

**Employees Retirement Board
Of Rhode Island
Monthly Meeting Minutes
Date of Meeting: December 8, 2004**

The Monthly Meeting of the Retirement Board was called to order at 10:55 a.m., Wednesday, December 8, 2004 in the 8th Floor Conference Room, 40 Fountain Street, Providence, RI.

I. Roll Call of Members

The following members were present at roll call: Ponzi A. Angelone; Rosemary Booth-Gallogly; Michael R. Boyce; Liza Cohen, designee for Representative Steven M. Costantino; William B. Finelli; John P. Maguire; Louis M. Prata; Linda C. Riendeau; General Treasurer Paul J. Tavares and Jerome F. Williams, designee for the Director of Administration.

Also in attendance: Frank J. Karpinski, ERSRI Executive Director and David D. Barricelli, Board Counsel.

Recognizing a quorum, Treasurer Tavares called the meeting to order.

II. Approval of Minutes

On a motion by Michael R. Boyce and seconded by Louis M. Prata, it was

VOTED: To approve the minutes of the November 10, 2004 meeting of the Employees' Retirement Board of Rhode Island.

III. Chairman's Report

Treasurer Tavares thanked Liza Cohen, designee for Representative Steven M. Costantino, for her service on the Board. She will no longer serve on the Board after January 2005 due to separation of powers.

Regarding separation of powers, Treasurer Tavares informed the Board that he suggested to the House that they include a retiree representative to the Board. He pointed out that the House is reviewing the matter.

Mr. Boyce asked Treasurer Tavares what the status was of the three staff positions approved in this years budget. The Treasurer informed the Board that the job descriptions were being drawn up and would soon be posted.

IV. Executive Director's Report

Director Karpinski provided the Board the pension application report.

Director Karpinski then apprised the Board of deduction processing scenarios for retiree healthcare given the pending litigation between Blue Cross Blue Shield and United Healthcare for the State's healthcare contract. He told the Board that the system was poised to integrate either carrier but needed lead time to implement the computer programs. Upon describing the scenarios, he said ERSRI would wait for official confirmation from the Department of Administration as to who would be the carrier and what the appropriate deduction would be.

Mr. Finelli asked if a healthcare provider would still cover any retirees who applied for health coverage at the open enrollment in November. Treasurer Tavares reiterated that the only role ERSRI serves is as a pass through of payment and is not involved in any contract negotiation for healthcare. Director Karpinski told the Board that all members applying for health benefits are being processed parallel with both carriers and all members should be covered.

V. Administrative Decisions

Disability Appeals:

(None this month)

Hearing Officer Decisions:

(None this month)

VI. Approval of November pensions as presented by ERSRI

On a motion by Linda C. Riendeau and seconded by William B. Finelli, it was unanimously

VOTED: To approve the November pensions as presented by ERSRI.

VII. Legal Counsel Report

The legal counsel report was included in the Board book. Mr. Finelli observed that the number of cases pending has declined. Attorney Barricelli responded by stating that the Retirement System has improved administration by addressing many matters in which there has been gray area. Because of successful litigation of these matters by the System, there are several decisions, some from the Supreme Court, establishing a legal standard, which prompted fewer legal challenges.

Mr. Boyce inquired about the status of the Cranston Crossing Guard matter. Attorney Barricelli informed the Board that Attorney Jerry Cobleigh is now handling the Cranston Crossing Guards matter. Thus, he may be requesting a continuance to bring in additional parties. Attorney Barricelli pointed out that the Retirement System is the defendant and the plaintiff controls the calendar.

On a motion by Rosemary Booth Gallogly and seconded by Jerome F. Williams, it was unanimously

VOTED: To approve the Legal Counsel report.

VIII. Committee Reports

Disability Sub-Committee: The Disability Sub-Committee recommended the following actions on disability applications as the result of its December 3, 2004 meeting for approval by the full Board:

<u>Name</u>	<u>Membership Group</u>	<u>Type</u>	<u>Action</u>
1. Richard Eckenroth	Teacher	Ordinary	Approve
2. Henry Owen	Municipal	Ordinary	Approve
3. Martin Bradley	State	Accidental	Table
4. Rene Chabot	State	Accidental	Approve
5. Joanne Mitola	Municipal	Accidental	Table
6. John Agostine	State	Ordinary	Approve
7. Louis Deciantis	State	Ordinary	Approve
8. Stephen Costa	Municipal	Accidental	Approve
9. Sandra Tiernan	State	Accidental	Table

On a motion by William B. Finelli and seconded by Michael R. Boyce it was unanimously

VOTED: To approve the recommendation of the Disability Sub-Committee meeting on Friday, December 3, 2004 on item 1.

(Mr. Maguire recused himself from any and all consideration of item # 1).

On a motion by William B. Finelli and seconded by Michael R. Boyce it was unanimously

VOTED: To approve the recommendation of the Disability Sub-Committee meeting on Friday, December 3, 2004 on item 5.

(Mr. Prata recused himself from any and all consideration of item 5).

Treasurer Tavares requested that item 8 be addressed separately. Mr. Finelli obliged and then on a motion by William B. Finelli and seconded by Michael R. Boyce it was unanimously

VOTED: To approve the recommendation of the Disability Sub-Committee meeting on Friday, December 3, 2004 on items 2, 3, 4, 6, 7, 9.

A motion by William B. Finelli and seconded by Michael R. Boyce to approve the recommendation of the Disability Sub-Committee meeting on Friday, December 3, 2004 on item 8 was opened for discussion.

Treasurer Tavares advised the Board that Attorney Musgrave, legal counsel for Mr. Costa, was present at today's meeting. The Treasurer told the Board that last Friday morning while the Disability Subcommittee was meeting; the Retirement System received a call from Attorney Musgrave indicating that there was communication between the City of East Providence and him for counter proposals regarding a modified position for Mr. Costa. The Treasurer then stated that he believes disability pension

adjudication is one of the most important functions performed by the Board. He acknowledged that a disability pension is the safety net to provide income for people who are unable to obtain income by any other means. Consequently, he felt it is something the Board should look at carefully. The Treasurer then suggested that since there appears to be ongoing negotiations, it may be prudent to remand the matter back to the disability Subcommittee so that negotiations between the parties can continue and the Subcommittee can take action when deemed appropriate.

Mr. Boyce then asked that Attorney Musgrave give the Board members an update on the communication.

Attorney Musgrave informed the Board that a response from the City of East Providence regarding the counter proposal has not yet been received. He pointed out that the Board asked the City whether or not it would offer a job to Mr. Costa. In response, Attorney Musgrave received an agreement with fifteen (15) points and a number of conditions. Attorney Musgrave stated the he responded with a revised agreement. He pointed out that in each of the correspondences with the City, it was suggested that the City and the Union sit down and discuss these matters. Attorney Musgrave said that a response from the City to his revised agreement was received on December 2, 2004. He said that there were still items to be resolved between the parties.

Mr. Boyce indicated that he concurred with Treasurer Tavares that disability pensions should not be taken lightly. Mr. Boyce then indicated that Mr. Costa's application has previously been before the Board and was filed over 18 months ago. He said it was March when the committee recommended approval and coincidentally, on the day of the meeting, a communication from the City was received. The Board then remanded the application back to the Subcommittee. Mr. Boyce indicated that the Subcommittee spent considerable time hearing the matter and that at the conclusion of the hearing, the employer suggested that a modified job description be made available for Mr. Costa. Mr. Costa stated that if there was a job that he could do, he would go back to work. Mr. Boyce pointed out that a request was made to the City asking that they supply the Board with the modified job description and inform them when the employee is back to work. Mr. Boyce felt that it is not proper to have an employee application on hold for 18 months.

Mr. Williams agreed with Mr. Boyce that significant time was spent reviewing facts provided by the City and Mr. Costa's attorney. Mr. Williams said that if there are ongoing discussions he would have no issue tabling the matter. However, he pointed out that if a vote were taken today, he would again not be in favor of approving the application. Mr. Williams said that although he recognizes the longevity of the application, this involves a lifetime disability pension and not short-term unemployment insurance thus due diligence is necessary. Mr. Williams felt that the City had in fact offered a position to Mr. Costa albeit there were conditions placed on it. He understood that those conditions were not a matter to be addressed by the Board. Regardless, he stressed to the Board that the City has offered a position to Mr. Costa. Mr. Williams apprised the Board that the last question he asked Mr. Costa during the hearing was if a light duty position were offered, would he accept it. Mr. Costa said yes. Based on that response, Mr. Williams felt he could not justify approval of a disability when an applicant is willing to accept a light duty position.

Mr. Boyce said he did not believe a modified job description is being offered because in order to get to that point, conditions and terms have been placed which may or may not

be resolvable. Thus, he said there is not an agreeable job description and the employee should not be honoring it and be going back to work.

Treasurer Tavares reiterated that the Board is looking at a long-term obligation of the pension system and since there are discussions going on between the parties, he felt they should be allowed to play out.

There being no further discussion, Treasurer Tavares then asked for a roll call vote. The following members voted in favor of the motion: Ponzi A. Angelone, C.L.U., Michael R. Boyce, William B. Finelli, John P. Maguire, Louis M. Prata and Linda C. Riendeau. The following members voted in opposition to the motion: Liza Cohen, Rosemary Booth-Gallogly, General Treasurer Paul J. Tavares and Jerome F. Williams. There being 10 votes cast, 6 votes in the affirmative and 4 votes in opposition, consistent with Rhode Island General Laws §36-8-6, there not being 8 votes in the affirmative, the motion failed.

Mr. Boyce mentioned that it is his understanding if the City and the applicant come to an agreement and Mr. Costa returns to work there is no action taken on his application.

Attorney Barricelli informed the Board that the application before them is for an accidental disability pension to be adjudicated consistent with title 45. He told the Board that once a disability pension is approved, it may be re-examined within 12 months and at that point, if Mr. Costa is found to be fit, he has to return to work. Attorney Barricelli pointed out that if Mr. Costa was to negotiate through the collective bargaining agreement it is technically irrelevant to the adjudication of the application. He said the standard is title 45 and the failure of an arbitration or collective bargaining is not a standard that should be considered for approval or disapproval. However, Attorney Barricelli pointed out that given the situation in which Mr. Costa would consider light work and he responded in the affirmative, it is then a consideration based on title 45. Attorney Barricelli said the issue is whether a job has actually been offered and if a settlement is reached is there a condition precedent in order to get a legal standard of a job.

Attorney Barricelli then answered Mr. Boyce's inquiry by stating that the applicant will have to withdraw his application for an accidental disability if he is offered and accepts a position.

Mr. Prata asked if Mr. Costa were to go back to work on light duty and is found that he cannot perform any duties of work what would the remedy be. Attorney Barricelli informed the Board that the applicant would have to reapply for disability.

There being no further discussion, on a motion by William B. Finelli and seconded by Michael R. Boyce it was unanimously

VOTED: To table item 8 to the January 12, 2005 Board meeting for a vote.

IX. New Business

Director Karpinski informed the Board that the actuarial audit RFP has been posted. Responses are due on January 7, 2005 and questions are due by December 15, 2004.

Attorney Barricelli informed the Board of another matter that may be pending soon regarding members filing for bankruptcy. He reminded the Board of the Vasquez case, in which halting of pension contributions to the system was requested. In that matter,

the bankruptcy was denied and contributions were continued. Attorney Barricelli indicated that he met with the bankruptcy attorney on the pending matter and said he would be taking a very aggressive position against the bankruptcy to preserve the integrity of contributions to the system.

X. Adjournment

There being no other business to come before the Board, on a motion by Linda C. Riendeau and seconded by Jerome F. Williams, the meeting was adjourned at 11:40 a.m.

Respectfully submitted,

Frank J. Karpinski

Executive Director