki motioned to certify Mr. Debellis; this was seconded by Mr. Thomas Bright. Councilors Garner and Miles abstained, Mayor Butler voted nay. All others were in favor.

Later in the meeting Ms. Carrero-Papi was able to reach both the Human Resource Director and the City Solicitor to verify that only two doctor's notes were received by the City relating to Mr. Debellis's condition. Given that the ordinance requires three doctors notes, the Board agreed to table this matter pending receipt of a third doctor's note.

Turning to another matter, the Controller noted that the police ordinance states that any one hired on or after 1988 who becomes eligible for retirement shall have their salary calculated under the average of the last three years of employment as opposed to the last 52 weeks. It is her understanding that the union and the City wish to do away with this 2 tier system and simply allow all officers to retire using a 52 week salary calculation .

Mr. Bright asked whether a contract language change must occur before this can be implemented. Mr. Bright stated that you have an ordinance that says one thing and a CBA that says another. It needs to be changed to be in conformance with the language of the ordinance, right now you are not. There is a conflict. Ms. Carrero-Papi stated that the Union and the Solicitor's Office on behalf of the City have been in negotiations and discussions with both fire and police and have come to the agreement that everybody desires it to be the 52 week calculation. It is the job of the actuary to prepare the proper paper work so that this 2 tier system can be eliminated. She stated that she does not want to put guys out because the language is one way and then have to change it because of some formality. Mr. Bright asked has anyone reviewed the police contract prior to Marlowe Freeman going out. Ms. Carrero-Papi stated that she met with a union representative and Officer Freeman and it was confirmed that this is the union intention. Mr. Bright stated that this change can't occur without a vote by union membership. Mr. Bright further stated that there is a deal being done and someone getting a benefit that maybe he is not entitled to because of additional language in the contract and he (Mr. Bright) has concerns about that. Ms. Carrero-Papi stated that the two-tier system has been eliminated just by the very fact that they have gone to the twenty and out. She stated that the only thing required is for the City to update their ordinances. Ms. Carrero-Papi states that the DROP indicates that a person is to be pensioned out pursuant to the normal retirement requirements under the contract; the normal retirement is 20 and out.

Councilor Wells asked if Officer Marlowe Freeman was voted on. Ms. Carrero-Papi informed her that he was voted on at the last meeting.

Ms. Carrero-Papi asked Battalion Chief Bolgunas if this two tiered pension calculation method was a problem for the fire as well (52 weeks vs. average 5 year salary). The response by both Chief Bolgunas and Firefighter Archacki was that this is causing problems for the upcoming firefighter retirees/DROP

participants. Ms. Carrero-Papi stated that in light of her discussions with the Union and the Solicitor's Office, she would also have the actuary review this firefighter issue.

Mr. Bright questioned whether anyone was taking the time to look at the police contract as it relates to the police DROP program. Specifically, Mr. Bright stated that the contract says that police officers that retire with a flat 20 years may not join the DROP. Ms. Carrero-Papi stated that she does not believe this to be an accurate quote of the DROP provision but she would look into it. Ms. Carrero-Papi noted that the DROP indicates a participant may qualify for the DROP if they meet normal retirement requirements, and under the police contract, normal retirement is 20 years of service. Firefighter Archacki noted that if there is a conflict between the contract language and the DROP, this is something that has to be worked out with the City and the Union and cannot be superseded by the Pension Board.

### **OLD BUSINESS**

It was noted that Frank Samsel exited the DROP early and would be receiving his DROP lump sum along with his monthly pension effective on or after April 3, 2009.

### **INR Presentation by Mike Glackin**

Mr. Glackin presented the quarterly investment portfolio.

No other business was discussed. Meeting adjourned.