

# WEST PALM BEACH POLICE

## PENSION NEWS

A West Palm Beach Police Pension Fund Publication

*Issue 7*

*Date of Issue:  
Third Quarter 2010*

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### Web Site

For members who have web access, the company who hosts our web site has been upgrading their systems. As such, our site has been up and down. These outages are temporary and normal services should resume shortly. If you see the site is down, simply check back later. Thank you!

## QUARTERLY PENSION FUND SUMMARY

On June 30, 2010 our fund had a total market value of \$170,400,000. For the quarter the fund lost \$8,502,000.

For the quarter the total fund return was -4.57% (net) which beat our benchmark return which was -6.02%. In the previous quarter the fund return was 4.11%. For the quarter the stock return was -8.22% and the benchmark return was -11.14%. The bond return is 1.75% and the benchmark return is 3.49%.

For the quarter the average allocation of our fund was 55.5% invested in stocks, 38.4% in bonds and 6.1% in cash equivalents (i.e., short term liquid interest bearing investments similar to money market funds). Our ongoing target for investment in stocks is 65% of the total fund.

**Fiscal Year to Date  
(10/1/2009 – 6/30/2010)**

For the fiscal year to date the total fund net return was 2.82% and its benchmark return was 1.71%. The stock return was 2.23% and the benchmark return was -0.94%. The bond return was 5.09% and the benchmark return was 5.54%.

For the fiscal year to date the Earnest Partners large cap value stock return was 0.04%, the Garcia, Hamilton, & Jackson large cap growth stock return was -1.62%, the Munder mid-cap growth stock return was 4.13%, the Anchor mid-cap value stock return was 6.75%, the Wells small-cap growth stock return was 4.05%, the DFA international stock return was -13.14%, the Collins Fund of Funds return was 3.64%, and the Davis Hamilton & Jackson aggregate fixed income return was 5.12%. The S&P 500 index return was -1.02%. Three new

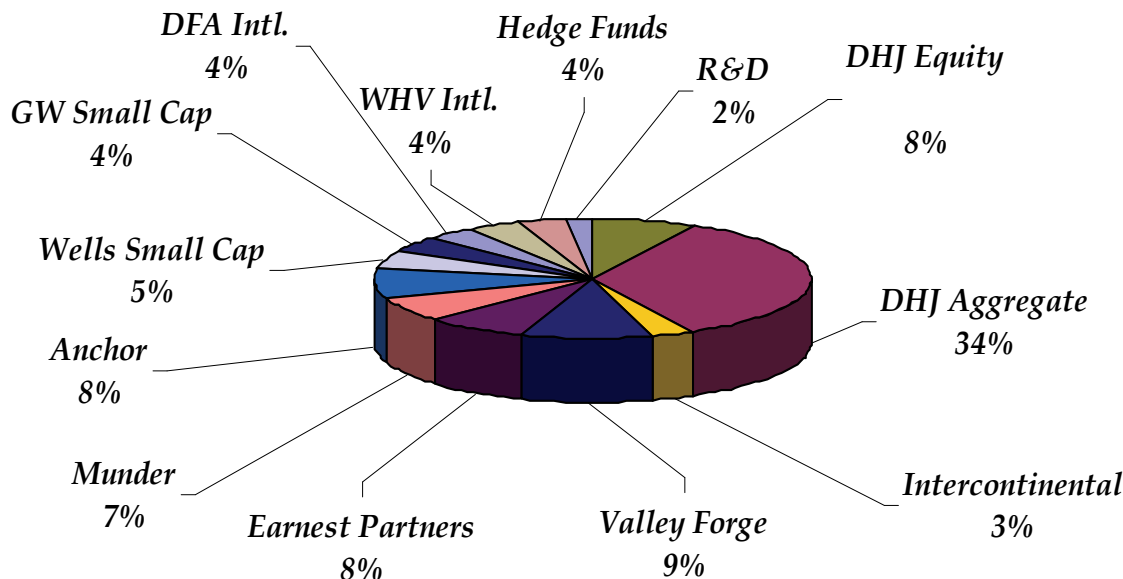
equity managers have been added to fund (WHV, GW Capital, and Valley Forge). They came on board during the quarter. They replaced Driehaus, Stratton and Intech, respectively.

For the quarter the best performing sector among S&P 500 stocks was Utilities which decreased 4.82% and the worst sector was Materials which decreased 15.72%.

Among the major economic indicators, the Consumer Price Index (CPI-Urban) increased 1.1% for the twelve months ended in June. The Producer Price Index (PPI) for finished goods advanced 2.8% (unadjusted) for twelve-month period ended in June.

The seasonally adjusted unemployment rate was 9.5% in June compared to 9.7% in March.

# Track the Fund



## Plan Asset Allocation & Diversification as of June 30, 2010

	Domestic Equities	Int'l Equities	Fixed Income	Real Estate	Cash	Total	% of Total
<i>DHJ Equity</i>	\$12,970,000				\$403,000	\$13,373,000	
<i>DHJ Aggregate</i>			\$59,061,000		\$293,000	\$59,061,000	
<i>DHJ Credit</i>			\$0		\$0	\$0	
<i>DHJ Total</i>						\$72,434,000	42.5%
<i>Valley Forge</i>	\$15,912,000				\$832,000	\$16,744,000	9.8%
<i>Earnest Partners</i>	\$12,438,000				\$470,000	\$12,908,000	7.6%
<i>Munder</i>	\$11,386,000				\$158,000	\$11,544,000	6.8%
<i>Anchor</i>	\$9,557,000				\$3,871,000	\$13,428,000	7.9%
<i>Wells Small Cap</i>	\$8,362,000				\$287,000	\$8,649,000	5.1%
<i>GW Small Cap</i>	\$7,049,000				\$279,000	\$7,328,000	4.3%
<i>DFA Intl.</i>		\$6,308,000				\$6,308,000	3.7%
<i>WHV Intl.</i>		\$5,886,000			\$474,000	\$6,360,000	3.7%
<i>Hedge Funds</i>			\$6,303,000			\$6,303,000	3.7%
<i>Intercontinental</i>				\$5,000,000		\$5,000,000	2.9%
<i>R&amp;D</i>					\$3,393,000	\$3,393,000	2.0%
<i>Totals</i>	\$77,674,000	\$12,194,000	\$65,364,000	\$5,000,000	\$10,460,000	\$170,399,000	100.0%

DHJ	Wells	Valley Forge	Earnest Partners	Munder
Apple	GSI Commerce	Barrick Gold Corp	Occidental Petrol.	Cognizant Tech.
Microsoft	Sykes Enterprises	Newmont Mining	Freeport-McMoran	NetApp Inc.
Danaher	Scientific Games	Goldcorp Inc.	Express Scripts	Akamai Tech.
IBM	PMC-Sierra	Coca Cola	Cummins Inc	Coach Inc.
Cisco	Gartner Group Inc.	Archer Daniels Mid.	Intel	LKQ Corp.
Exxon Mobil	Global Cash Access	Merck	IBM	Chipolte Mexican
Apache Corp.	Cbeyond Inc.	Abbott Labs	Wells Fargo	BorgWarner
Nike	Bridgepoint Educ.	Procter & Gamble	Exxon Mobil	IHS Inc.
Roper Ind.	Microsemi Corp.	Johnson & Johnson	Darden	ResMed
Walt Disney	Synchronoss Tech.	Verizon Comm.	General Dynamics	Church & Dwight

# Top Ten Equity Holdings

Anchor	GW	DFA	WHV
Annaly Capital Mgmt.	A.O. Smith Corp.	Vodafone Group ADR	Nestle SA
SPDR Gold Trust	Omega Healthcare	Royal Dutch Shell	Noble Corp.
Sun Communities	SLM Corp.	Koninklijke Philips	Suncor Energy
Invesco Mortgage Cap.	Esterline Tech.	Daimler AG	Nabors Industries
Cablevision Systems	Southern Union	HSBC Holdings	Schlumberger LTD
Hasbro Inc.	Forest Oil Corp.	Zurich Financial	Weatherford Intl.
Progress Energy	Capstead Mortgage	Arcelormittal	BHP Billition LTD
HCP Inc.	Darling International	Thomson Reuters Corp.	Potash Corp.
Ivanhoe Mines	Oneok Inc.	Credit Suisse Group	Rio Tinto PLC
Millicom International	Stewart Enterprises	Vodafone Group PLC	Transocean Inc.

**WEST PALM BEACH POLICE PENSION FUND**  
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West Palm Beach, Florida 33409

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**PUBLIC NOTICE**

**WEST PALM BEACH POLICE PENSION FUND  
BOARD OF TRUSTEES  
WILL BE MEETING**

<b>January 14, 2011</b>	<b>February 18, 2011</b>
<b>March 11, 2011</b>	<b>April 08, 2011</b>
<b>May 13, 2011</b>	<b>June 10, 2011</b>
<b>July 08, 2011</b>	<b>August 12, 2011</b>
<b>September 09, 2011</b>	<b>October 14, 2011</b>
<b>November 04, 2011</b>	<b>December 09, 2011</b>

**LOCATION: PALM BEACH PBA  
2100 N. FLORIDA MANGO ROAD  
WEST PALM BEACH, FLORIDA 33409**

**TIME: 8:15 A.M.**

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, THEY WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, THEY WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE WHICH THE APPEAL IS TO BE BASED.

THIS MEETING MAY BE CONDUCTED BY MEANS OF OR IN CONJUNCTION WITH COMMUNICATION MEDIA TECHNOLOGY, THE TYPE BEING A SPEAKER TELEPHONE. THE ACCESS POINT IS THE CONFERENCE ROOM, WITHIN THE PALM BEACH COUNTY POLICE BENEVOLENT ASSOCIATION BUILDING.

PERSONS WITH DISABILITIES WHO REQUIRE REASONABLE ACCOMMODATIONS TO PARTICIPATE IN THE MEETINGS MAY CALL THE PLAN ADMINISTRATOR FIVE BUSINESS DAYS IN ADVANCE AT 561-471-0802 (VOICE) AND/OR 800-955-8771 (TTY).

Please visit us at: [www.wpbppf.com](http://www.wpbppf.com)



**NOTICE TO ALL MEMBERS**

***Board Election Results***

The two year term of Trustee Chris Roaf (which ends September 30, 2010) was publicly open for nomination. Troy Marchese was the only challenger for the seat.

The following are the results from the Pension Trustee Election which was held August 13<sup>th</sup> – 23<sup>rd</sup>, 2010. Ballots were counted directly after the election in the Palm Beach PBA Hall. The counting process was open to any member to observe.

**283 Ballots Sent Out**

**96 Returned**

**Troy Marchese 68 - WON**

**Chris Roaf 28**

The Board of Trustees would like to thank those who took the time to vote. A formal report will be presented to the Board on September 17, 2010 by the Plan Administrator.

**THANK YOU CHRIS!**

**THE BOARD OF TRUSTEES  
WOULD LIKE TO THANK  
CHRIS ROAF FOR HIS  
DILIGENT EFFORTS**

**AS A**

**BOARD TRUSTEE**

**10-01-2002**

**TO**

**09-30-2010**

**Welcome**

**New Pension Members**

Christina Arroyo 07/11/2010

Anthony Imbesi 07/11/2010

Jerrell Negron 07/11/2010

Frank Nelli 07/11/2010

Diony Oliscat 07/11/2010

***We all wish you  
continued success!***

## Garcia Hamilton Jackson Market Review

Stock prices retreated during the quarter, following four quarters of uninterrupted gains off the March 2009 bottom. Perhaps the period was merely a pause in a continuing recovery as many measures of economic activity remain healthy including industrial production and corporate profits. Credit markets are functioning well and volatility has subsided. Inflation rates are low and borrowing costs attractive. Nevertheless, the domestic stock market, as measured by the S&P 500 Index, fell 11.4% for the quarter ending June 30.

Stock price declines were pervasive, with all ten economic sectors of the S&P 500 Index posting negative quarterly returns. Reflecting investor fear, those sectors considered defensive held up best including Utilities, Telecommunications, and Consumer Staples. Sectors more closely linked to future economic activity fared worse. For instance, the Materials sector dropped 15.3%. This trend was consistent across growth and value styles. The Russell 1000 Growth Index dropped 11.8% compared with an 11.2% decrease for the Russell 1000 Value Index.

Looking forward, equity market valuations are quite attractive given current earnings forecasts and the favorable interest rate environment. Economic activity may be moderate, raising the likelihood central banks remain accommodative. Corporate managements show every indication they will stay vigilant on cost structures. Balance sheets are much improved, and cash levels, if anything, are excessive.

These factors suggest equity markets are likely to move higher with earnings once the current correction plays out.

For the past five quarters, **beta** factors have dominated stock market activity with underlying fundamentals all but ignored. However, traditional metrics such as earnings growth, P/E multiples, and cash flows are likely to be increasingly important to investors as the recovery progresses. Large cap, high quality companies seem particularly well-positioned, with attractive competitive positions, established global distribution channels, and strong balance sheets.

See page 12 of this publication for further information on [beta](#).

## Retiree Corner



### *Congratulations to our latest DROP Members*

*James Cink*                      *06-30-2010*

*Thomas Bonney*                *07-31-2010*

*Karl Seifel*                      *07-31-2010*

### *Congratulations to our latest Retired Members*

*Brett Patterson*                *06-16-2010*

*Harry Oswald*                 *07-15-2010*

*Khaled Ghumrawi*              *07-31-2010*

*Mark Meyerowich*              *07-31-2010*

*Daniel Sargent*                 *07-31-2010*

## STOCK SPOTLIGHT

### Lockheed Martin (Ticker = LMT)

Sector: Industrials

Industry: Aerospace/Defense

Market Capitalization: \$27.4 Billion



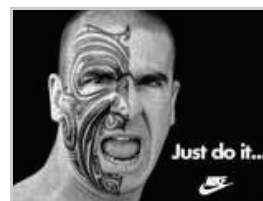
Lockheed Martin Corporation is a global company engaged in the research, design, development, manufacture, integration, and maintenance of advanced defense technology systems and products. In 2009, 85% of net sales were made to the U.S. government and 13% of net sales were made to foreign governments. Lockheed is currently in the early stages of producing the F-35 Joint Strike Fighter, the next-generation fighter plane for the U.S. Air Force and Navy and a number of allied countries. Since it is needed to replace a rapidly aging fleet of fighter planes, the F-35 has the support of the Department of Defense, the administration, and Congress. Lockheed Martin is currently earning strong returns on invested capital, has historically returned 50% of its free cash flow to shareholders, and recently increased its dividend by 10.5% (its seventh consecutive double-digit annual increase). Key opportunities for the company include the potential growth of the F-35 program to 3,000 planes, continued foreign sales of the F-16, and further sales growth for the C-130J transport and the company's missile defense systems. With investors concerned about federal government budget pressures, Lockheed's stock represents an attractively valued opportunity to participate in expected growth of 4-6% in revenues and 8-10% in earnings per share over the next 5-10 years.

### Nike Inc (Ticker = NKE)

Sector: Consumer Discretion

Industry: Footwear

Market Capitalization: \$34.14 Billion



Nike Inc. is the world's largest designer and developer of high end footwear, equipment, apparel, and accessory products. Nike's brands include: NIKE, Cole Haan, Converse, Hurley, and Umbro. The Company sells its products via retailers in the United States and in over 170 countries around the world. Their sales ordering program (called "futures") allows retailers to order up to six months in advance of delivery so as to guarantee a set delivery date and price. The futures projections continue to deliver solid percentage sales growth in the low double digits on a quarter over quarter basis. Much of this is attributable to their innovative marketing strategies, customer brand loyalty, and successful penetration in emerging markets. Their level of involvement with the Olympics in China boosted their profile and Asia and the recent purchase of Umbro has given them significant exposure to World Cup (and soccer in general). Fundamentally, NKE has little debt, exceptional cash-flow, and value return to the shareholders via share repurchases.

## ITEMS OF INTEREST

**PUBLIC PENSION INVESTMENT RETURNS:** Public pension plans report double-digit returns for the 2010 fiscal year ENDING June 30th, recovering from record losses the previous year. The rebound was due to better market returns and increasing allocations to fixed-income and alternatives investments. An average 13.8% return was achieved by the 17 pension funds that have reported 2009-10 fiscal data reviewed by Pensions & Investments (P&I). At 11.4%, the nation's largest pension fund, \$211.4 Billion California Public Employees' Retirement System, had the lowest return of the 17 systems reviewed by P&I. While CalPERS had gains in most asset categories ~ including 30.9% in private equity ~ total returns were reduced by a -37.1% return in the system's real estate portfolio. (The fund's benchmark return was 15.84%.) Meanwhile, statistics from Wilshire's Trust Universe Comparison Service show large public pension plans continued to push away from equities in the 2010 fiscal year. Median allocation to equities among public plans with more than \$1 Billion was 52.8% as of June 30, compared with 54.34% a year earlier. For fiscal year ended June 30, 2007, plans had 61.55% of their assets in equities. Fixed income stood at 27.5% at the end of June, down from 29.1% for the prior 12 months, but up from the 23.73% allocation in 2007. The biggest increase came in alternatives: While some plans had invested in them in 2007, they were so few, that Wilshire statistics showed a 0% median allocation then. For the 2010 fiscal year, however, alternatives made up 7.63% of total plan assets.

**FLORIDA MUNICIPAL POLICE OFFICERS WHO HAVE SERVICE PRIOR TO PENSION VESTING UNCONDITIONALLY ENTITLED TO CONTRIBUTION REFUND:** Section 185.19(1), Florida Statutes, provides that if any police officer leaves service of the municipality before being eligible to retire, such police officer shall be entitled to a refund of all contributions, without interest, less any benefits paid. The City of St. Petersburg and the City of St. Petersburg Police Pension Board of Trustees appealed a final judgment finding that former police officers who left service prior to vesting in the City's police pension fund were entitled to refund of their contributions. The Second District Court of Appeal affirmed. Relying upon Section 185.35(1), Florida Statutes, requiring municipalities with their own police pension plans to meet minimum benefits and standards of Chapter 185, the city and board claimed that any refund is a pension "benefit" and must await its receipt of premium tax income funds. They contended that they could not provide a refund because they lacked sufficient premium tax income revenue. The former officers countered that a refund is not a benefit, and nothing in Section 185.35(1), Florida Statutes, requires that refunds come from premium tax income funds. The former officers advanced a persuasive and simple argument: Chapter 185, Florida Statutes, is not ambiguous, and legislative intent is easily seen in the plain language of the statute. Under Section 185.19(1), Florida Statutes, former police officers shall be entitled to a refund of his contributions. A 1958 Florida Attorney General opinion lent support to such conclusion. The court saw no reason why the requirements of Section 185.35, Florida Statutes, relating to premium tax income, should have any bearing on rights of the former police officers here. Use of the mandatory term "shall" normally creates an obligation impervious to judicial discretion. The appellate court also found the City's and Board's other arguments unavailing: that requiring a refund creates an unconstitutional unfunded mandate and that the former police officers were bound by terms of their employment contracts that called for forfeiture absent vesting. *City of St. Petersburg v. Remia*, Case Nos. 2D09-4233 and 2D09-4444 (Fla. 2d DCA, July 16, 2010).

**TIMING IS EVERYTHING:** Yankees owner George Steinbrenner may have saved his heirs as much as \$600 Million in estate taxes by dying in 2010. The estate tax expired in 2009, and a new one does not take effect until 2011, when heirs will be taxed at a top rate of 55 percent, according to abajournal.com. Steinbrenner's net worth has been estimated at \$1.15 Billion, and dying in 2010 rather than 2011 could amount to a \$600 Million savings for his heirs. Steinbrenner's death may help spur Congress to pass a retroactive extension of the 2009 estate tax of 45 percent. Some experts believe such law would be constitutional, but would be subject to court challenges that could result in years-long litigation.



## Normal Retirement Age: Where Do We Stand?.... According to NCPERS

In May 2007, the Department of the Treasury and the Internal Revenue Service (IRS) issued final regulations that would define the term normal retirement age (NRA) for all pension plans. Specifically, the regulations provide that pension plans must have an “age-based” NRA. Age means number, in the eyes of Treasury-IRS officials. In contrast, many public pension plans historically have tethered eligibility for retirement to years of service and not attainment of a certain age. Some have based retirement eligibility on a combination of years of service and age, which Treasury-IRS officials say would also be noncompliant with the new regulations. To comply with the 2007 regulations, many public plans will have to devote considerable time, resources, and political capital to pursue legislative changes to their governing state statutes. Public plans protested the new regulations informal comments submitted to the Treasury-IRS. In October 2008, the Treasury Department extended the date by which governmental pension plans would have to comply with the new regulations to plan years beginning after December 31, 2010. The effective date has since been extended to plan years beginning on or after January 1, 2013. NCPERS believes the NRA regulations are a solution in search of a problem. These regulations are not necessary to further any public policy objective. Plans making the change to an age-based NRA will achieve only a cosmetic or superficial plan modification. This fact is recognized by Treasury-IRS officials. From the beginning, NCPERS has pushed back against these burdensome regulations in an attempt to exempt public plans. At a time when public plans are under great scrutiny on funding levels and investment decisions, forcing plans to go hat in hand to state legislators on the NRA issue will open them up to legislative mischief. In some cases, unrelated legislative changes could threaten the basic defined benefit design of a plan and undermine this important and successful component of our nation’s retirement regime. In this increasingly challenging political environment for public plans, NCPERS must develop and implement a strategy to thread the needle and achieve administrative or legislative relief from the NRA regulations. This summer, in the latest in a series of contacts with Treasury and IRS officials, NCPERS initiated a meeting for the public plan community with senior Treasury Department and IRS officials to discuss in detail the NRA regulations and their implications for public plans. It was clear from the outset of the meeting that the government officials were not budging on their interpretation of the law. In the coming months, as a follow-up to this meeting, NCPERS will test this interpretation by developing a legal memorandum to counter the Treasury’s arguments. While it is a decision related to a private pension plan, it is important to note that on July 2, 2009, the U.S. Court of Appeals for the Seventh Circuit in *Fry. Exel* interpreted the federal statutory definition of NRA to allow an age combined with years of service. The Court stated, “It is employee specific, to be sure, but ‘age + 5’ remains an age. It is not as if the Plan provided that an employee reaches normal retirement age when he owns ten umbrellas.” The U.S. Supreme Court denied review of the decision. In addition to challenging the legal arguments, NCPERS will continue to press the political argument that forcing many public plans into their state legislatures could lead to major revisions in plan designs and not just the NRA fix that Treasury is demanding. Some senior Treasury officials appeared sympathetic to that argument in our recent meeting. Likewise, our allies in Congress should be sympathetic to that argument, if we need to enlist Congressional support in exempting public plans from the NRA regulations. One substantive issue with defining an age-based NRA is that under the HELPS provision of the Pension Protection Act of 2006, reaching a plan’s NRA prior to distribution of benefits is a condition of qualifying for the \$3,000 tax exclusion for health insurance expenses. Therefore, depending on the age at which an individual retires and the plan’s age-based NRA, some public safety officers who retired or who will retire under a traditional plan based on years of service could be barred from qualifying for the HELPS exclusion once the regulations ultimately take effect. Of course, the HELPS issue makes our effort seven more important. For the next few months NCPERS will pursue a concerted effort with Treasury-IRS officials. If we cannot make significant progress by the middle of 2011, we will shift the playing field to Congress. As always, we welcome the involvement of specific plans in this effort.

**NCPERS** is the largest national, nonprofit public pension advocate, and for more than 65 years we have been the principal trade association working to protect the pensions of public employees. We focus on [Advocacy](#), [Research](#) and [Education](#) for the benefit of public sector pension trustees, administrators and government officials. . .it's who we **ARE**. NCPERS was founded in 1941 to protect public employees from an action by the federal government that would have wiped out public pension systems by requiring Social Security coverage for non-covered state and local government employees. Today, the membership of NCPERS includes more than 500 public pension funds representing nearly \$3 trillion in assets.



## SURVEY SAYS.....

The following is a summation of the Annual Satisfaction Survey that is sent to all of our retired and DROP members. A COMPLETE COPY MAY BE VIEWED ON THE WEB. The Board of Trustees would like to thank those who took the time to complete and return. Your time and input are valued.

1. How would you rate the courtesy & respect you receive from our staff?  
Results: 96.36% Very Good to Excellent Rating
  2. What would you rate the accuracy of the reports and documents received from the staff?  
Results: 80.00% Very Good to Excellent Rating
- In the area of communication:
- 3A. How would you rate the pension newsletter?  
Results: 88.24% Very Good to Excellent Rating
  - 3B. How would you rate the pension web site?  
Results: 89.47% Very Good to Excellent Rating
  - 3C. How would you rate written communications received from the staff?  
Results: 84.21% Very Good to Excellent Rating
  - 3D. How would you rate e-mails received from the staff?  
Results: 93.76% Very Good to Excellent Rating
  - 3E. Over the last year, how do you feel about the lines of communication between the membership and the Board?  
Results: 77.78% Very Good to Excellent Rating
  4. How does the staff listen to you and understand your needs?  
Results: 83.34% Very Good to Excellent Rating
  5. How would you rate staff, in terms of being responsive to your requests and completing your objectives in a timely manner?  
Results: 87.27% Very Good to Excellent Rating
  6. How would you rate the pension forms used by the system?  
Results: 76.36% Very Good to Excellent Rating
  7. How would you rate the staff knowledge about the pension system?  
Results: 80.00% Very Good to Excellent Rating
  8. How would you rate the staff in terms of solving your problems?  
Results: 86.79% Very Good to Excellent Rating
  9. How would you rate the overall performance of the staff?  
Results: 89.66% Very Good to Excellent Rating
  10. How would you rate the overall performance of the Board of Trustees?  
Results: 86.44% Very Good to Excellent Rating

## US Supreme Court affirms audit of police officer's text messages

By Leonard J. Dietzen III  
GUEST COLUMNIST

The U.S. Supreme Court acknowledged in a case this week that the law can rarely keep pace with technology.

In the landmark case of *City of Ontario v. Quon* (08-1332), the court determined that the City of Ontario, Calif., did not violate a police officer's Fourth Amendment rights when it audited his text messages. The court attempted to limit its ruling because of the fast pace of evolving technology and the uncertainties in workplace norms.

This is the first time the Supreme Court has addressed a public employee's expectation of privacy in the workplace as it relates to new forms of communication — specifically, text messaging.

While the city has a robust electronic communications policy, text messaging issues were not specifically addressed in writing. Sgt. Jeff Quon and others were informed verbally that their text messages were subject to the same policies and that they had no expectation of privacy or confidentiality when using these resources, which were provided by the city.

In addition, Quon's supervisor, Lt. Steve Duke, told Quon and others that personal use would not be audited if all overage charges were reimbursed to the city. However, Quon's excessive messages were ultimately reviewed, leading him and three others to sue the city and lose at the trial court level.

The trial court ruled that the search was legal and did not violate the officer's Fourth Amendment rights.

However, the U.S. Court of Appeals for the 9th Circuit reversed the decision, ruling in part that reading the messages without a clear written policy in place, combined with Lt. Duke's statements about reimbursement for personal use, violated the officer's Fourth Amendment protection against unreasonable searches.

The Supreme Court reversed the Court of Appeals in a unanimous opinion. The court opined that it must proceed with great care when considering the whole concept of privacy expectations in communications made on electronic equipment owned by a government employer. The court further noted that courts risk error by elaborating too fully on the Fourth Amendment implications in light of the emerging technology before its role in society has become clear. Justice Scalia, in a concurring opinion, commented on the Court's attempt to qualify its opinion by stating, "The-times-they-are-a-changin' is a feeble excuse for disregard of duty."

In essence, the officer's rights were not violated because the search was motivated by a legitimate work-related purpose and was not excessive in nature. Further, the court determined the search was not excessively intrusive. Only work-related text messages were reviewed. Because the court decided that Sgt. Quon had no expectation of privacy on company equipment, the court also held that persons sending him text messages while he was on duty could not have an expectation of privacy either. Accordingly, his now former wife, a co-worker with whom he had a romantic relationship, and another coworker who also sued the city lost on appeal.

Employers can learn from this opinion, regardless of whether they are private or public. First, the Supreme Court affirmed the value of having clear policies in place that address employees' expectations of privacy. Employees will have a lesser expectation of privacy if the employer's policies are clear and explicitly communicated.

Second, the court emphasized that the nature of his law enforcement job should have put Quon on notice that his work-related text messages could subject him to legal review.

In this writer's opinion, employers should adopt robust policies to encompass all forms of electronic communication and train on these policies frequently.

· Attorney Leonard J. Dietzen III is a partner in the Tallahassee office of law firm Rumberger, Kirk & Caldwell. His practice is devoted to the representation of private and public-sector employers in all aspects of labor and employment law. Contact him at [ldietzen@rumberger.com](mailto:ldietzen@rumberger.com).



## THE BOARD OF TRUSTEES

**Ed Mitchell, Chairperson**

**Jonathan Frost, Secretary**

**Chris Fragakis, Trustee**

**Chris Roaf, Trustee**

**Wilton White, Trustee**

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E-mail Comments and Suggestions to:

Email: [info@wpbppf.com](mailto:info@wpbppf.com)

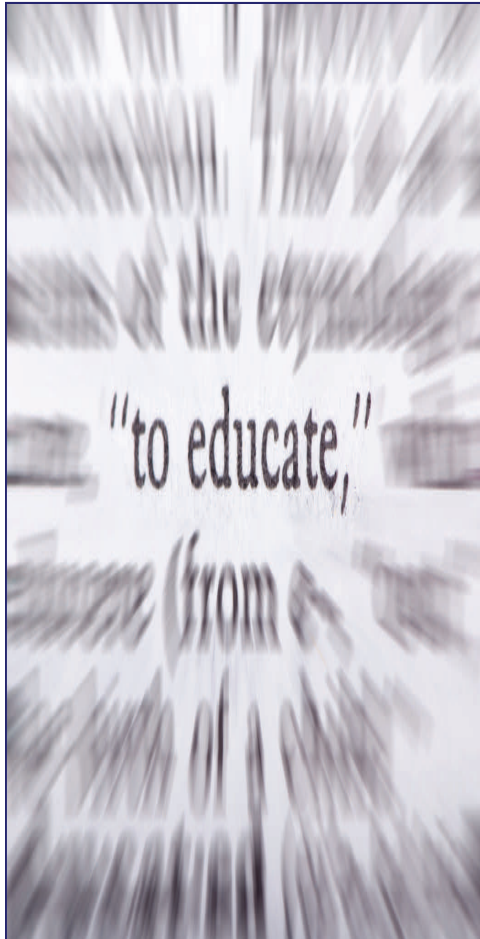
## SHARE ACCOUNTS

Vested Participants have the option to select between two methods to credit investment earnings to their account. The method may be changed each year effective October 1; however, the method must be elected prior to October 1.

Options are: The investment earnings (or losses) credited to the individual member accounts shall be the same percentage as are earned (or lost) by the total investment earnings (or losses) of the Fund as a whole. **OR** A fixed annual rate of 8.25 percent.

### Disclaimer

The information contained herein is provided for informational purposes only. The foregoing information/summary/prices/quotes/statistics have been obtained from sources we believe to be reliable, but cannot guarantee its accuracy or completeness. Neither the information nor any opinion expressed constitutes investment, tax and/or legal advice from the Board of Trustees and/or any and all entities thereof. Please consult your professional investment, tax and/or legal advisor for such guidance.



## What is *Beta* ?

In the GHJ article on page 6, beta is cited as a factor in the market. What does that mean?

A measure of the volatility, or systematic risk, of a security or a portfolio in comparison to the market as a whole. Beta is used in the capital asset pricing model (CAPM), a model that calculates the expected return of an asset based on its beta and expected market returns.

Beta is calculated using regression analysis, and you can think of beta as the tendency of a security's returns to respond to swings in the market. A beta of 1 indicates that the security's price will move with the market. A beta of less than 1 means that the security will be less volatile than the market. A beta of greater than 1 indicates that the security's price will be more volatile than the market. For example, if a stock's beta is 1.2, it's theoretically 20% more volatile than the market.

Many utilities stocks have a beta of less than 1. Conversely, most high-tech Nasdaq-based stocks have a beta of greater than 1, offering the possibility of a higher rate of return, but also posing more risk.