



## **Taxation, Revenue and Utilization of Expenditures**

### **(TRUE) Commission**

#### **SPECIAL PFPF PENSION FUND REPORT**

**October 2013**

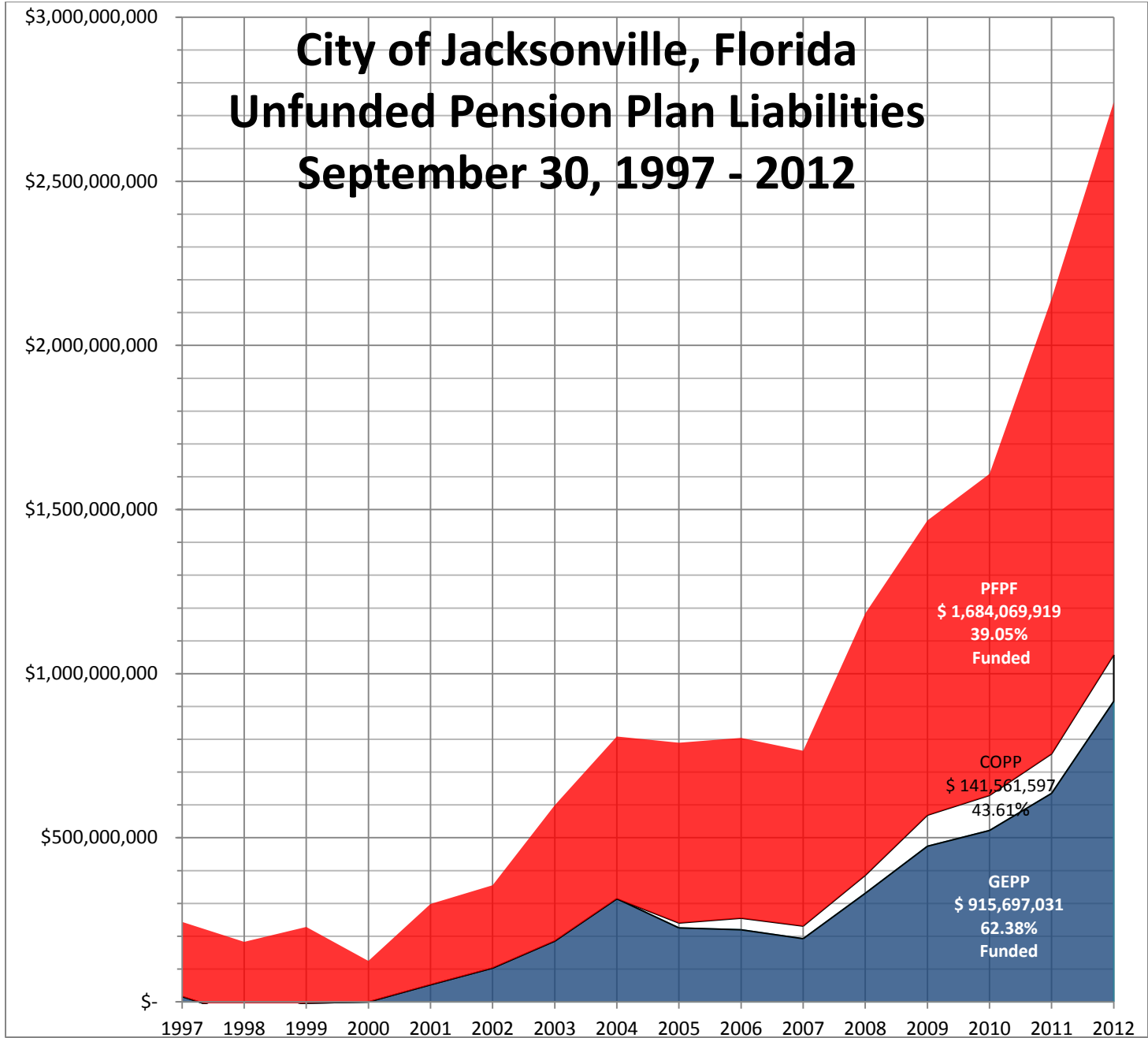
**Subcommittee Chair**

**Ted Wendler**

**Subcommittee Commissioners**

**Patti Anania, Joe Andrews, Danny Becton, Diane Brown, John Campbell, James Edwards, Keith Johnson, Marcella Lowe, Tom Martin, Greg Radlinski,**

# City of Jacksonville, Florida Unfunded Pension Plan Liabilities September 30, 1997 - 2012



## TRUE Commission Conclusions

The public has been concerned that the City cannot afford the Police and Fire Pension Fund. The TRUE Commission has concluded that affordability is a valid concern. In May of this year, the Administration, the PFPF and the Police and Firefighters Union came to terms on changes to the pension plan that purportedly would have saved the City \$1.1B over 30 years. It should be noted that the bulk of those saving would only have been realized in approximately 23 years from now. Until then, the City would still have to make payments each year ranging from \$150 million to over \$400 million by 2036 – if the actuaries are right. The problem with this current solution is that it leaves those already in the pension plan unaffected. By not addressing the current employees, the so-called option only addresses half the problem, leaving the next 23 years of escalating payments, unresolved. Under any solution, the TRUE Commission emphasizes that all future payments have to be reasonable and practical as to the City’s capacity to make those payments. City Council, in 2013-14 budget cycle, restored many proposed cuts in spending and opted for a millage increase. The budget short-fall is directly, but not solely, related to pensions.

On June 13, 2013 the TRUE Commission unanimously passed Resolution 2013-2 in opposition to the enactment of Ordinance 2013-366, The Mayor’s Pension Fund Settlement Agreement with the PFPF. The Council President discharged the bill from the committee on July 23, 2013 and the City Council rejected the passage of the bill by a vote of 13-6.

In implementing any changes to the Police and Fire Pension Plan the Jacksonville City Council will have to balance any savings and cost increases against the recruitment and retention of the City’s Police and Fire services. Additionally, it is important to note that employees on the City’s pension plans, are not covered by Social Security and therefore the City does not contribute to Social Security as a benefit. For employees hired before 1986, neither the City nor the employees contribute 1.45% to Medicare - therefore Medicare is not available to these employees.

The TRUE Commission concludes that two questions must be answered to resolve the financial problem with the PFPF. Those questions are:

- A. Is the 30 Year Agreement Valid?<sup>1</sup>
- B. Can Benefits be modified for current non-vested employees?<sup>2</sup>

---

<sup>1</sup> “In short, PERC decides who can and can’t collectively bargain on behalf of public employees. Similarly, in what may seem obvious, §447.309(5), Fla. Stat., is included in Part II, Chapter 447. Violations of it, too, are preempted in favor of PERC...the legislature intended for the PERA “to provide an exclusive method for resolving labor disputes between public employers and public employees, with the Public Employees Relations Commission (PERC) having preemptive jurisdiction over such matters.” Lee vs. City of Jacksonville, 4th Judicial Circuit, Duval County, Fla. (Case No. 16-2011-CA-4348) [Exhibit A]

“The Commission does not have the authority to independently investigate any alleged improper conduct; rather, it adjudicates unfair labor practices filed by public employees, employee organizations or public employers pursuant to Section 447.501 (1) and (2), Florida Statutes (2011). Thus, unless a charge is filed, the Commission would not have the authority to intervene in any matter related to the City’s pension plans. Consequently, at this time the Commission is unable to assist in this matter.” [Exhibit B]

The Office of General Counsel emails indicate the agreement is illegal and contrary to public policy. [Exhibit C]

<sup>2</sup> The amendment contained in section 17 of chapter 2011-68, Laws of Florida, completely eliminated the COLA for all service performed after the effective date of the act. For employees who were members of the FRS prior to July 1, 2011, their COLA will be calculated as follows: The COLA factor “shall equal the product of 3 percent multiplied by the quotient of the sum of the member’s service credit earned for service before July 1, 2011, divided by the sum of the member’s total service credit earned.” Ch. 2011-68, § 17, at 1053, Laws of Fla., amending section 121.101(4)(c), Florida Statutes. However, under the 2011 amendments, “[s]ubject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the expiration of the cost-of-living adjustment specified in subsection (4), in accordance with s. 14, Art. X of the State Consti-

In anticipation of the answers to these questions from the courts or PERC, the TRUE Commission offers the following points that should be considered:

**If the 30 Year Agreement is found to be Valid and benefits for current employees are Non-Negotiable:**

- ❖ Consider transferring surplus City owned property to PFPF to fund City's obligations. However, real estate is easier to buy than to sell and is not easily converted to cash for pension benefits. It might be better to sell surplus property to a taxable buyer at fair-market-value (generate tax revenue) and use the proceeds to reduce the unfunded liability. Transferring additional property to PFPF lacks sufficient diversity in this class of assets. Diversified and professionally managed Real Estate Investment Trusts (REITs) should be considered for PFPF investments in real estate. They are traded on the open market and easily convertible to cash.
- ❖ Consider terminating the Restated Agreement under clause 31 and 32.<sup>3</sup> The City Council should have the actuary determine the "Accumulated Benefit Obligation" (ABO) so the cost of terminating the current plan and replacing it with another plan, including defined contribution or a hybrid plan can be considered.
- ❖ City issuance of "Pension Obligation Bonds" (POB) at current reduced interest rates, which is an unreasonably risky alternative. The City currently pays interest on the unfunded liability (UAAL) at the PFPF assumed rate of return (currently 7%). If POBs are issued and there is a subsequent downturn in the economy the City has lost borrowed money and may not be able to borrow more.<sup>4</sup> After the recent financial crisis, most POBs issued since 1992 are in the red. Nevertheless, it appears that POBs have the potential to be useful tools in the hands of the right governments at the right time. Issuing a POB may allow well-heeled governments to gamble on the spread between interest rate costs and asset returns or to avoid raising taxes during a recession. Unfortunately, most often POB issuers are fiscally stressed and in a poor position to shoulder the investment risk. As such, most POBs appear to be issued by the wrong governments at the wrong time.<sup>5</sup>
- ❖ Investigate the possibility of transferring PFPF to Florida Retirement System.<sup>6</sup>
- ❖ Adjust the COLA as described in Scott vs. Williams, 107 So 3d 379 (Fla. 2013), p.4, Footnote 3, (See footnote 2 in this document).
- ❖ Raise taxes, in conjunction with forecasted increase in City's Annual Required Contributions (See Graph 7).
- ❖ Negotiate future COLA based on Fund performance and the absence of an unfunded liability (UAAL).
- ❖ Negotiate future City and employee contribution rates.

---

tution, the cost-of-living adjustment formula provided for in subsection (4) shall expire effective June 30, 2016, and the benefit of each retiree and annuitant shall be adjusted on each July 1 thereafter, as provided in subsection (3)." See id. Section 121.101(3), as amended in 2011, continues to provide a 3% cost-of-living adjustment to those persons who retired prior to July 1, 2011. [Florida Supreme Court No. SC12-520, p.4, Footnote 3, January 17, 2013]

<sup>3</sup> "31. This Agreement shall have a term extending to September 30, 2030. If for any reason the term shall be challenged as a matter of law, the term of this Agreement shall not be less than the minimum term allowed by law. The terms of this Agreement shall control beyond the expressed term hereof until such time as either party is notified in writing by certified mail, return receipt requested as to its Intention to terminate.

32. The City and the Board of Trustees of the Police and Fire Pension Fund shall meet no later than January 1, 2005, and periodically thereafter to review the provisions of this Agreement, which either party wishes to address. Such future discussion shall be guided by a mutual desire to ensure the continued application of terms and conditions that are fair and equitable given circumstances that may present themselves in the future that are not currently addressed nor presently anticipated by the parties hereto upon execution of this Restated Agreement."

<sup>4</sup> <http://www.governing.com/topics/public-workforce/pensions/gov-pension-obligation-bonds-risky-or-smart.html> [Governing Magazine January 2013]

<sup>5</sup> <http://crr.bc.edu/briefs/pension-obligation-bonds-financial-crisis-exposes-risks/> [Center for Retirement Research at Boston College, Number 9, January 2010, p.6]

<sup>6</sup> Part I of Chapter 121, Florida Statutes, and Chapter 60S of Florida Administrative Code.

- ❖ Negotiate future new hire benefits similar to 2013-366 and only as it applies to new employees.
- ❖ Re-evaluate PFPF investment policies. Remember higher returns present greater risk for the taxpayers.

**If the 30 Year Agreement is found to be Invalid and the benefits of all current employees are Negotiable:**

- ❖ Change vesting dated based on the number of years over a gradual implementation (Example as provided):
  - 5 Years to Retirement – No Change, 20 Years
  - 6 – 10 Years to Retirement – 23 Years
  - 11 – 15 Years to Retirement – 26 Years
  - 16 – 20 Years to Retirement – 30 Years.
  - New Employees—increase time service retirement eligibility to 30 years of service and delay receipt until retiree reaches age 62.
- ❖ Change the DROP Plan based on the number of years to retirement - a gradual implementation:
  - 10 Years to Retirement – No Change
  - 11 –20 Years to Retirement – No DROP
  - New Employees, No DROP.
- ❖ Base COLA on an adjustable COLA Index (Currently constant 3%) - capped at an agreed percentage.
- ❖ Increase employee contribution rate. (Currently 7%)
- ❖ Salary Basis – Increase number of months (Currently 24 Months)
- ❖ Cap maximum retirement benefit (Payout of Salary), currently 80%, at a dollar figure, for example \$99,999 regardless of years of service or final or averaged salary.
- ❖ Adjust accrual rate – (Currently 3% for 1-20 years; 2% for next 10 years)
- ❖ Consider transferring surplus City owned property to PFPF to fund City’s obligations. However, real estate is easier to buy than to sell and is not easily converted to cash for pension benefits. It might be better to sell surplus property to a taxable buyer at fair-market-value (generate tax revenue) and use the proceeds to reduce the unfunded liability. Transferring additional property to PFPF lacks sufficient diversity in this class of assets. Diversified and professionally managed Real Estate Investment Trusts (REITs) should be considered for PFPF investments in real estate. They are traded on the open market and easily convertible to cash.
- ❖ Raise taxes, in conjunction with forecasted increase in City’s Annual Required Contributions (See Graph 7).
- ❖ Negotiate future new hire benefits similar to 2013-366 and only as it applies to new employees.
- ❖ Add a fifth member of the Pension Board - appointed by City, based on City’s fiduciary responsibility, for future pension values and returns.
- ❖ Add employee options of receiving; (1) monthly benefit through employee’s lifetime with no benefit to a survivor, (2) reduced monthly benefit but with a guaranteed 10 year benefit to the beneficiary when employee retires, (3) give continued reduced benefit to both employee and a survivor throughout the employee’s and survivor’s lifetime and (4) an adjusted benefit for employee and survivor but reduced benefits on the event of death of either one.

The TRUE Commission realizes that any solution will involve negotiation of one or more of the above components. Furthermore, the City’s actuary must also agree that the resulting changes and projections are realistic and future payments are affordable. It is to the benefit of all, that a solution to this problem be solved soon!

## Pension Plan Background

Article 16 of the City Charter for the City of Jacksonville established the retirement and pension system for the Consolidated Government. As many of its employees and the City did not contribute to Social Security, the Police & Fire Pension Plan was created to provide a retirement package for the active employees of the Jacksonville Sheriff's Office and Fire and Rescue Department, with the exception of the civilian workforce.

Up until 1971 the plan was administered on a pay-as-you-go basis (PAYGO), i.e. pension benefits were paid to pensioners from current tax revenues with no funds set aside for future pension obligations, creating an unfunded liability for future pension benefit payments. That system was discontinued and replaced by the staircase funding method in which the City agreed to fund up to a level of 73.8% for the GEPP and 35.9% for PFPF of future pension benefits by 1991. Originally that funding level was to remain in place until 2011. In 1976 the staircase funding method was abandoned and replaced with the 20% funding system, where the City funded the plan with 20% of payroll instead of 8%, creating a Pension Excess Contribution account.

DROP was created in 1999, which led to a high retirement participation rate, and the City elected to establish a 0% employer contribution policy while employees contribute 2%. During this time the city guarantees 8.4% return on DROP funds.

In FY2003 the City elected to use excess contributions accumulated through the City's 20% funding method to satisfy the Annual Required Contribution (ARC). The holiday was discontinued in FY2008 and the City paid the Annual Required Contribution in full on a yearly basis. Up until FY2005 the pension fund received 30% of court fines and penalties, but reorganization of the Court system required this share be relinquished to the State of Florida (Article V).

### **PFPF Board of Trustees**

Article 22 of the City Charter established the Police & Fire Pension Board of Trustees. The Board consists of 5 members: two are appointed by the City Council (although there is a movement towards three); one each is selected by the police and fire pension fund members; the fifth member is selected by the first four members and is submitted to the City Council for approval and appointment. All serve for a term of four years.

Under Section 22.04 the Board has the sole and exclusive responsibility to administer the Police and Fire Pension plan. The Board shall cause an annual determination to be made by a competent actuary of the liabilities and reserves of the pension plan and the annual determination of the amount of the contributions required by the city; and maintain the funds of the pension plan on a sound actuarial basis. Anytime there are changes in the plan, the Board of Trustees is to be consulted first. Despite the fact that the Board's responsibility is to administer pension funds, not negotiate benefits, there is a history of the Board leadership negotiating and authoring city ordinances stipulating increases in retroactive and future benefits:

- Ordinance 91-1017 and Signed Agreement
- Ordinance 93-1983-1407-E (implemented COLA in response Ordinance 93-99-41 GEPP COLA Ordinance 97-1103-E
- Ordinance 2000-1164-E & Signed Agreement (shortened period for 80% pension from 32 years to 30 years of service).
- Ordinance 2003-303-E & Unsigned Agreement

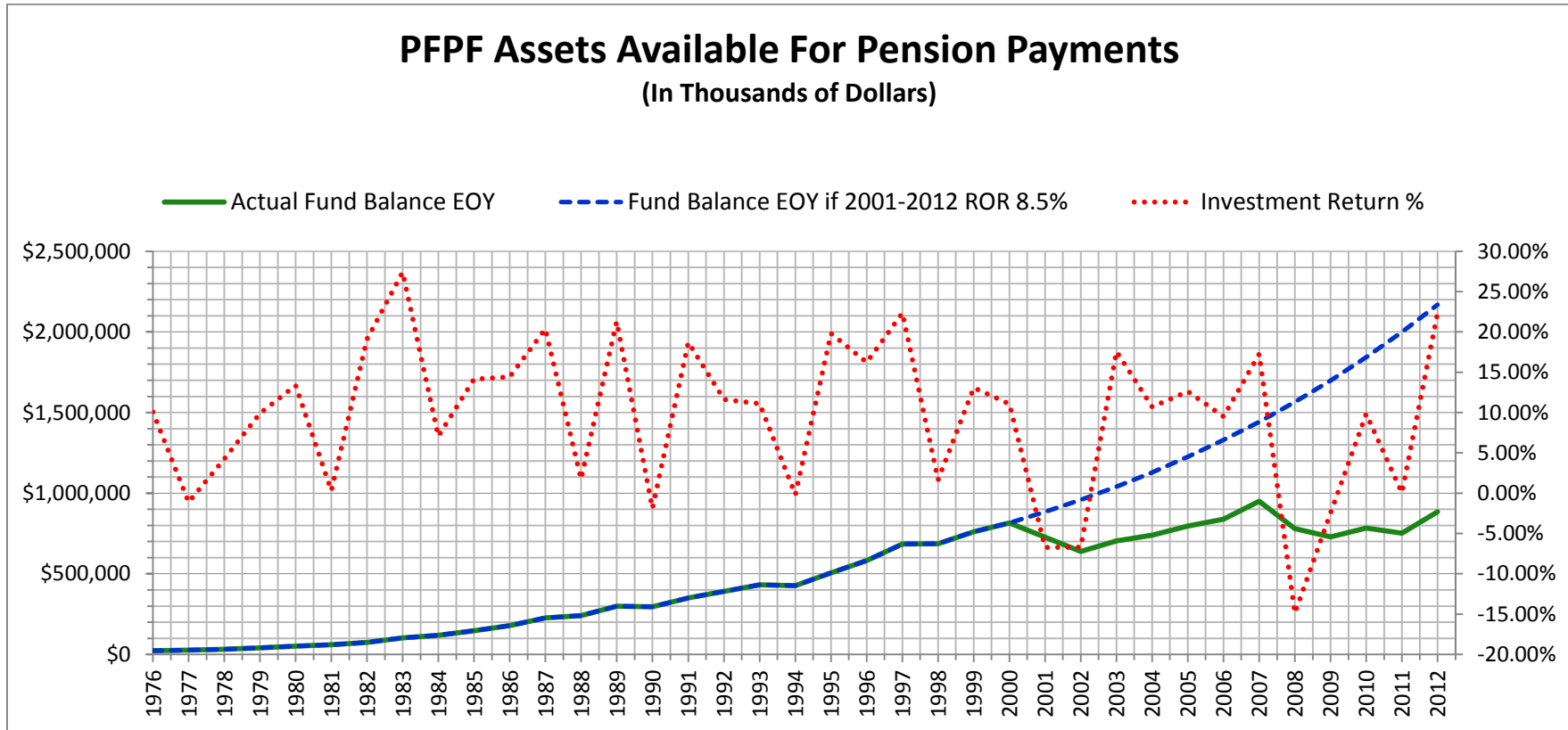
## Lawsuits

There are four lawsuits filed in response of the changes of the Police & Fire Pension plan:

- In 2010, the Jacksonville Association of Firefighters filed a lawsuit against the City over the status of the thirty years agreement. [Duval County Circuit Court Case No.16-2010-CA-001494]
- In 2011 Curtis Lee and Concerned Taxpayer of Duval County (CTDC) filed a lawsuit against the City and the Police & Fire Pension Board of Trustees for violation of Florida's Government in the Sunshine law by negotiating public employee retirement benefits in private meetings that were not noticed as required by law. Also, that the thirty year settlement agreement between the City and PFPF is in violation of state law that limits collective bargaining agreement to a maximum of three years. [Case # 16-2011-CA-4348 Division CV-A]
- Three firefighters and a police officer (R. Wyse, L. Jones, M. Roberts & L. Norris v. COJ & PFPF Board of Trustee (2/6/13)) filed a lawsuit to defend the status of the 30 year agreement between the City and PFPF board and to prevent the City from attempting to negotiate potential changes to the pension system directly with the unions instead of with the PFPF board.[ Wyse et.al. v. City of Jacksonville et. al. United States District Court, Middle District of Florida, Case No. 3:13-cv-00121-MMH-MCR]. This case led to the Mediation Settlement Agreement and Ordinance 2013-366 which City Council did not pass.
- The Florida Times-Union filed a lawsuit regarding (1) The Mediation Settlement Agreement constitutes official action taken by the City of Jacksonville and the Pension Fund Board.(2) The mediation was not open to the public and was not declared to be open to the public. (3) The mediation procedure was in violation of the Sunshine Law. "Because Section 286.011 was enacted in the public interest to protect the public from 'closed door' politics, the law must be broadly construed to effect its remedial and protective purpose." [Case #: 2013-CA-5799]

## The Police and Fire Pension Fund

The Police and Fire Pension Fund (PFPF) had a \$ 1,684,069,919 unfunded liability (UAAL)<sup>7</sup> at the end of the last fiscal year (9/30/2012). It will continue to increase for a number of years. The PFPF is 39.05% funded to meet future benefit payments. There are five factors that can affect a UAAL: (1) City contributions; (2) The assets and earnings in the Plan; (3) The calculation of future pension benefits; (4) Changes in actuary's assumptions (5) Changes in the assumed Rate of Return.



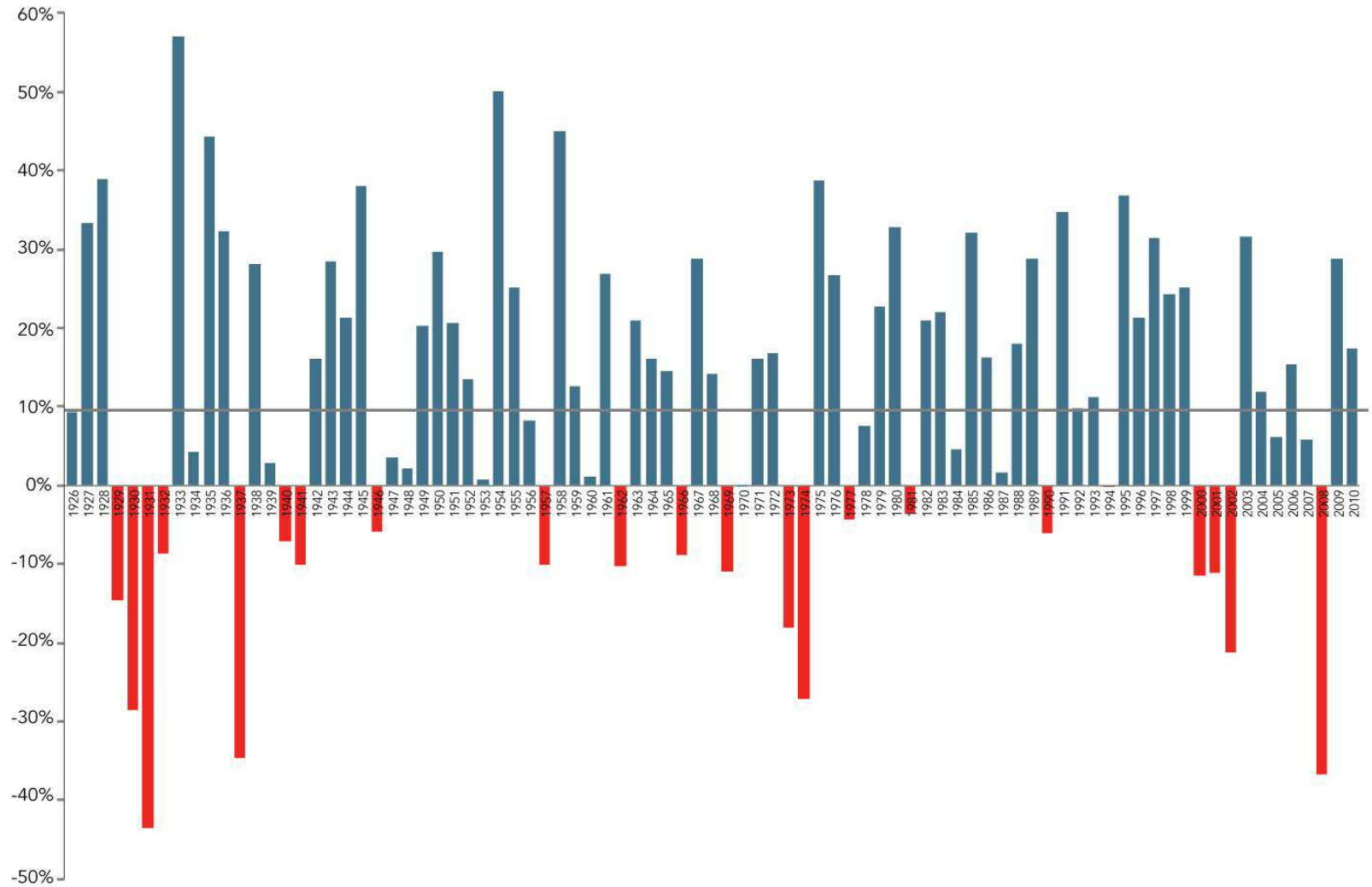
Graph 1

<sup>7</sup> The Government Accounting Standards Board (GASB) officially defines UAAL as “the difference between the actuarial accrued liability and the actuarial value of assets accumulated to finance” a public pension. In simpler terms, if you compare the cost of PFPF pension promises with the actuarial value of PFPF assets, the promises currently exceed the assets. That shortfall is the PFPF Unfunded Actuarial Accrued Liability. A fully funded pension system with no UAAL generally means that all of the actuary's assumptions about the cost of the fund and growth of liabilities have been met, and the present value of the system's accumulated assets are sufficient to pay out the pension promises to plan members.



# US Stock Market Returns

CRSP Deciles 1-10 Annual Performance (1926-2010)



Source: Center for Research in Security Prices, University of Chicago.

Illustration of Market History

Graph 2

## Has the City Made the Annual Required Contributions?

According to independently audited financial statements and actuarial reports, the COJ has paid at least 100% of the ARC every year. The yearly ARC is made up of two parts.

- 1) The Normal Cost <sup>8</sup>
- 2) A payment respecting the Unfunded Actuarially Accrued Liability (UAAL). <sup>9</sup> Each UAAL is paid over a 30 year period with interest at the Plan's assumed rate-of-return.

Critics of the City often claim that occasionally it did not make an Annual Required Contribution. That, they say, is a "pension holiday." However, the City has paid 100% of its Annual Required Contribution to the PFPF each and every year. See page 15 ("Did the City take Pension Holidays?") for further discussion.

---

<sup>8</sup> The Normal Cost is the sum of the individual normal costs for all active participants. For an active participant, the normal cost is the participant's normal cost accrual rate multiplied by the participant's current compensation. The normal cost accrual rate equals

(i) The present value of the future benefits for the participant, determined as of the participant's entry age, divided by

(ii) The present value of the compensation expected to be paid to the participant for each year of the participant's anticipated future service, determined as of the participant's entry age. In calculating the present value of future compensation, the salary scale is applied both retrospectively and prospectively to estimate compensation in years prior to and subsequent to the valuation year based on the compensation used for the valuation. The accrued liability is the sum of the individual accrued liabilities for all participants and beneficiaries. A participant's accrued liability equals the present value, at the participant's attained age, of future benefits less the present value, at the participant's attained age, of the individual normal costs payable in the future. A beneficiary's accrued liability equals the present value, at the beneficiary's attained age, of future benefits. The unfunded accrued liability equals the total accrued liability less the actuarial value of assets. Under this method, the entry age used for each active participant is the participant's age at the time he or she would have commenced participation if the plan had always been in existence under current terms, or the age as of which he or she first earns service credits for purposes of benefit accrual under the current terms of the plan.

<sup>9</sup> The funding requirements are defined in Florida Statutes 112.64(2) "From and after October 1, 1980, for those plans in existence on October 1, 1980, the total contributions to the retirement system or plan shall be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, nothing contained in this subsection permits any retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule."

## Has the Fund Earned the Assumed Rate of Return?

Has the PFPF earned the assumed rate-of-return (8.5% thru 2011), (7.75% in 2012) & (7% in 2013) per year?

The average rate-of-return for the PFPF:

1981 – 1990 = 12.4%    1991 – 2000 = 12.54%    2001 – 2012 = 5.76%    **1976 – 2012 = 9.59%**

The actual annual rate-of-return is shown in the first graph as a red dotted line – it varies considerably.

The average rate-of-return is not a very good measure of PFPF performance. For example, if you start with a \$ 100 investment and there is a market loss of 30% in one year, it takes nine years at 10% (not 3 years X 10%) to get back to where your investment would have been five years earlier without the market loss – six years of compounded returns have been lost. At 8.5% it takes more than ten years.

	No Losses			Make up for Loss @ 10%			Make up for Loss @ 8.5%		
	Start Balance	Rate of Return	End Balance	Start Balance	Rate of Return	End Balance	Start Balance	Rate of Return	End Balance
Year 1	100.00	8.50%	108.50	100.00	-30%	70.00	100.00	-30%	70.00
Year 2	108.50	8.50%	117.72	70.00	10%	77.00	70.00	8.5%	75.95
Year 3	117.72	8.50%	127.73	77.00	10%	84.70	75.95	8.5%	82.41
Year 4	127.73	8.50%	138.59	84.70	10%	93.17	82.41	8.5%	89.41
Year 5	138.59	8.50%	<b>150.37</b>	93.17	10%	102.49	89.41	8.5%	97.01
Year 6				102.49	10%	112.74	97.01	8.5%	105.26
Year 7				112.74	10%	124.01	105.26	8.5%	114.20
Year 8				124.01	10%	136.41	114.20	8.5%	123.91
<b>Year 9</b>				136.41	10%	<b>150.05</b>	123.91	8.5%	134.44
<b>Year 10</b>							134.44	8.5%	145.87
<b>Year 11</b>							145.87	8.5%	<b>158.27</b>

Table 1

## How Can There Be Such A Large Unfunded Liability (UAAL)?

The answers to the previous questions beg the question – how can there be a large unfunded liability?

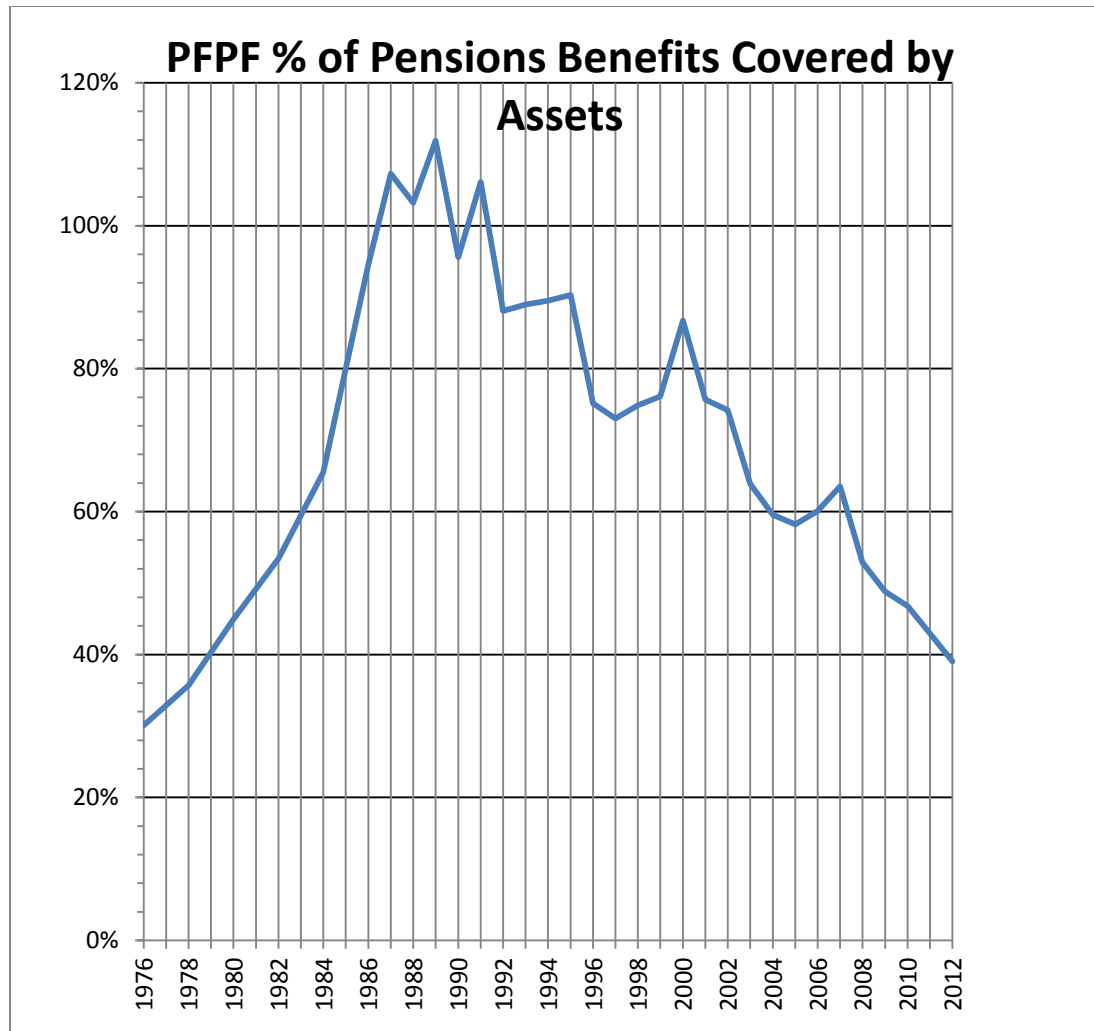
The “Percent Funded” is a better measure of pension plan health. It is the percentage of projected benefit payments that is covered by assets. At 100 %, a pension plan has sufficient assets to pay all benefits earned to date by all its members. At 39.05 % it could pay 39 cents of every dollar of all benefits earned to date by all its members. The other 61% is the unfunded liability (UAAL).<sup>10</sup>

If the PFPF investment returns had been 8.5% EACH year from 2001-2012 there would not have been a UAAL (the blue-dashed line in Graph 1). The Fund assets at 9/30/2012 were about the same as they were 9/30/2006.

“An 80% funded ratio often has been cited in recent years as a basis for whether a pension plan is financially or “actuarially” sound. Left unchallenged, this misinformation can gain undue credibility with the observer, who may accept and in turn rely on it as fact, thereby establishing a mythic standard. ... The Pension Practice Council of the American Academy of Actuaries finds that while the funded ratio may be a useful measure, understanding a pension plan’s funding progress should not be reduced to a single measure or benchmark at a single point in time. Pension plans should have a strategy in place to attain or maintain a funded status of 100% or greater over a reasonable period of time....Actuarial funding methods generally are designed with a target of 100% funding—not 80%. If the funded ratio is less than 100%, contribution patterns are structured with the objective of attaining a funded ratio of 100% over a reasonable period of time....Higher funded ratios are to be expected following periods of strong economic growth and investment returns such as at the end of the 1990s. Lower funded ratios are to be expected after recessions or years of poor investment returns such as the economic downturn that began in 2008. Whether a particular shortfall affects the financial health of the plan depends on many other factors—particularly the size of the shortfall compared to the resources of the plan sponsor.”<sup>11</sup>

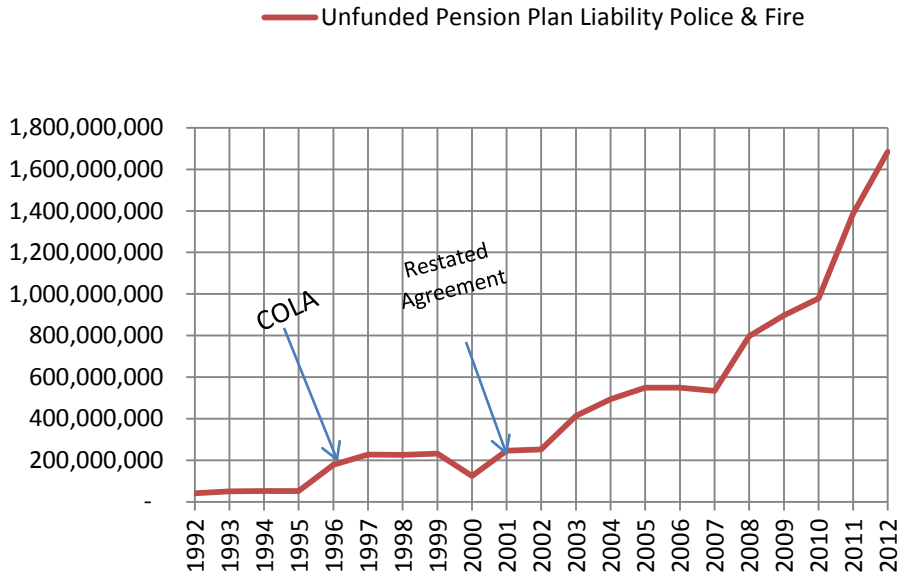
---

<sup>11</sup> [http://www.actuary.org/files/80\\_Percent\\_Funding\\_IB\\_071912.pdf](http://www.actuary.org/files/80_Percent_Funding_IB_071912.pdf)



**Graph 3**

# Unfunded Pension Plan Liability Police & Fire for the years ended September 30, 1992-2012



Graph 4

## Did the City Take Pension Holidays?

According to independently audited financial statements and actuarial reports, the COJ has paid at least 100% of the Annual Required Contribution each and every year. Some critics claim that the city took a Pension Holiday by not making the annual contribution in full. However, the correct definition of a “pension holiday” is when the City transfers funds from “reserve accounts” to satisfy any part of the Annual Required Contribution rather than funding its contribution from the General Fund. These reserve accounts were a result of previous year “overfunding” contributions and were set aside as future funding assets.

The reserves are included in the total assets of the PFPF. <sup>12</sup>

The August 11, 1992 Agreement between the City and the PFPF provided equal sharing of actuarial gains and losses. Three reserve accounts were created by the Agreement:

The Base Benefit Reserve Account (BBRA) was established to account for City contributions in excess of its funding requirements and earnings thereon, for the purpose of cushioning against actuarial losses in the base benefits fund, recognizing actuarial gains in the base benefits fund and giving the City greater flexibility in its funding of the Fund. The base benefits fund consists of the assets pledged to provide fund benefits.

The Member Reserve Account (MRA) was established to hold member contributions in excess of their contribution requirements, and earnings thereon, for the purpose of cushioning against the actuarial losses in the base benefits fund, recognizing actuarial gains in the base benefits fund and giving members the flexibility to provide additional money to the enhanced benefits account.

The enhanced benefits account (EBA) was established to provide benefits in excess of base benefits.

The City has used reserve accounts funds eighteen times to meet its funding requirements as follows:

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	
Reserve	292,000	1,529,000	2,749,000	1,962,000	6,767,000	5,175,000	5,901,000	8,144,000	3,170,000	10,389,200	
Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Reserve	10,881,681	768,514	8,753,301	2,105,596	(4,358,257)	442,776	329,448	(5,014,820)	1,162,380	3,130,000	64,278,819

Table 2

The City (BBRA) and Member’s (MRA) reserve account were created to hold “excess contributions” – the result of higher than projected investment returns. The City used the BBRA to reduce the contribution (ARC) from the General Fund. The PFPF used the MRA to provide enhanced benefits. [EXHIBIT D]

<sup>12</sup> On August 11, 1992 the City and the PFPF entered into an eight year agreement (Ordinance 91-1017-605) retroactive to January 1, 1992. This agreement established the “Base Benefit Reserve Account” (BBRA) to hold City contributions in excess of City funding requirements and the earnings thereof, for the purpose of:

- 1) Cushioning against actuarial losses in the Base Benefits Fund;
- 2) Recognizing actuarial gains in the Base Benefits Fund;
- 3) Giving to the City greater flexibility in its funding options.

The agreement states: “Nothing contained herein shall force the City to apply actuarial gains to the BBRA as opposed to reducing its funding requirement. The City may use monies in the BBRA to help meet the City funding requirements, in lieu of additional City contributions.”

## How Do the Actuary's Calculations Affect Taxpayers' Contribution to PFPF?

Calculations can vary considerably from one actuarial report to the next due to investment performance, experience or changes in assumptions. It is based on the actuary's opinions, evaluations and interpretation of past and future uncontrollable events.

Two PFPF actuarial reports, prepared for two consecutive three-year periods (2008 and 2011), by the same actuary, with "expected UAAL" for the same future years differ by nearly \$ 600,000,000.

The PFPF Actuarial Report dated October 1, 2011 includes an "Expected Amortization Payment" for the years 2011 through 2040.<sup>13</sup> Remember, the "Annual Required Contribution" is the "Normal Cost" plus a payment on the unfunded liability (UAAL).

### Assumptions:

1. "Normal Cost" remains the same as shown in the 10/01/2011 Actuarial Report [page 4, line 6c].
  2. "Total Member Contributions" remain the same as shown in the 10/01/2011 Actuarial Report [page 34, for 2011]. Employee contributions are fixed at 7% of payroll.
  3. Any contributions other than employee contributions are paid by or thru the City (e.g. Chapter 175, 185 Funds, Court Fines).
- The computation the \$ 85,038,060, Required Amortization, for 2011 is shown in Table 4.
  - The Annual Required Contribution (ARC) is the "Normal Cost" + "Expected Amortization Payment" (See Table 3).
  - Subtract the "Employees Contributions" and the result is the "City's Contribution".

---

<sup>13</sup> Jacksonville Police and Fire Pension Fund Actuarial Valuation Report as of October 1, 2011, page 7.



Annual Required Contribution				
Year	Normal Cost	Expected	Employees Contributions	City's Contribution
		Amortization Payment		
2011	\$ 49,769,761	\$ 85,038,060	(11,607,345)	\$ 123,200,476
2012	49,769,761	89,137,095	(11,607,345)	138,906,856
2013	49,769,761	93,148,264	(11,607,345)	142,918,025
2014	49,769,761	96,809,459	(11,607,345)	146,579,220
2015	49,769,761	101,165,885	(11,607,345)	150,935,646
2016	49,769,761	103,582,852	(11,607,345)	153,352,613
2017	49,769,761	107,707,136	(11,607,345)	157,476,897
2018	49,769,761	109,252,152	(11,607,345)	159,021,913
2019	49,769,761	110,417,227	(11,607,345)	160,186,988
2020	49,769,761	115,284,099	(11,607,345)	165,053,860
2021	49,769,761	120,471,883	(11,607,345)	170,241,644
2022	49,769,761	126,651,980	(11,607,345)	176,421,741
2023	49,769,761	132,351,319	(11,607,345)	182,121,080
2024	49,769,761	138,307,128	(11,607,345)	188,076,889
2025	49,769,761	144,530,949	(11,607,345)	194,300,710
2026	49,769,761	125,290,625	(11,607,345)	175,060,386
2027	49,769,761	121,940,534	(11,607,345)	171,710,295
2028	49,769,761	128,502,960	(11,607,345)	178,272,721
2029	49,769,761	134,285,593	(11,607,345)	184,055,354
2030	49,769,761	140,328,445	(11,607,345)	190,098,206
2031	49,769,761	145,372,951	(11,607,345)	195,142,712
2032	49,769,761	151,914,734	(11,607,345)	201,684,495
2033	49,769,761	127,218,706	(11,607,345)	176,988,467
2034	49,769,761	132,943,548	(11,607,345)	182,713,309
2035	49,769,761	117,275,748	(11,607,345)	167,045,509
2036	49,769,761	122,553,157	(11,607,345)	172,322,918
2037	49,769,761	83,876,309	(11,607,345)	133,646,070
2038	49,769,761	87,650,743	(11,607,345)	137,420,504
2039	49,769,761	91,595,026	(11,607,345)	141,364,787
2040	49,769,761	198,315,541	(11,607,345)	248,085,302

Table 3

JACKSONVILLE POLICE AND FIRE PENSION FUND					
Section II: Statement of Actuarial Position as of October 1, 2011					
Schedule of Minimum Required Amortization of Unfunded Actuarial Accrued Liability					
Date Established	Initial Amount	UAAL as of 10/01/11	Remaining Period 10/01/2011	Required Amortization 10/1/2011	UAAL as of 10/01/2012
1-Oct-76	\$ 52,267,000	\$ 21,894,160	5	\$ 4,651,071	\$ 18,579,428
1-Oct-82	(3,089,846)	(260,595)	1	(260,595)	-
1-Oct-84	5,630,273	1,352,924	3	464,855	956,894
1-Oct-86	(36,179,120)	(13,827,509)	5	(2,937,438)	(11,734,052)
1-Oct-87	3,868,562	2,294,690	6	412,317	2,028,257
1-Oct-88	17,910,698	15,521,970	7	2,426,260	14,110,628
1-Oct-89	19,019,326	19,004,375	8	2,637,839	17,634,943
1-Oct-90	508,620	547,686	9	68,571	516,247
1-Jan-92	(15,877,911)	(17,423,362)	10.75	(1,873,368)	(16,755,119)
1-Oct-92	11,433,880	13,330,097	11	1,405,758	12,848,476
1-Oct-96	126,129,419	162,448,250	15	13,302,563	160,704,478
1-Oct-97	44,127,813	57,081,155	16	4,444,374	56,716,132
1-Oct-98	(5,280,099)	(6,845,275)	17	(508,713)	(6,827,646)
1-Oct-01	6,296,677	7,998,228	20	526,710	8,050,561
1-Oct-03	158,527,905	194,592,195	22	11,972,801	196,772,397
1-Oct-06	111,179,581	127,768,607	25	7,203,704	129,908,683
1-Oct-08	230,168,269	251,153,449	27	13,464,842	256,109,474
1-Oct-11	550,672,339	550,672,339	30	27,636,509	563,571,107
<b>Total</b>	<b>\$ 1,277,313,386</b>	<b>\$ 1,387,303,384</b>		<b>\$ 85,038,060</b>	<b>\$ 1,403,190,888</b>

Source: Police and Fire Pension Fund Actuarial Report 10/01/2011, page 6.

Table 4

## How Does The PFPF Defined-Benefit (DB) Plan Compare To A Defined-Contribution (DC) Plan?

For illustrative purposes assume a participant in the PFPF:

- 1) started working in 1990 at age 22
- 2) worked 20 years - retired at age 42
- 3) average pensionable payroll \$ 55,000 over the last 52 pay periods
- 4) Life expectancy 75 years of age.

To earn the same benefits, over the same time period: (See EXHIBIT E)

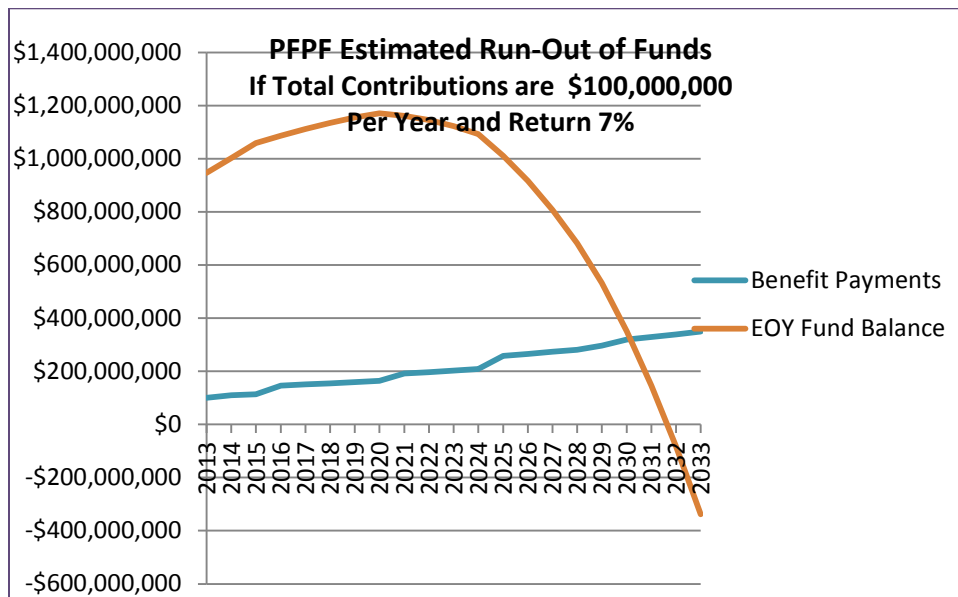
Issue	PFPF	Defined Contribution/IRA/401(k)	Social Security
Investment Required	7% of payroll for 20 years = \$ 51,830 an average of \$ 2,592 per year.	(1) \$ 14,400 per year for 20 years at 7% compound interest needed to accu- mulate \$ 590,352. (2) \$ 39,347 per year for 20 years at 3% compound interest to accumulate \$ 1,057,828.	6.2% of payroll for 20 years = \$ 45,906 an average of \$ 2,295 per year.
1 <sup>st</sup> Year of Retirement	55,000 x 60% = \$ 33,000	\$ 33,000	At age 62 = \$ 10,320; at 67 = \$ 14,652 <sup>14</sup>
33 <sup>rd</sup> Year Retirement Benefit	\$ 84,978 due to 3% COLA each year	\$ 84,978	Depends on Social Security COLA
34 <sup>th</sup> Year Retirement Benefit	\$ 87,527 plus 3% each year until death.	No money left after 33 <sup>rd</sup> benefit year.	Depends on Social Security COLA
Spousal Benefit	75% of benefit for surviving spouse's lifetime.	Balance in the account at death.	Same amount as deceased spouse's benefit.

<sup>14</sup> <http://www.socialsecurity.gov/OACT/anypia/download.html>

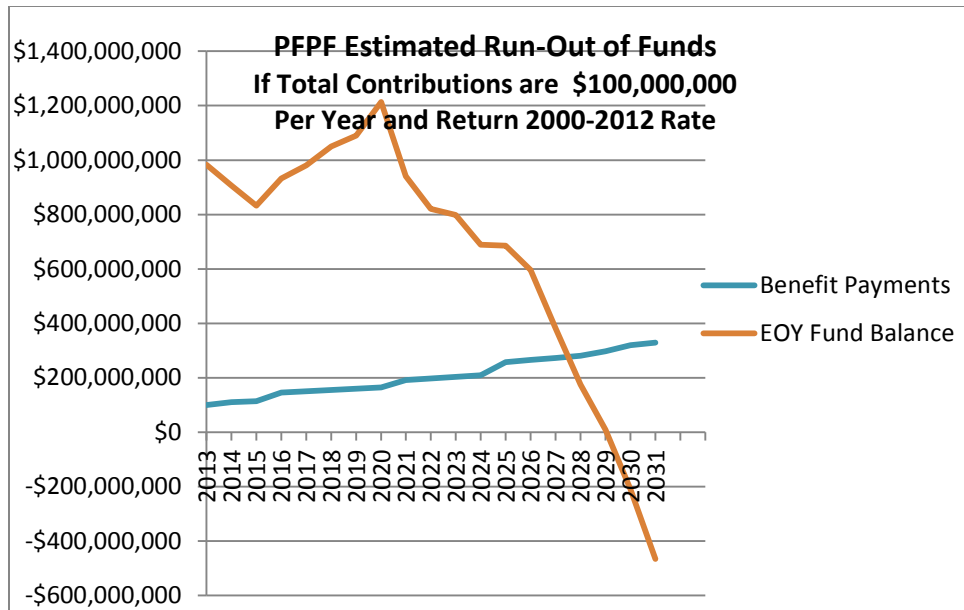
## Will the PFPF run out of money?

As long as the City pays the Annual Required Contribution (ARC) the PFPF will not run out of funds to pay retirees. If the City cannot afford to contribute the ARC this may no longer be true. The combined contributions to the PFPF (\$ 138,906,856), GEPP (\$ 78,981,840 x 25% = \$ 19,745,460) and COPP (\$ 14,451,421) for the year ending September 30, 2013 are projected to be \$ 173,103,737 – about 18 % of the General Fund Budget. The contribution is projected to increase each year (see below) for more than 20 years. The annual required contributions will increase if the PFPF investment income is less than the assumed 7.0% in any year. The past decade had net investment losses in 2001 (-6.72%), 2002 (-6.68%), 2008 (-14.88%), 2009 (-2.46%) and no gain in 2011 (+.05%) while the assumed rate of return was 8.5%.

If the City determines that for services to be adequate the total contributions from all sources can be \$ 100 million, earning 7%, the PFPF could run out of funds by 2032 (See Graph 5). If the investment performance is similar to 2000-2012 then it could run out by 2029 (Graph 6).



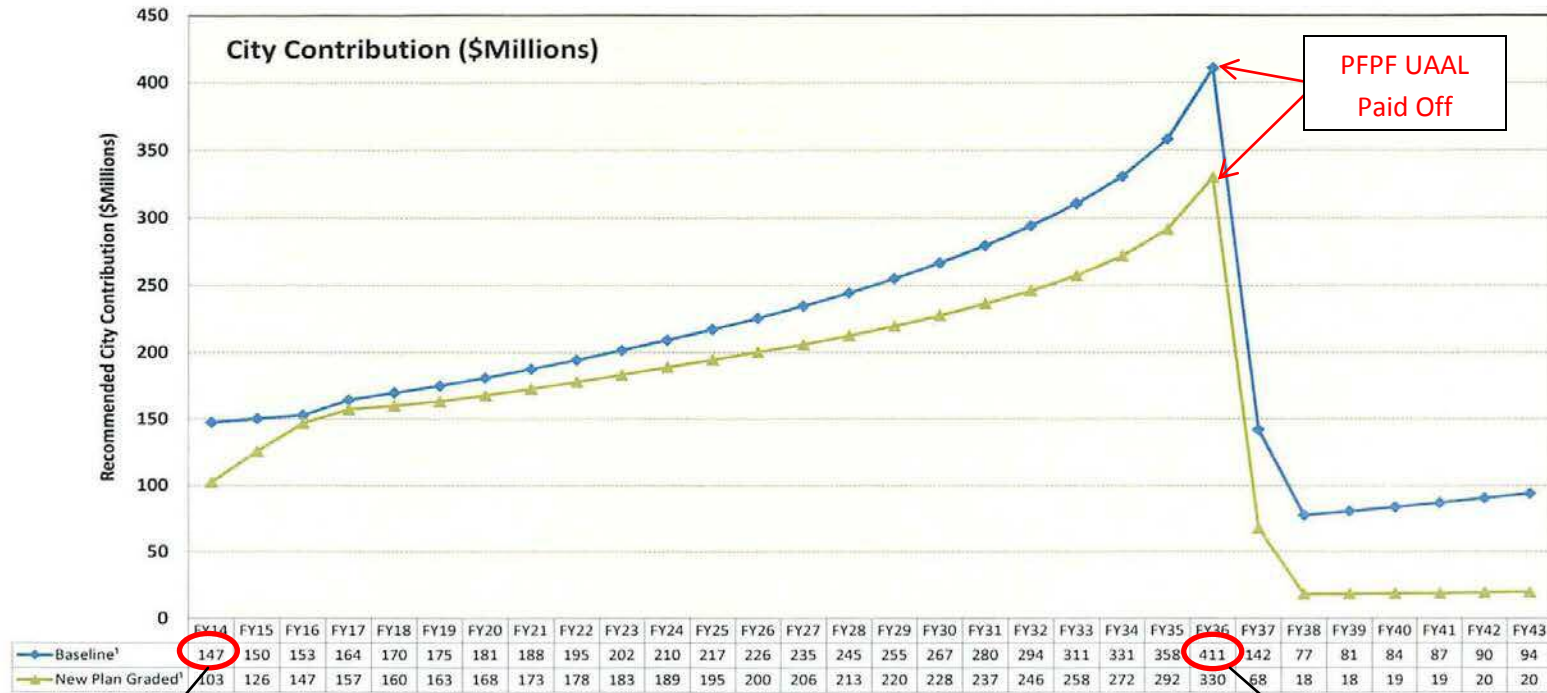
Graph 5



Graph 6

**Demographics:**

Currently there are 2,213 active PFPF participants and 2,097 retirees and beneficiaries receiving benefits. In eight years (2021) there will possibly be 2,213 actives and 3,214 retirees and beneficiaries.



<sup>1</sup> Excludes employee contributions, State Chapter Funds allocation (i.e. premium-tax refunds) and expected court fines and penalties. State laws make the City responsible for the difference between the actuarially determined contribution and these amounts.

**Graph 7**

Will the taxpayers run out of money? The budget deficit for the 2013-2014 year for Government Operations is \$60 million; to provide this money taxes have to increase by 15% (to 11.5353 mills from 10.0353). If it takes 15% to raise \$60 million how much more is required to get an additional (\$ 411,000,000 – 147,000,000 =) 264,000,000? The answer is 66% + 15% = 81%. That is if everything goes as the actuaries predict – that is not likely (See Graph 4 and Table 4).

## How will the new Government Accounting Standards Board (GASB) pronouncements affect the City?

The assumed rate-of-return will decrease -- it will further increase the unfunded liability and the annual required contribution. The rate will be a single rate that reflects: (a) the long-term expected rate of return (currently 7.75%).<sup>15</sup> (b) The rate for 20-year, tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher for benefit payments that occur in years when those amounts are no longer sufficient to cover annual benefit payments.<sup>16</sup> “The conclusion is that employers and plan administrators should be prepared for funded ratios reported in their financial statements to decline sharply under the new rules.”<sup>17</sup>

In addition, plans cannot use actuarial smoothing of market gains and losses. Plan assets must be valued at market value - immediately recognizing asset gains and losses results in a funded ratio that clearly demonstrates the degree to which plan funding is tied to the fate of the stock market.<sup>18</sup>

---

<sup>15</sup> The plan will project the number of future years in which assets on hand, investment returns, and certain future employer and employee contributions will be sufficient to pay annual benefit payments. So long as the benefit payments are projected to be covered by available assets, they are discounted by expected returns. *How Would GASB Proposals Affect State And Local Pension Reporting?*, page 3, Center for Retirement Research at Boston College, September 2012. <http://crr.bc.edu>

<sup>16</sup> *Statement No. 68 of the Government Accounting Standards Board*, page 11. Effective for years beginning after June 15, 2014.

<sup>17</sup> *How Would GASB Proposals Affect State And Local Pension Reporting?*, page 1, Center for Retirement Research at Boston College, September 2012. <http://crr.bc.edu>

<sup>18</sup> *ibid.*

## Comparison of Original Agreement and the Restated Agreement

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
<b>Term of Agreement</b>	<p>Eight (8) years.</p> <p>“If for any reason the term shall be challenged as a matter of law, the term of this Agreement shall not be less than the minimum term allowed by law. The terms of this Agreement shall control beyond the expressed term hereof until such time as either party is notified in writing by certified mail, return receipt requested as to its intention to terminate.”<sup>19</sup></p>	<p>Thirty (30) years.</p> <p>Ord. 93-1983-1407 extended 8/11/1992 agreement to 9/30/2005.</p> <p>“If for any reason the term shall be challenged as a matter of law, the term of this Agreement shall not be less than the minimum term allowed by law. The terms of this Agreement shall control beyond the expressed term hereof until such time as either party is notified in writing by certified mail, return receipt requested as to its intention to terminate.”<sup>20</sup></p>
<b>Cost of Living Allowance (COLA)</b>	None	<p>The COLA is retroactive to the 5<sup>th</sup> anniversary of the date of payment of pension benefits after 10/01/1991. The COLA shall be the <u>smaller</u> of 3% or the percentage of increase in the CPI-U published by Department of Labor <sup>21</sup></p> <p>The funding of the new COLA benefits provided from October 1, 1996 through September 30, 2000, shall be provided as follows: (a) The Trustees of the PFPF shall initially transfer funds into the Base Benefits Fund from the Enhanced Benefits Account and subsequently as needed from the Member Reserve Account equal to 50% of the increased contribution requirement attributable to the COLA benefit. The funding requirement is permanent and shall not cease on September 30, 2000. (b) The City shall transfer into the Base Benefits Fund those funds certified by the Plan Actuary equal to fifty (50%) percent of the increased contribution requirement attributable to the new COLA benefit.<sup>22</sup></p> <p><b>Immediate COLA became a Base Benefit - City provides 100% of funding.</b></p>
<b>Surviving Spouse</b>	<p>If any member of the police or fire department shall hereafter be killed or die from effects of an injury or of any illness or disease contracted while a member of the Police or Fire Department, or while retired on a pension, and any such member or retiree so killed or dying shall have a spouse living with said member at time of death, the Trustees shall direct the payment from said Fund of the following sum to the surviving spouse, while unmarried, seventy-five (75%) percent of the pension the deceased member was receiving or would be entitled to receive had the member completed twenty-five (25) years of credited service, and survived to receive such pension. If a deceased member served in excess of twenty-five (25) years, the seventy-five (75%) percent of the pension shall be based upon the actual years of service.</p>	<p>75% of the pension benefit the deceased member would be entitled to receive, had the member completed 20 years of credited service (60 percent of the average salary received by the member for the 52 pay periods immediately preceding the time of death) and survived to receive such pension. If a deceased member served in excess of 20 years, the 75% of the pension benefit shall be based upon the actual years of service. the surviving spouse of any pension participant member who shall be killed or die from the effects of an injury, illness or disease outside of the line of duty shall not lose survivor retirement benefits if the spouse remarries after September 30, 2000. Surviving spouses who were removed from the pension rolls due to remarriage prior to October 1, 2000 shall continue to be ineligible for reinstatement of pension benefits so long as such previously existing marriage continues.</p>

<sup>19</sup> Ord. 93-1983-1407, Exhibit A, p.7, paragraph 40.

<sup>20</sup> Restated Agreement, p.25, paragraph 31.

<sup>21</sup> Ord. 93-1983-1407 (4/1/1996), p.3, lines 13-15.

<sup>22</sup> Ibid, p.6, lines 18-22.



Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
<p><b>Member Contribution</b></p>	<p>A deduction of 7% percent annum from all salaries (base salary, longevity, city college incentive, enhanced certification pay, emergency operation and hazardous duty pay; shift differential, and "upgrade" pay; and excluding all overtime, state incentive pay, reimbursed expenses and allowances such as cleaning/clothes allowances, and payments for unused accrued time) overtime pay, of all members of the police and fire departments participating in this fund, or who will become members hereafter, to be deducted in installments from each periodical paycheck of each of said members, together with a sum equal to not less than the minimum recommended contribution in the most recent actuarial valuation of the fund expressed as a percent per annum of all salaries (as defined above) of all members of the police and fire departments participating in this fund according to the amount thereof as set up in the current budget in each year hereafter, together with such additional sums as may be necessary to administer this fund, which two latter amounts shall be designated by the Board of Pension Trustees and certified to the Council for each fiscal year, and the Council shall thereupon place the amount so designated in the budget for the succeeding year and levy a tax therefor if necessary except that the City may in good faith challenge the City contribution designated by the Board of Trustees. In the event of such a challenge, the Board of Pension Trustees' actuary and the City's actuary shall agree on an impartial third actuary who shall resolve all disputes between the actuaries and whose decision shall be binding and final as between the Board and the City. As of the date of this Agreement, the Member Funding requirement is seven (7%) percent of Payroll. <b><u>For future fiscal years, the Member Funding requirement will be adjusted through the rate sharing of actuarial gains and losses.</u></b></p> <p>If subsequent actuarial reviews determine that the Member Funding Requirement is other than seven (7%) percent, the Member Contribution Rate shall be determined as follows: If the Member Funding Requirement exceeds seven (7%) percent, the City shall deduct the entire funding requirement from Member's Salaries unless the Board submits documentation that Plan Members as a group have authorized the expenditure of available MRA funds to reduce the Member Contribution Rate, and in that event, the Member Contribution Rate for that year shall be set at the amount</p>	<p>A deduction of seven percent (7%) per annum shall be increased to eight percent (8%) per annum effective October 1, 1996.<sup>23</sup> This 1% increase is part of the member 50% contribution to the cost of the COLA.<sup>24</sup></p> <p><b>Effective April 1, 2000, the Member Contribution Rate to the Base Benefits Fund shall be seven percent (7%) of payroll.</b></p>

<sup>23</sup> Ibid, p.4, lines 11-12.

<sup>24</sup> Ibid, p.6, line 23.

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
	authorized by the Plan Members but no less than the amount needed to meet the funding requirement, after taking into consideration available MRA funds.	
<b>Retirement benefits – Time Service</b>	<b>Time service retirement. Members shall be entitled to a regular time service retirement benefit equal to a maximum of eighty percent of the average salary received by the member for the 52 pay periods immediately preceding the time of retirement, upon the completion of thirty-two years of credited service. For each year prior to the thirty-second year of service that a member retires, the eighty percent retirement benefit shall be reduced by two percent, with the minimum normal retirement benefit being fifty-six percent after completion of twenty years of credited service.</b>	Time Service Retirement- Retirement after 25 years or more of credited service regardless of age. Benefit formula- 2.5% of the average salary for the last 2 years of the first 32 years of credited service, reduced 2% for each year the member retires prior to completing 32 years of service, with minimum time service benefit of 25 years. 3 % rate of accrual for each of the first twenty years of service was applicable to vested retirement benefits as well as time service retirement. <sup>25</sup>
<b>Retirement benefits – Disability</b>	Any member, who prior to reaching regular time service retirement becomes permanently and totally disabled from useful and efficient service as a police officer or firefighter, as established by competent medical evidence, shall be entitled to a disability retirement. The Disability retirement benefit shall be equal to sixty percent of the average salary received by the member for the 52 pay periods immediately preceding the time of retirement. The Board shall establish the effective date on which the disability benefit shall commence. The Board of Trustees shall, by rule, establish procedures for the examination of applicants for disability retirement, for the conduct of disability retirement hearings, for review of said hearings by a court of competent jurisdiction, and re-examination of retirees on disability pension.	Disability Benefit- 60% of the average salary for the last 2 years. <sup>26</sup>
<b>Retirement benefits - Vesting</b>	Members who terminate employment on or after the effective date of this Ordinance with five (5) or more years of credited service and are not otherwise eligible to retire, are eligible to receive either a deferred retirement benefit of two and one-half (2.5%) percent of the average salary received by the member for the 52 pay periods immediately preceding the date of vesting, for each year of credited service prior to the date of vesting, to commence at normal retirement date; or be paid a refund of one hundred (100%) percent of member contributions to the Plan without interest. Within thirty (30) days of a member leaving the payroll prior to normal service retirement, the member must make the election in writing to either vest or the refund will be issued automatically.	Termination of Service- For termination With less than 5 years of service refund of 100% of Member contributions or, if over 5 years of service, member may elect to “vest accrued benefit” of 2.5% of average salary of the last 2 years times the years of credited service, with payments to begin at normal time service date.

<sup>25</sup> First Amendment to the Restated Agreement 5/21/2003, p.1

<sup>26</sup> Ibid, p.14

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
<b>Refund of Member's Contributions</b>	Members whether or not vested, who terminate employment on or after the effective date of this Section, prior to retirement, shall be paid a refund of one hundred (100%) percent of their contributions to the Plan without interest, except as provided in Section 121.107(c). Acceptance of the refund of employee contributions constitutes an irrevocable waiver of all rights to benefits from the Plan.	For termination With less than 5 years of service refund of 100% of Member contributions.
<b>Single Member's Death Benefit</b>	In the event of the death of a member who does not have a surviving spouse or children, one hundred (100%) percent of the member's contributions to the Plan without interest shall be payable to the estate of the member to be distributed in accordance with the law of the domicile of the member at the time of death.	<b>No Change</b>
<b>Purchase of Wartime Military Service</b>	Members of the Police and Fire Pension Fund may purchase up to twenty-four (24) months of wartime military service for credited service towards retirement based on the following definitions: World War II, December 7, 1941- December 31, 1946; Korean Conflict, June 27, 1950-January 31, 1955; Vietnam Era, August 5, 1964-May 7, 1975. Members of the Fund must apply for purchase of wartime military service and will be required to pay into the Pension Fund an amount equal to twenty (20%) percent of the base pay the member was earning on the date of application, to be paid as directed by the Trustees.	<b>No Change</b>
<b>Enhanced Benefit Account (EBA)</b>	That account established to hold the Enhanced Benefit Revenues until they are assigned to provide Enhanced Benefits.	<b>No Change</b>
<b>Enhanced Benefit Loss Reserve Account</b>	That subaccount established in this Agreement within the Enhanced Benefit Account which is a cushion against unanticipated actuarial experience impacting enhanced benefits. This account shall not be considered in the determination of the appropriate contribution requirements.	"AG&(L)" associated with Enhanced Benefits are to be borne 100% by the Members from the Enhanced Benefits Account. However, the Enhanced Benefit Account shall not bear 100% of the "AG&(L)" associated with benefits formerly classified as Enhanced Benefits through the period ended March 31 , 2000, which were subsequently reclassified as Base Benefits for periods on and after April1 , 2000.
<b>Enhanced Benefit Revenues</b>	Uncommitted Chapters Funds and all earnings thereon.	<b>No Change</b>

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
<b>Member Reserve Account (MRA)</b>	That account established in this Agreement to hold Member Contributions in excess of Member Contribution Requirements and earnings thereon, for the purpose of: 1.) Cushioning against actuarial losses in the Base Benefits Fund, i.e. the Members' liability of ratable sharing; 2.) Recognizing actuarial gains in the Base Benefits Fund, i.e. the Members' benefit of ratable sharing; and 3.) Giving to the Members (as an entire group) flexibility to provide additional monies to the Enhanced Benefits Account.	One percent per annum increase in member contribution (from 7% to 8%) may be assessed against the Member Reserve Account. <sup>27</sup>  <b>Effective March 31, 2000, the MRA shall be liquidated and retired from further use with the accumulated balance as of such date being transferred to the City Budget Stabilization Account.</b>
<b>Post Retirement Enhancement</b>	Enhanced benefits, in the nature of "cost of living" increases to the standard or base level benefits, which are authorized by this Agreement or subsequent City Council action, adopted by the Board, and funded from the Enhanced Benefits Account.	<b>COLA became a Base Benefit – City 100% responsible.</b>
<b>City's Contribution Rate</b>	The Board will certify that the contribution rates in budget ordinances for fiscal years 1990-91 and 1991-92 comply with actuarial requirements of the Florida Statutes and will not hereinafter challenge the City contribution rates reflected in such budget ordinances. The parties agree that in the 1992-93 fiscal year the City Contribution Rate will be 3.39% of payroll.	<b>Effective April 1, 2000, through September 30, 2002, the City Contribution Rate shall be 8.75% of Payroll. Effective October 1, 2002, through September 30, 2004, the City Contribution Rate shall be at least 9.25% of Payroll.</b>
<b>Base Benefit Reserve Account (BBRA)</b>	If City contributions in excess of the requirements are made, they shall be credited to a separate account called the Base Benefit Reserve Account (BBRA). It is recognized that since the City has a floating contribution rate, the City's funding requirements may increase or decrease based upon actuarial experience. Nothing contained herein shall force the City to apply actuarial gains to the BBRA as opposed to reducing its funding requirement. The City may use monies in the BBRA to help meet the City funding requirements, in lieu of additional City contributions. In recognition of the resolution of disputes between the City and the Board, the parties agree that the initial balance in the BBRA, supplied from current assets of the Base Benefits Fund shall be \$13,659,113. The City may apply the release of all BBRA funds as needed to compensate for adverse unanticipated experience in the Base Benefits Fund; however, no funds shall be released for any other purpose that will result in a drop in the BBRA below 1% of payroll.	<b>Replaced by City Budget Stabilization Account (CBSA)</b>
<b>Actuarial Gain and Loss Sharing</b>	The parties agree to ratably share in the benefits and liabilities of Actuarial Gains & Losses, hereinafter "AG&(L)" attributable to Base Benefits, from the valuation date reflected in Exhibit B through the duration of this Agreement. The parties also agree that	<b>Effective April 1, 2000, the parties agree that "AG&amp;(L)" associated with Base Benefits are the full responsibility of the City</b> , subject to the application of incremental provisions described in Subsections E and F of Paragraph 8. The parties also agree that "AG&(L)" associated with Enhanced Benefits are to be

<sup>27</sup> Ibid.

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
	<p>"AG&amp;(L)" associated with Enhanced Benefits are to be borne 100% by the Members from the Enhanced Benefits Account.</p> <p>The parties agree that "AG&amp;(L)" shall be utilized for the purpose of reducing (when there are gains) or increasing (when there are losses) City and Member Base Benefit funding requirements.</p> <p>A. Ratable Sharing The parties agree that ratable sharing in the reduction or increasing of Base Benefit funding requirements shall be accomplished through the use of an equal <b><u>50-50% sharing of actuarial gains and losses.</u></b></p> <p>(i) "AG&amp;(L)" shall be computed with existing Actuarial Assumptions to determine new total City and Member Base Benefit funding requirements.</p> <p>(ii) The new City and Member Base Benefit funding requirements shall be computed by functioning the ratable shares of actuarial gain or loss into the analysis of City and Member funding requirements.</p> <p>B. Actuarial Assumptions. For the purposes of implementing this paragraph, the Actuarial Assumptions shall be set consistent with the provisions of Paragraph 31 herein. However, any AG&amp;(L) associated with Enhanced Benefits will be factored out.</p>	<p>borne 100% by the Members from the Enhanced Benefits Account. However, the Enhanced Benefit Account shall not bear 100% of the "AG&amp;(L)" associated with benefits formerly classified as Enhanced Benefits through the period ended March 31 , 2000, which were subsequently reclassified as Base Benefits for periods on and after April 1 , 2000.</p>

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
<p><b>Use of Chapter 175/185 Insurance Rebate Funds</b></p>	<p>The parties agree that all pre-1992 Chapter Funds as such reference is used by the State Department of Insurance are irrevocably committed to the Base Benefits Fund, but that the fixed amount of \$13,659,113 effective the date of this Agreement, is initially withdrawn from the Base Benefits Fund and is assigned to the Member Reserve Account.</p>	<p>All pre-April, 2000 Chapter Funds as such reference is used by the State Department of Insurance are irrevocably committed to the Base Benefits Fund and/or the CBSA, but that the fixed amount of \$1 000,000 effective April 1, 2000, is maintained in the EBA. Beginning April 1, 2000, the Value of all future Chapter Funds up to an amount equivalent to three percent (3%) of Valuation Payroll is hereby committed to the Base Benefits Fund. Beginning April 1, 2000, after the remittance of the committed portion of the Chapter Funds to the Base Benefits Fund, the value of any remaining future Chapter Funds in an amount equal to 0.35% (thirty-five one-hundredths of one percent) of Valuation Payroll is hereby committed to the Enhanced Benefit Account. Any Chapter Funds received by the Fund subsequent to March 31, 2000, at a level in excess of an amount equivalent to 3.35% of Valuation Payroll shall be made available for designation as Temporary Commitments of Chapter Funds in an amount not to exceed a value equivalent to one percent (1%) of Valuation Payroll. Any such residual Chapter Funds remaining thereafter are designated as Uncommitted Chapter Funds with such uncommitted amounts earmarked for remittance to the Enhanced Benefit Account.</p>

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
<p style="text-align: center;"><b>Base Benefits Defined</b></p>	<p>Base Benefits shall mean the following:</p> <p>(a) Time Service Retirement - Retirement after 25 years or more of credited service regardless of age.</p> <p>(b) Benefit formula - 2.5% of the average salary for the last 2 years of the first 32 years of credited service, reduced 2% for each year the member retires prior to completing 32 years of service, with minimum time service benefit of 25 years.</p> <p>(c) Spouse Benefit – 75% benefit continuation to eligible spouse.</p> <p>(d) Child Benefit - \$200.00 per month per child, up to maximum member benefit, prorated if exceeding maximum benefit, until child turns 18 years of age.</p> <p>(e) Orphan Benefit- Same as spouse. Combination of benefits prorated for orphaned children cannot exceed maximum member benefit. Benefits end when orphan turns 18 years of age.</p> <p>(f) Disability Benefit - 60% of the average salary for the last 2 years.</p> <p>(g) Preretirement Death Benefits - Spouse's benefit of 75% of projected normal retirement benefit, plus \$200.00 for each child to age 18, prorated if necessary, with overall maximum benefit of 100% of projected normal retirement benefit.</p> <p>(h) Termination of Service - For termination with less than 10 years of service, refund of 50% of Member contributions or, if over 10 years of service, member may elect to "vest accrued benefit" of 2.5% of average salary of the last 2 years times the years of credited service, with payments to begin at normal time service date.</p> <p>It is agreed that no change in the law shall be deemed to change the definition and scope of Base Benefits as contemplated by this Section.</p>	<p>It is agreed that Base Benefits shall mean the following:</p> <p>(a) Time Service Retirement - Retirement after 25 years or more of credited Service, regardless of age.</p> <p>(b) Benefit formula- 2.5% of the average salary for the last 2 years of the first 32 years of credited service, reduced 2% for each year the member retires prior to completing 32 years of service, with minimum time service benefit of 25 years.</p> <p>(c) Spouse Benefit - 75% benefit continuation to eligible spouse. Spouse Benefit Includes that benefit defined in in Sections 121.204 and 121.205, Ordinance Code.</p> <p>(d) Child Benefit-\$200.00 per month per child, up to maximum member benefit, prorated if exceeding maximum benefit, until child turns 18 years of age. Child Benefit includes that benefit defined in Section 121.206, Ordinance Code.</p> <p>(e) Orphan Benefit· Same as spouse. Combination of benefits prorated for orphaned children cannot exceed maximum member benefit. Benefits end when orphan turns 18 years of age, unless the orphan meets the requirements of Section 121 .207, Ordinance Code.</p> <p>(f) Child Disability Benefit • shall be that as defined In Section 121 .206(d), Ordinance Code.</p> <p>(g) Disability Benefit- 60% of the average salary for the last 2 years.</p> <p>(h) Preretirement Death Benefits· Spouse's benefit of 75% of projected normal retirement benefit, plus \$200.00 for each child to age 18, prorated if necessary, with overall maximum benefit of 100% of projected normal retirement benefit.</p> <p>(i) Termination of Service- For termination with less than 5 years of service. refund of 100% of Member contributions or, if over 5 years of service, member may elect to "vest accrued benefit" of 2.5% of average salary of the last 2 years times the years of credited service, with payments to begin at normal time service date.</p> <p>(j) · Cost of Living Adjustments</p> <p>It is agreed that Base Benefits shall be amended to include the following categories of benefits for periods subsequent to March 31 , 2000:</p> <p>(1) Twenty (20) year retirement element of Ordinance 91-1017-605</p> <p>(2) Immediate COLA Benefit</p> <p>(3) DROP element of Ordinance 97-1103-E</p> <p>(4) Modifications to the benefit formula increasing the rate of accrual from 2.8% to 3% per year of service over the. first 20 years of service, with 2% thereafter to a maximum of 80% at 30 years of service rather than 32 years (for implementation effective April 1, 2001).</p>

Topic	August 11, 1992 Agreement (Ord. 91-1017-605)	Restated Agreement - March 5, 2001
City Budget Stabilization Account (CBSA)	None	<p>The parties agree to the creation and establishment of the City Budget Stabilization Account (CBSA) effective April 1, 2000. The original balance in such account on April 1, 2000, shall be \$28,837,723. The City may use monies in the CBSA to help meet the City Funding Requirements for periods subsequent to March 31, 2000, in lieu of additional City contributions; however, the use of the CBSA shall be limited to an amount equivalent to 3.75% of Valuation Payroll through fiscal year ending 2004 and to 3.25% of Valuation Payroll thereafter until the UAAL is fully amortized, plus an amount equivalent to the amortization of any net actuarial loss per year. The Board shall submit an annual report to City Council and the Council Auditors on the beginning balance, additions, deductions and ending balance of the CBSA. This shall be submitted as part of the Board's annual financial statements.</p> <p>Effective March 31, 2000, the MRA shall be liquidated and retired from further use with the accumulated balance as of such date being transferred to the City Budget Stabilization Account.</p>
Deferred Retirement Option Program (DROP)	None	<p>Ord. 97-1103-E (8/17/1998) created a DROP benefit. Participants elect to participate for a maximum of 48 months. Effective with the date of DROP participation, the member's initial normal retirement benefit, including creditable service, average compensation and effective date of retirement are fixed. Normal retirement benefits, together with annual COLAs, and interest at 8.4% accrue monthly in the fund for participant's benefit. DROP participants contribute 2% of pay to the Fund. The City does not contribute other than the 8.4% interest guarantee.</p>
Annual Cost	<p>As of 1/1/1992:            \$ 9,875,517 = Normal Cost  <u>\$ 2,709,377</u> = Amortization of UAAL            \$ 12,584,894 = Total 15.49% of Payroll</p>	<p>As of 10/01/2012            \$ 46,109,290 = Normal Cost            \$ 4,500,000 = Expense Load  <u>\$ 108,273,721</u> = Amortization of UAAL            \$ 158,883,011 = Total 118.91% of Payroll</p>
Assumed Annual Net Investment Yield	8.75%	Changed to 7.0% 10/01/2012
Unfunded Liability (UAAL)	\$ 42,138,873 Agreed 1/1/1992	\$ 1,684,069,919 As of 10/01/2012 <sup>28</sup>

<sup>28</sup> PFPF Actuarial Report 10/01/2012.



IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2011-CA-4348  
DIVISION: CV-A

**CURTIS W. LEE, an individual, and  
CONCERNED TAXPAYERS OF  
DUVAL COUNTY, INC., a non-profit  
Florida corporation,**

Petitioner(s),

vs.

**CITY OF JACKSONVILLE, a municipal  
corporation of the State of Florida, and  
JACKSONVILLE POLICE & FIRE  
PENSION FUND BOARD OF TRUSTEES,**

Defendant(s).

---

**ORDER GRANTING MOTIONS TO DISMISS AMENDED COMPLAINT  
AS TO COUNT II, WITH PREJUDICE, AND DENYING  
MOTIONS AS TO COUNT I AND COUNT III**

After reviewing both motions filed by Defendants to dismiss Plaintiffs' Amended Complaint, hearing argument of counsel, and considering applicable case law and statutory provisions, the court **grants** Defendants' motions, with prejudice, as to the allegations in Count II of the Amended Complaint that Defendants violated provisions of Part II, Chapter 447, Fla. Stat., otherwise known as the Public Employees Relations Act (PERA). The court **denies** Defendants' motions to the extent that they were directed to Plaintiffs' allegations in Count I and Count III that Defendants violated §286.011, Fla. Stat., which provides for open public meetings and records and is part of the statutory provisions known as "The Sunshine Act."

Plaintiffs' Amended Complaint seeks declaratory and injunctive relief for alleged violations

by the Defendants of the PERA and the Sunshine Act in connection with the process of negotiating future pension benefits for Jacksonville police and firefighters as part of the collective bargaining agreement between the Jacksonville Fraternal Order of Police (“the FOP”), the Jacksonville Association of Firefighters (“the JAFF”) and the City of Jacksonville (“the City). Plaintiff, Curtis Lee, is a private citizen and there are no allegations that he is, or ever was, an employee of the City of Jacksonville, the Jacksonville Sheriff’s Office (“JSO”) or the Jacksonville Fire and Rescue Department (“JFRD”). Plaintiff, Concerned Taxpayers of Duval County, Inc., is alleged to be a not-for-profit Florida corporation. The FOP and the JAFF are the unions that represent JSO and JFRD employees, respectively, and are the certified collective bargaining agents under the PERA for their members who are, or will become, members of Jacksonville Police and Fire Pension Fund.

Defendant, the Jacksonville Police and Fire Pension Fund Board of Trustees (“the Pension Fund Board”), administers the Jacksonville Police and Fire Pension Fund. The City is required to fund the pension plan and, according to the Amended Complaint, has in the past entered into a series of contracts with the Pension Fund Board covering all aspects of funding, entitlement and disbursement of pension and retirement benefits to current and future retired JSO and JFRD employees. The Amended Complaint alleges that the City and the Pension Fund Board have been negotiating over the past two years for a revised pension fund contract. That process has resulted in a replacement pension fund contract that covers retirement benefits for JSO and JFRD retirees, and the City’s contribution to the pension fund, through the year 2030. The most current version of the pension fund contract between the City and the Pension Fund Board is the subject of a proposed ordinance that is currently pending before the Jacksonville City Council.<sup>1</sup>

---

<sup>1</sup>Plaintiffs’ counsel indicated at the hearing that the City Council had recently approved the contract. However, the court is limited to the “four corners” of the Amended Complaint and so cannot consider this most recent development. However, the fact that the ordinance has, or

In a light most favorable to the Plaintiffs, the common allegations of the Amended Complaint state that the FOP and the JAFF are the certified bargaining agents for JSO and JFRD employees under the PERA, but that they have delegated to the Pension Fund Board their role in collectively bargaining with the City over retirement benefits for their members. (¶21). Plaintiffs also allege that the communications and negotiations between the City and the Pension Fund Board over the past two years that resulted in the replacement contract and pending ordinance were not held at noticed and open public meetings, that the public was not allowed to attend these meetings, and that the City and the Pension Fund Board violated §286.011, Fla. Stat. (¶¶24, 26, 31-33). Furthermore, Plaintiffs contend that the PERA prohibits the City from collectively bargaining with the Pension Fund Board on behalf of JSO and JFRD employees because it is neither a “ public employer” or “public employee” as defined under Part II, Chapter 447, Fla. Stat., and that it was unlawful for the FOP and JAFF to delegate such responsibility to the Pension Fund Board. (¶¶35-39).

In Count I, Plaintiffs seek a declaratory judgment 1) finding that the Defendants violated the Sunshine Act by negotiating public employee retirement benefits in private meetings that were not properly noticed and open to the public and 2) determining that the most recent pension fund contract resulting from those improper negotiations, and any ordinances approving it, are void. In Count II, Plaintiffs also seek a declaratory judgment determining 1) that the Defendants are not legally permitted under the PERA to negotiate the retirement benefits for JAFF and FOP members, 2) that the most current pension fund contract violates §447.309(5), Fla. Stat., of the PERA because it covers a period of 30 years, instead of 3 years, and 3) that the most recent pension fund contract, and any ordinances approving it, are likewise void because of these alleged violations. Finally, Plaintiffs seek injunctive relief in Count III for the Sunshine Act violations that form the basis for their request

---

has not passed, is not determinative to the outcome of Defendants’ motions.

for declaratory judgment in Count I.

Concerning Plaintiffs' claims for relief in Count II based upon violations of the PERA, they have not stated a cause of action for two reasons. First, the legislature intended for the PERA "to provide an exclusive method for resolving labor disputes between public employers and public employees, with the Public Employees Relations Commission [{"PERC"}] having preemptive jurisdiction over such matters." *Maxwell v. School Board of Broward County*, 330 So.2d 177, 179 (Fla. 4<sup>th</sup> DCA 1976). "[J]urisdiction over labor activities is preempted in favor of PERC if the activities are 'arguably' covered by the provisions of Part II, Chapter 447...." *Id.* The Plaintiffs' claims in this case that Defendants violated the PERA because the Pension Fund Board is not a certified bargaining agent under §447.203(11), Fla. Stat., or that the term of the pension fund contract exceeds the three year limitation in §447.309(5), Fla. Stat., are clearly, not just arguably, covered by the PERA. §447.207(6), Fla. Stat., expressly states that "the commission [PERC] shall resolve questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit, determine or approve units appropriate for purposes of collective bargaining, expeditiously process charges of unfair labor practices ..., and resolve such other questions and controversies as it may be authorized herein to undertake." In short, PERC decides who can and can't collectively bargain on behalf of public employees. Similarly, in what may seem obvious, §447.309(5), Fla. Stat., is included in Part II, Chapter 447. Violations of it, too, are preempted in favor of PERC.

Count II must also be dismissed because the PERA does not confer standing upon Mr. Lee or the Concerned Taxpayers of Duval County to bring an action, in circuit court or in front of the PERC, for violations of any of its provisions. Except for situations involving Sunshine Act violations that are expressly exempted in §447.605, Fla. Stat., the court has not found, and the

Plaintiffs have not provided, any case where a private citizen or a private not-for-profit corporation has sued a public employer, or a bargaining agent for public employees, over purported violations of the PERA that occurred during the collective bargaining process. Instead, the provisions of the PERA grant remedies for unfair labor practices and violations of collective bargaining agreements to “public employees”, “public employers”, “bargaining agents”, and “employee organizations” all of which are defined in §447.203, Fla. Stat. Plaintiffs do not qualify as any of these or other statutorily defined entities that can bring forth a claim under the PERA. The PERA was not designed for, and PERC was not created to hear, complaints by ordinary citizens and public interest groups who may have objections to the terms and conditions of a collectively bargained agreement between public employers and those representing public employees.

While the court is aware that ordinarily leave should be granted to amend a complaint if the court grants a motion to dismiss for failure to state a cause of action, amendment in this case would be futile. Plaintiffs cannot amend the complaint to state a cause of action under the PERA because, as explained above, this court does not have subject matter jurisdiction over the type of violations alleged in the Amended Complaint and the Plaintiffs do not have standing to assert such claims. See, *Rohatynsky v. Kalogiannis*, 763 so.2d 1270, 1272 (Fla. 4<sup>th</sup> DCA 2000)(“A claim should not be dismissed with prejudice ‘without giving the plaintiff an opportunity to amend the defective pleading, unless it is apparent that the pleading cannot be amended to state a cause of action’.”).

As to the Sunshine Act violations alleged in Count I and Count III, the Amended Complaint states a cause of action for the requested relief in each count. As mentioned above, §447.605(2), Fla. Stat., expressly states that “[t]he collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of s.286.011.” The rights afforded to all citizens under the Sunshine Act, and their ability to seek

redress in the circuit court for violations of those rights, is not preempted by the PERA. See, *Warden v. Bennett*, 340 So.2d 977, 979 (Fla. 2<sup>nd</sup> DCA 1976)(observing that there is “nothing in Chapter 447 that remotely suggests that records otherwise available under the Public Records Act should not be furnished” and rejecting the argument that such public records requests must give way to the statutory scheme under Chapter 447). It is axiomatic that ordinary citizens have the right to enforce the provisions of the Sunshine Act through an action in the circuit court.

The Amended Complaint alleges that the collective bargaining responsibilities of the FOP and JAFF have been delegated to the Pension Fund Board. This allegation is the crux of Plaintiffs’ claims under Counts I and III. If that is proven, then any meetings between representatives from the City and the Pension Fund Board where the two sides were engaged in “collective bargaining negotiations,” as that term is understood in Chapter 447, must comply with §286.011, Fla. Stat. The fact that the Amended Complaint does not specify the exact date, time and attendees at the meetings does not render the claims in both counts deficient. Plaintiffs have alleged enough ultimate facts in their Amended Complaint to reasonably apprise Defendants as to the claims that they are making in this suit for Sunshine Act violations in Count I and Count III.

Accordingly, IT IS ORDERED:

1. Count II of the Amended Complaint is dismissed with prejudice;
2. The motions to dismiss as they relate to Counts I and III are denied;
3. Defendants have twenty (20) days from the date of this order in which to file an

Answer to Count I and Count III of Plaintiffs’ Amended Complaint.

**DONE AND ORDERED** in Chambers at Jacksonville, Duval County, Florida this 20<sup>TH</sup> day of October, 2011.

**ORDER ENTERED**  
OCT 20 2011  
*/s/ James H. Daniel*  
JAMES H. DANIEL, Circuit Judge

Copies to:

Robert M. Dees, Esquire  
14 East Bay Street  
Jacksonville, FL 32202

Robert D. Klausner, Esquire  
10059 N.W. 1<sup>st</sup> Court  
Plantation, FL 33324

Michael B. Wedner, Esquire  
Derrel Q. Chatmon, Esquire  
117 West Duval Street, Suite 480  
Jacksonville, FL 32202



STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION

Mike Hogan  
Chair

John M. Delgado  
Donna Maggert Poole  
Commissioners

January 4, 2012

Theodore J. Wendler, C.P.A.  
7876 Glen Echo Road North  
Jacksonville, FL 32211-6029

Dear Mr. Wendler:

The Office of the Attorney General sent a copy of your correspondence regarding your concerns about the City of Jacksonville's defined benefit pension plans to the Public Employees Relations Commission. According to your correspondence, the pension plans have significant unfunded liabilities. In addition, you question the legality of a thirty-year agreement between the City and the Police and Fire Pension Fund. Your correspondence has been forwarded to me for a response.

The Public Employees Relations Commission's statutory authority is limited to resolving employment disputes between public employees, public employers, and employee organizations, as defined by Section 447.203, Florida Statutes (2011), for the purpose of ensuring that the rights provided to them by Chapter 447, Part II, Florida Statutes (2011), are not abridged. The Commission does not have the authority to independently investigate any alleged improper conduct; rather, it adjudicates unfair labor practices filed by public employees, employee organizations or public employers pursuant to Section 447.501(1) and (2), Florida Statutes (2011). Thus, unless a charge is filed, the Commission would not have the authority to intervene in any matter related to the City's pension plans. Consequently, at this time the Commission is unable to assist in this matter.

Sincerely,

Stephen A. Meck  
General Counsel

SAM/pap





**PAM BONDI**  
**ATTORNEY GENERAL**  
**STATE OF FLORIDA**

OFFICE OF THE ATTORNEY GENERAL  
Citizen Services

PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
Phone: (850) 414-3990 Fax: (850) 410-1630  
Website: <http://www.myfloridalegal.com>

December 19, 2011

Mr. Theodore J. Wendler, CPA  
TRUE Commissioner  
Taxation, Revenue and Utilization  
of Expenditures (TRUE) Commission  
7876 Glen Echo Road North  
Jacksonville, Florida 32211-6029

Dear Mr. Wendler:

Florida Attorney General Pam Bondi received your correspondence, forwarded by the Florida Governor's Office, regarding your concerns about the City Council of the City of Jacksonville and a collective bargaining agreement. Attorney General Bondi asked that I respond.

Our office appreciates the opportunity to review your concerns, and I have examined your correspondence to determine the best resources to help you. Our office is not at liberty to provide legal advice or opinions to private individuals; however, I am happy to offer the following information and referral.

Section 16.01(3), Florida Statutes, authorizes the Florida Attorney General's Office to render legal opinions to certain public officials on questions of law pertaining to their own officials duties. By law, our office acts as the attorney for the state of Florida and its agencies. The Attorney General is precluded by law from providing legal advice or opinions to private individuals.

The Attorney General's website provides a searchable database of previously issued formal Attorney General Opinions from 1974 to date. Please visit the Attorney General's website at [www.myfloridalegal.com](http://www.myfloridalegal.com).

I am forwarding a copy of your correspondence to the Florida Public Employees Relations Commission for review and any assistance that they may be able to provide. I have enclosed information from the Commission's website which you may find useful. You may contact the Commission by telephone at (850) 488-8641.

Otherwise, please continue with your local officials as directed by the Governor's Office. I hope this proves helpful.

Sincerely,

Bethann Dillon  
Office of Citizen Services

Enclosures

cc: Public Employees Relations Commission  
4050 Esplanade Way, Room 135  
Tallahassee, Florida 32399-0950

The Honorable Rick Scott  
Executive Office of the Governor  
The Capitol, 400 South Monroe Street  
Tallahassee, Florida 32399-0001



RICK SCOTT  
GOVERNOR

STATE OF FLORIDA  
**Office of the Governor**  
THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001  
[www.flgov.com](http://www.flgov.com)  
850-488-7146

October 24, 2011

Mr. Theodore J. Wendler  
7876 Glen Echo Road North  
Jacksonville, Florida 32211

Dear Mr. Wendler:

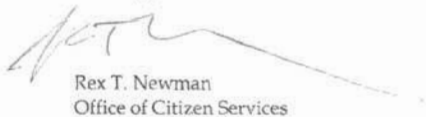
Thank you for contacting Governor Rick Scott about a pension plan promulgated by the City of Jacksonville. The Governor asked me to respond on his behalf.

Because this is a local government matter, the Governor's ability to assist is limited. Our government is structured on the principle that communities can best assess the needs of their residents. Voters elect their officials to manage local government business. Those dissatisfied with local officials' performance can always make their views known directly to those officials.

You requested that the Governor's Office forward your materials to the Office of the Attorney General. Attorney General Pam Bondi is a statewide elected official who has administrative authority over the Florida Department of Legal Affairs. To assist you, I forwarded your correspondence to Attorney General Bondi's office for review. You can also contact her office directly by using the information provided below.

Thank you again for taking the time to contact Governor Scott. Governor Scott hopes your concerns can be resolved to your satisfaction.

Sincerely,



Rex T. Newman  
Office of Citizen Services

RN/cas

cc/enc: The Honorable Pam Bondi  
Office of the Attorney General  
The Capitol  
Tallahassee, Florida 32399-1050  
(850) 414-3990  
[www.myfloridalegal.com/contact](http://www.myfloridalegal.com/contact)

EXHIBIT B

**THEODORE J WENDLER, CPA, PA**

7876 GLEN ECHO ROAD NORTH  
JACKSONVILLE, FL 32211-6029  
(904)614-1509  
FAX (904)374-2195  
TWENDLER@COMCAST.NET

September 10, 2011

Governor Rick Scott  
Hand Delivered

Governor Scott:

The City of Jacksonville has Unfunded Actuarial Accrued Liabilities that total ONE-BILLION, SIX-HUNDRED-NINE MILLION in its three defined-benefit plans. I am asking you to involve the Florida Attorney General on behalf of the taxpayers of Jacksonville. The attached TRUE Commission Resolution 2011-4 tells the story so I will not repeat it.

There is a current bill, 2011-400, that makes modifications to a "Restated Agreement" dated March 5, 2001. That agreement has a term of thirty years. The City's General Council stated that it is a violation of public policy because it violates FS 447.309(5) which limits any collective bargaining agreement to three years.

The City Council appears determined to create a second class of members to the existing illegal agreement. Council Members will not discuss the issue with their constituents and so taxpayers think they have no voice. It is our understanding that the Council members have been advised, by General Counsel, not to talk about pension issues because of an existing impasse.

I hope that the Florida Attorney General will become the voice of the taxpayers of Jacksonville.

Respectfully,

Ted Wendler, CPA  
TRUE Commissioner

## Ted Wendler CPA

---

**From:** Delaney, John <jdelaney@unf.edu>  
**Sent:** 05/05/2011 1:36 PM  
**To:** 'Ted Wendler CPA'  
**Subject:** RE: Police and Fire Pension Plan

I was indeed the CEO, but that was a lot of years ago. Jacksonville is a very large city-the 13<sup>th</sup> largest in the country. So forgive me if I forget some details. For whatever it is worth, we cut the tax rate by 10%, and during those years Jacksonville did not have stormwater, impact or garbage fees.

- 1) In Jacksonville, the Union has always taken the position that the pension is separate from the collective bargaining agreement. When I was Mayor Austin's Chief of Staff, I insisted that they be discussed in tandem, as previously the discussions were completely separate, 6 months apart. I took the position that it was an employee cost.
- 2) We rolled back starting salaries by 10%. This has a compounding effect of savings millions of dollars each year as it cascaded up the ranks. Further, the Union essentially turned over large reserve funds that freed up City money.  
They also consented to an early retirement program that allowed us to further shrink employment. For example, we reduced the number of civilian employees by 1/3 over 8 years.
- 3) The Union lobbied the Legislature to create the P/F Pension Fund, and made it independent of City Hall. City Hall appoints 2 of the 5 members. This gave them immense bargaining leverage. The City pension fund has historically performed better than the P/F fund. But whenever they build up reserves, they demand more benefits. Though the Fund and the Unions are separate, for all intents and purposes the move is in lockstep. They are major players in the City Council and legislative elections. It is an ugly monster.

---

**From:** Ted Wendler CPA [mailto:twendler@comcast.net]  
**Sent:** Thursday, May 05, 2011 1:06 PM  
**To:** Delaney, John  
**Subject:** RE: Police and Fire Pension Plan

You were the chief executive officer when it was adopted – there is really nobody else to ask these questions.

1) It is difficult for me to understand how, given the content of the “agreement”, it is not a second collective bargaining agreement. My layman's interpretation is that **a)** Any collective bargaining agreement can only be for three years and **b)** The agreement must contain ALL of the terms. That makes sense to me – where am I wrong?

(5) Any collective bargaining agreement shall not provide for a term of existence of more than 3 years and shall contain **all** of the terms and conditions of employment of the employees in the bargaining unit during such term except those terms and conditions provided for in applicable merit and civil service rules and regulations.

2) What was left out of the “public discussion” – what did the Union and Fund pay? How did the City benefit?

3) If it is not a collective bargaining agreement, how are the Unions bound by the terms of it?

---

**From:** Delaney, John [mailto:jdelaney@unf.edu]  
**Sent:** 05/04/2011 2:24 PM  
**To:** 'Ted Wendler CPA'  
**Subject:** RE: Police and Fire Pension Plan

Steve answered you correctly. We disagree with the interpretation that the Pension Fund and Union gave. What is also left out of the public discussion is that the Union and the Fund made some other concessions over a series of years. In other words, the Union and Fund paid for this.

---

**From:** Ted Wendler CPA [mailto:twendler@comcast.net]  
**Sent:** Wednesday, May 04, 2011 9:44 AM  
**To:** Delaney, John  
**Subject:** FW: Police and Fire Pension Plan  
**Importance:** High

Mr. Delaney,

On February 22, 2001, as mayor of Jacksonville, you signed into law Ordinance 2000-1164. The ordinance adopted a 30 year agreement between the City and the Police and Firemen's Pension Fund. This agreement was/is contrary to FS 447.309(5), according to General Counsel, in that it has a term of existence of more than 3 years. As a lawyer, and former State Attorney, why/how did you enter into what appears to be an illegal contract?

Ted Wendler, CPA  
TRUE Commissioner  
Performance Committee Chair

---

**From:** Rohan, Steve [mailto:SROHAN@coj.net]  
**Sent:** 04/17/2011 2:04 PM  
**To:** Ted Wendler CPA  
**Cc:** Laquidara, Cindy; Wedner, Michael; Chatmon, Derrel; Poppell, Chad; Clements, Jeff; Rohan, Steve  
**Subject:** RE: Police and Fire Pension Plan  
**Importance:** High

Thank you, Mr. Wendler, for the reminder.

The position of the City includes but is not limited to the following points:

1. The agreement between the City and the P&FPF was not intended to and did not bind the City regarding benefits;
2. According to the Charter - only the Council can establish benefits - not the P&FPF; absent waiver, that can only be accomplished through collective bargaining;
3. The P&FPF has acknowledged it has no power to set benefits;
4. Chapter 447 establishes that all benefits are binding for no more than 3 years;
5. It would be in violation of public policy - and therefore unenforceable - for any Council to commit to benefits for more than 3 years.

To my knowledge - neither the Police Union, nor the Fire Union, nor the P&FPF agree with the City's position, and litigation brought by the Fire Union is still pending. I am not the City's attorney in that case and have no authority to speak on behalf of the City therein.

In order to establish the City's position, it is probable that years of litigation would be involved.

I hope the above is of some assistance to you.

Steve Rohan

---

**From:** Ted Wendler CPA [mailto:twendler@comcast.net]  
**Sent:** Friday, April 15, 2011 1:17 PM  
**To:** Rohan, Steve  
**Subject:** RE: Police and Fire Pension Plan  
**Importance:** High

Mr. Rohan:

Did you forget? It's Friday of "next week"!

---

**From:** Rohan, Steve [mailto:SROHAN@coj.net]  
**Sent:** 04/07/2011 3:10 PM  
**To:** Ted Wendler CPA  
**Cc:** Rohan, Steve; Laquidara, Cindy  
**Subject:** RE: Police and Fire Pension Plan  
**Importance:** High

Thank you for your email. However, it would be inappropriate for me to give you guidance or interpretations at this point. Either Ms. Laquidara or I will respond to you sometime next week.

Thank you for your interest.

Steven E. Rohan  
Deputy General Counsel  
Legislative Affairs Department  
Land Use Regulatory & Environmental Law Department  
Office of General Counsel  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
(904) 630-1672  
(904) 630-2388 Facsimile  
[srohan@coj.net](mailto:srohan@coj.net)

---

**From:** Ted Wendler CPA [mailto:twendler@comcast.net]  
**Sent:** Thursday, April 07, 2011 2:24 PM  
**To:** Rohan, Steve  
**Subject:** FW: Police and Fire Pension Plan

Mr. Rohan:

I received the auto reply from Ms. Laquidara and assume that you are the proper person to consult on the matter.

"I will be out of the office Thursday and Friday, March 17 and 18, 2011 in federal mediation. I will be unavailable via cell phone and e-mails. Should you have any questions regarding litigation, please contact Howard Maltz at (904) 630-1854. Questions regarding non-litigation matters go to Karen Chastain (904) 630-1720 and legislative matters can go to Steve Rohan at (904) 630-1672 or Dylan Reingold at (904) 630-1725."

Ted Wendler, CPA

TRUE Commissioner

---

**From:** Ted Wendler CPA [mailto:twendler@comcast.net]  
**Sent:** 04/07/2011 1:45 PM  
**To:** 'CindyL@coj.net'  
**Subject:** Police and Fire Pension Plan

Ms. Laquidara:

When I read the analysis of SB 1128 I was surprised to find that the 30 year agreement between COJ and PFPF may not be allowable under current law [FS 447.309 (5)] - even without SB 1128. What do you think?

**447.309 Collective bargaining; approval or rejection.—**

(1) After an employee organization has been certified pursuant to the provisions of this part, the bargaining agent for the organization and the chief executive officer of the appropriate public employer or employers, jointly, shall bargain collectively in the determination of the wages, hours, and terms and conditions of employment of the public employees within the bargaining unit. The chief executive officer or his or her representative and the bargaining agent or its representative shall meet at reasonable times and bargain in good faith. In conducting negotiations with the bargaining agent, the chief executive officer or his or her representative shall consult with, and attempt to represent the views of, the legislative body of the public employer. Any collective bargaining agreement reached by the negotiators shall be reduced to writing, and such agreement shall be signed by the chief executive officer and the bargaining agent. Any agreement signed by the chief executive officer and the bargaining agent shall not be binding on the public employer until such agreement has been ratified by the public employer and by public employees who are members of the bargaining unit, subject to the provisions of subsections (2) and (3). However, with respect to statewide bargaining units, any agreement signed by the Governor and the bargaining agent for such a unit shall not be binding until approved by the public employees who are members of the bargaining unit, subject to the provisions of subsections (2) and (3).

(2)(a) Upon execution of the collective bargaining agreement, the chief executive shall, in his or her annual budget request or by other appropriate means, request the legislative body to appropriate such amounts as shall be sufficient to fund the provisions of the collective bargaining agreement.

(b) If the state is a party to a collective bargaining agreement in which less than the requested amount is appropriated by the Legislature, the collective bargaining agreement shall be administered on the basis of the amounts appropriated by the Legislature. The failure of the Legislature to appropriate funds sufficient to fund the collective bargaining agreement shall not constitute, or be evidence of, any unfair labor practice. All collective bargaining agreements entered into by the state are subject to the appropriations powers of the Legislature, and the provisions of this section shall not conflict with the exclusive authority of the Legislature to appropriate funds.

(3) If any provision of a collective bargaining agreement is in conflict with any law, ordinance, rule, or regulation over which the chief executive officer has no amendatory power, the chief executive officer shall submit to the appropriate governmental body having amendatory power a proposed amendment to such law, ordinance, rule, or regulation. Unless and until such amendment is enacted or adopted and becomes effective, the conflicting provision of the collective bargaining agreement shall not become effective.

(4) If the agreement is not ratified by the public employer or is not approved by a majority vote of employees voting in the unit, in accordance with procedures adopted by the commission, the agreement shall be returned to the chief executive officer and the employee organization for further negotiations.

(5) Any collective bargaining agreement shall not provide for a term of existence of more than 3 years and shall contain all of the terms and conditions of employment of the employees in the bargaining unit during such term except those terms and conditions provided for in applicable merit and civil service rules and regulations.

Ted Wendler, CPA  
TRUE Commissioner  
Performance Committee Chairman

PFPF RESERVE ACCOUNT HISTORY	BASE BENEFIT RESERVE ACCOUNT						CITY BUDGET STABILIZATION ACCOUNT													
	10/01/93	10/01/94	10/01/95	10/01/96	10/01/97	10/01/98	04/01/00	10/01/01	10/01/02	10/01/03	10/01/04	10/01/05	10/01/06	10/01/07	10/01/08	10/01/09	10/01/10	10/01/11	10/01/12	
Balance BOY	21,557,226	22,918,633	13,735,973	14,222,138	14,470,753	12,053,222	28,837,723	27,605,829	22,379,908	9,993,656	285,901	13,203,620	4,219,482	2,209,087	6,863,768	-	-	6,810,705	8,134,910	
<b>Additions:</b>																				
City Contributions			3,464,163	3,437,317	7,569,871	8,182,286								54,564,566	59,015,562	61,441,611	93,712,866	87,510,279	81,802,999	
Contributions from City, Memebers & Court Fines												36,758,043	45,770,015							
Chapter Funds												7,186,521	7,673,592	8,878,323	9,426,874	8,900,746	8,828,753	8,954,610	9,275,728	
Interest for the period	2,293,689	(142,096)	3,235,652	2,785,009	4,349,300	293,883	(340,285)	(1,855,112)	(1,494,978)	1,626,967	26,675	3,546,848	2,211,719	4,553,210	(6,184,812)	(1,353,396)	6,315,597	6,451,282	5,167,390	
Loan From EBA															290,231	497,763				
Transfer from Base Benefit Fund											13,691,554									
Actual Court Fines & Penalties	2,948,920	2,878,446	2,729,666	2,688,950	2,974,239	2,952,972														
<b>Subtractions:</b>																				
Health Subsidy Contributions	(623,892)	(1,225,261)	(1,346,953)	(1,330,824)	(1,406,544)	(1,480,865)														
Minimum Required City Contribution			(2,590,294)	(2,559,276)	(3,905,864)	(6,202,546)			(10,821,737)	(11,334,722)	(800,510)	(50,727,035)	(53,263,387)	(55,926,556)	(65,389,407)	(67,993,368)	(95,019,914)	(94,631,375)	(90,277,776)	
Interest on Contribution	(13,648)	(53,605)	(780,549)	(591,293)	(1,419,557)	(134,507)		933	463			(2,775,121)	(2,116,518)	(4,256,785)	5,543,685	1,475,312	(4,021,949)	(3,964,698)	(3,458,802)	
Expected Court Fines & Penalties	(3,231,308)	(3,393,029)	(3,108,352)	(3,071,132)	(3,895,044)	(4,100,857)														
Adjustment of Court Fines			(621,670)	(614,226)																
Payment to Base Benefits Fund							(891,609)	(3,301,742)												
Interest on Court Fines	(12,354)	(22,513)																		
Retiree Bonus Payment			(495,498)																	
Rachael Strickland Post Retirement Leave				(40,796)																
Five Year Delayed COLA Cost					(4,170,943)	(4,391,334)														
Allocation of Actuarial Gain for Two Year Period		4,402,283																		
Actuarial Fees (GASB 5 Statement)					(10,000)															
Adjustment for 4/1/96 adoption date of COLA					(2,487,938)															
Melissa Meadowss Post Retirement Leave					(15,051)															
Present Value Benefit Increase		(334,185)																		
Payment to Undo "fresh start"															(6,070,096)					
Payment for retroactive piece of health amendment												(1,002,564)								
Repayment of loan to EBA																(290,231)	(497,763)			
Transfer of Chapter Funds to EBA								(70,000)	(70,000)			(1,970,830)	(2,285,816)	(3,158,077)	(3,495,805)	(2,678,437)	(2,506,885)	(2,995,894)	(3,931,269)	
Single Member Death Benefit Improvement		(26,695)																		
Balancing Loss		(156,154)																		
Balance EOY	22,918,633	24,845,824	14,222,138	14,925,867	12,053,222	7,172,254	27,605,829	22,379,908	9,993,656	285,901	13,203,620	4,219,482	2,209,087	6,863,768	-	-	6,810,705	8,134,909	6,713,180	

EXHIBIT D



PFPF RESERVE ACCOUNT HISTORY		MEMBER RESERVE ACCOUNT																			
	10/01/93	10/01/94	10/01/95	10/01/96	10/01/97	10/01/98															
<b>Balance BOY</b>	21,509,972	23,798,633	16,816,850	21,083,502	24,762,755	22,927,888															
<b>Additions:</b>																					
Employee Contribution			7,252,822	7,165,974	7,573,697	7,973,888															
Interest for the period	2,288,661	(147,552)	3,930,801	3,979,076	6,332,554	449,202															
Allocation of Actuarial Gain for Two Year Period		4,402,283																			
<b>Subtractions:</b>																					
Minimum Employee Contributions			(6,330,677)	(6,254,872)	(7,811,727)	(10,314,794)															
Interest			(586,294)	(488,217)	(1,270,510)	(122,288)															
Code Sec. 121.139 Assessment					(1,081,957)	(1,139,127)															
Adjustment for 4/01/96 Adoption of COLA					(2,487,938)																
Balance of 5 Yr. Delayed COLA Cost					(3,088,986)	(3,252,207)															
Balancing Loss		(156,154)																			
<b>Balance EOY</b>	<b>23,798,633</b>	<b>27,897,210</b>	<b>21,083,502</b>	<b>25,485,463</b>	<b>22,927,888</b>	<b>16,522,562</b>															
<b>ENHANCED BENEFIT ACCOUNT</b>																					
PFPF RESERVE ACCOUNT HISTORY	10/01/93	10/01/94	10/01/95	10/01/96	10/01/97	10/01/98	04/01/00	10/01/01	10/01/02	10/01/03	10/01/04	10/01/05	10/01/06	10/01/07	10/01/08	10/01/09	10/01/10	10/01/11	10/01/12		
<b>Balance BOY</b>	2,131,690	3,963,863	6,210,251	9,223,417	11,541,030	12,996,877	1,000,000	1,397,660	2,029,142	2,270,844	4,136,846	5,756,064	8,390,505	9,968,603	13,032,017	12,723,482	13,048,401	15,306,054	16,236,904		
<b>Additions:</b>																					
Interest for the period	226,812	(24,576)								(143,635)											
Chapter 175/185 Contributions	2,884,448	3,298,759	3,386,923	4,090,128	4,151,282	4,199,516	340,226	336,696	355,943	383,728	485,893	534,608	552,247	586,325	607,935	637,787	647,991	610,768	547,807		
Uncommitted Chapter Funds							70,155	328,503	798,122	1,086,227	1,428,328	1,436,222	1,733,569	2,571,752	2,887,870	2,040,650	1,858,894	2,385,126	3,383,462		
Interest on Chapter contributions	67,291	82,469	1,399,690	1,700,900	2,810,370	233,276			(12,721)	(103,717)		396,047	400,054	663,611	694,763	1,593,211	(2,142,598)	(562,120)	1,064,544	(323,181)	3,695,785
20-Year Retirement Adjustment																					
Repayment of Loan From CBSA								70,000	70,000								290,231	497,763			
<b>Subtractions:</b>																					
Portion of 175/185 Allocated to Base Benefits	(1,346,378)	(1,413,762)	(1,554,176)	(1,535,566)	(1,622,935)	(1,708,690)															
Experience Loss due to 20 Year Retirement			(118,309)	(945,999)	(1,580,710)																
Immediate COLA Premium					(1,925,883)	(2,027,646)															
Bi-ennial COLA																					
Loan to CBSA									(887,264)		(648,135)										
Retiree Bonus Payment				(472,993)	(627,508)								(1,315,757)	(1,495,532)	(1,577,082)	(1,639,451)	(1,706,817)	(1,771,459)	(1,843,990)		
Interest			(100,962)	(210,577)	(376,277)	(39,439)			48,536		(46,922)		(86,724)	(192,342)	205,571	55,585	(104,722)	29,596	(326,233)		
Allocation of Actuarial Loss		(352,180)																			
<b>Balance EOY</b>	<b>3,963,863</b>	<b>5,554,573</b>	<b>9,223,417</b>	<b>11,849,310</b>	<b>12,996,877</b>	<b>13,157,049</b>	<b>1,397,660</b>	<b>2,029,142</b>	<b>2,270,844</b>	<b>4,136,846</b>	<b>5,756,064</b>	<b>8,390,505</b>	<b>9,968,603</b>	<b>13,032,017</b>	<b>12,723,482</b>	<b>13,048,401</b>	<b>15,306,054</b>	<b>16,236,904</b>	<b>21,693,735</b>		

