

**Employees' Retirement Board
Of Rhode Island
Monthly Meeting Minutes
Date of Meeting: January 12, 2005**

The Monthly Meeting of the Retirement Board was called to order at 9:05 a.m., Wednesday, January 12, 2005 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; William B. Finelli; John P. Maguire; 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.

John A. Marginson arrived at 9:20 a.m.

II. Approval of Minutes

On a motion by Rosemary Booth Gallogly and seconded by William B. Finelli, it was

VOTED: To approve the minutes of the December 8, 2004 meeting of the Employees' Retirement Board of Rhode Island.

III. Chairman's Report

At the last Board meeting, Mr. Boyce had asked about the full-time employees being added to Retirement System staff. Treasurer Tavares informed the Board that one of those positions has been filled and the other two positions, which are Retirement Analysts positions, have been posted and applications are arriving. The final date for receipt of applications is January 13th with a 3-day grace period.

Treasurer Tavares also informed the Board on the status of the Gateway American Express Building bankruptcy litigation. He gave the Board a recap of the details of that transaction: in 1989, the building was built using \$23 million of bonds. The Retirement System at that time purchased all those bonds, which had an expected 10-year period maturity. A renegotiated five-year deal was entered into in 1999, when the Developer of the property was unable to pay the principal owed on the bonds. On December 1, 2004, the note matured and at that time, the developer owed the Retirement System \$21.9 million. The day before the note was to mature, the Developer filed bankruptcy. The Treasurer assured the Board members that the Investment Commission would take any

legal action necessary to maximize the return to the Retirement System. The Treasurer noted that this is the only single piece of real estate in the entire \$6 billion retirement portfolio. Treasurer Tavares indicated that this is why retirement systems have to be extremely cautious in utilizing money for economic development purposes.

IV. Executive Director's Report

Director Karpinski provided the Board the pension application report.

Director Karpinski informed the Board that the responses to the Retirement System's RFP for the actuarial audit had a deadline of January 14, 2005. Upon receipt of these responses, a subcommittee procurement meeting would be scheduled and upon a selection of candidates, presentations would be made to the full Board.

Regarding the actuary, Mr. Williams apprised the Board that he is the chair of the Pension Review team. As part of that process, there have been ongoing discussions with all members of the team. The Pension Review team has again asked for the assistance of the system's actuary, Gabriel, Roeder, Smith and Company in discussing proposals for the team. Mr. Williams indicated to the Board that the Department of Administration is paying for these actuarial services and not the Retirement System.

Director Karpinski gave an update on the Cranston crossing guards matter. The preliminary Court order directed the Retirement System to proceed to pay the retirement service allowance for those crossing guards who were employed as crossing guards prior to July, 1994 and therefore, were not impacted by the change in RIGL §45-21-2(5) and the additional requirement that municipal employees must work at least 20 hours per week to be eligible to receive a pension. Consequently, he told the Board that 11 of the 13 crossing guards would be receiving a retirement allowance. These retirees will be receiving pensions retroactive to their date of retirement.

Mr. Boyce asked if the amount of pension payments was based on the decision that was rendered by the Court. Attorney Barricelli informed the Board that this matter had been before the Court on December 14, 2004. The Judge asked that the information on the crossing guards be reviewed, including additional affidavits and testimony that had been presented to the Court during the hearing. The Judge also inquired whether the Retirement System could adjudicate the pension applications currently on file with the Retirement System and issue a pension by the end of January for those crossing guards that qualified using service credits earned prior to the change in the statute in 1994. Attorney Barricelli advised the Court that the Retirement System would look at the 13 applications and adjudicate them for pensions based on service credit earned prior to July 1994 at which time the statute changed and the new 20 hours of employment requirement came into effect.

Mr. Boyce indicated that it was his understanding that the testimony was clear not only as presented by the Labor Union representing the crossing guards but also within the affidavit of the former Mayor of the City of Cranston, Mayor Michael Traficante. He said that testimony indicated that the crossing guards were salaried employees, paid for a six hour day, 5 days per week, which is 30 hours per week. Mr. Boyce also noted that there had been no testimony by the current employer to the contrary. Mr. Maguire questioned why this matter was being delayed given the additional information provided to the Court on December 14, 2004 as well as the direction given by the Court

to the Retirement System to reconsider its decision not to grant full pensions to the crossing guards. The Treasurer acknowledged Mr. Maguire's position but cited the conflicting information received so far on the issue of whether the crossing guards worked 20 hours per week. As an example, the Treasurer pointed to a memorandum by Board Counsel that concluded that under the provisions of the Fair Labor Standards Act (FLSA), during the school day, the crossing guards were "on-call" from between 8:00 a.m. through 2:00 p.m. however; during this time, they were free to pursue personal activities. As such, this "on-call" time would not be compensable time under the FLSA. The Treasurer stated that it appeared that the Retirement System was being asked to make a determination in a matter that was beyond its normal scope of operation. From a practical point of view, he noted, the statute is very clear: 20 hours of work per week is required. He further observed that in this matter parties are going to extreme lengths to avoid answering a simple question. The Treasurer concluded that for the Retirement System to preempt the Court's decision by taking action was to further delay the resolution of this matter since the Retirement System's "preemptive" decision would undoubtedly cause further litigation or court action. Mr. Boyce responded by saying that the information received by the Court and the Board was neither conflicting nor confusing. He said the crossing guards worked on a salaried basis and were "employed" on such a basis for 20 hours per week. Mr. Boyce asked audience member Attorney Donald Iannazzi, the attorney and business manager for Local Union 1033, if there was conflicting testimony or information on this point. Before responding, the Treasurer asked that Attorney Iannazzi be sworn in and that the stenographer record his remarks.

Attorney Iannazzi provided his interpretation of the testimony and information presented at the December 14, 2004 hearing. He pointed out that there was testimony that the crossing guards were required to be in the service of their employer for the full school day, which is defined by Rhode Island statute as six hours or more. Counsel for the Board, David Barricelli, disagreed with Attorney Iannazzi's rendition of the testimony given to the Court. Attorney Barricelli indicated that while there was testimony that the crossing guards were salaried individuals, there was never any testimony that the crossing guards worked 20 hours per week.

At the conclusion of Attorney Iannazzi's remarks, Attorney Barricelli advised the Board that the Court directed the Retirement System to review the information presented to the Court with the information it previously had to determine the eligibility of the crossing guards to receive a pension from the Retirement System. The Court further directed the Retirement System to adjudicate the 13 pending applications so that the applicants will receive a pension on uncontested credits no later than the January 2005 pension check. If the Retirement System determines that the information presented in Court qualifies the crossing guards as 20 hour or more employees and eligible for pension credits, then there will be no need to handle the 13 applications in a bifurcated manner.

Mr. Boyce then made a motion that the Retirement System process full pensions for the crossing guards. Mr. Maguire seconded the motion. Treasurer Tavares then cautioned the Board members that under the "open meeting" law, in order to vote on Mr. Boyce's motion, the issue would first need to be on the agenda for the next Retirement Board meeting. Mr. Maguire suggested that the matter could be placed on the current "Legal Report" or under the "New Business" section of the current Board agenda rather than waiting for the next meeting. Attorney Barricelli indicated that the Treasurer's decision

not to continue with the vote and to have the matter placed on the next agenda for the Board meeting was proper but stated that to confirm such a position he would need to review the applicable statute. Mr. Maguire questioned the inability of the Board to consider issues that are not specifically on the current agenda especially in light of past Board practice. Mr. Maguire cited, in support of voting on items not currently on the Board's agenda, those discussions and votes at prior Board meetings concerning the actuarial audit RFP. The Treasurer told the Board that he had been advised by his staff legal counsel that additional items, not on the Board's agenda, may be discussed for informational purposes only but may not be voted on except in certain limited situations. Mr. Williams expressed concern that not all parties to the crossing guard matter were present at the meeting and afforded the same opportunity to present statements on the record before the Board. He agreed that the matter should be put on the agenda for the next meeting and that all parties should be present to provide statements for the record.

Mr. Boyce stated that he was unaware of the requirement that matters must be placed on the Board agenda in order to be voted on. Treasurer Tavares agreed with Mr. Boyce and pointed out that once he was made aware of the "open meeting" law restrictions, he had an obligation to bring such restrictions to the notice of the Board.

The Treasurer then noted that there was currently a seconded motion on the floor. Mr. Boyce reiterated his motion and Mr. Maguire again seconded the motion. The Treasurer ruled that the motion to vote (that the Retirement System process the crossing guards pension applications) would be in violation of Section 42 of the "open meetings" law and thus overruled the motion. Mr. Maguire next moved to override the Chairman's overrule of Mr. Boyce's motion. Mr. Boyce seconded this motion and requested Attorney Barricelli to confirm that a vote on the original motion would be in violation of the "open meetings" law. Attorney Barricelli so confirmed but indicated that additional research on what is an "additional item" was essential to his conclusion. Attorney Barricelli cautioned the Board stating that by voting on the processing of individual pension applications, the Board would be operating in a manner distinctly different from its past practices. The Treasurer then expressed his concern that with the final decision due by the Court within three weeks, the proposed action appeared to preempt what would in fact be a final resolution in this matter. Mr. Maguire stated that there was a seconded motion on the floor to override the Chairman's overrule.

The Treasurer requested a roll call vote for the motion to overrule his decision. The following members voted yea: Michael R. Boyce, William B. Finelli, John P. Maguire and Linda C. Riendeau. The following members voted nay: Ponzi A. Angelone, C.L.U., Rosemary Booth-Gallogly, John A. Marginson, Jerome F. Williams and General Treasurer Paul J. Tavares. There being 9 votes cast, 4 voted in the affirmative and 5 voted nay. Consistent with Rhode Island General Laws §36-8-6, *Votes of Board – Record of proceedings*, there not being 8 votes in the affirmative, the motion failed.

Mr. Finelli requested counsel to clarify exactly what the Board can and cannot do with respect to items and motions. Attorney Barricelli said he would prepare a memorandum for the Board on this matter.

V. Administrative Decisions

Disability Appeals:

(None this month)

Hearing Officer Decisions:

Vanessa Cooley vs. ERSRI

Attorney Barricelli provided the Board with a synopsis of the Hearing Officer's decision on Ms. Cooley's application to purchase service credits attributable to "appropriate work service". He also indicated that both the Hearing Officer's decision, as well as the post-hearing memorandum of law prepared by Ms. Cooley's counsel, was included in the members meeting books. Attorney Barricelli reminded the Board that their review of the Hearing Officer's decision was not to be de novo but rather based on whether the decision was flawed as to either fact or law. Attorney Barricelli then informed the Board that Attorney Angelica Gosz was representing Ms. Cooley.

There being a stenographer present, the parties presented their issues. At the conclusion of the presentations, Mr. Maguire voiced his difficulty with the Hearing Officer's decision. Specifically, Mr. Maguire indicated that the decision is predicated on the fact that Ms. Cooley does not participate in the teachers' retirement system. Under RIGL §16-16-6.2, Rhode Island law states that any certified vocational teachers may purchase the pertinent service credit whether they are employed by any city, town or by the state. Per Mr. Maguire, the flaw in the decision is that it limits the basis for the denial to Ms. Cooley's non-participation in the teachers' retirement system. The decision does not address the issue of vocational teacher certification. The Treasurer indicated that one option in front of the Board was to remand the decision back to the Hearing Officer for clarification on the points raised. On a motion by John P. Maguire and seconded by William B. Finelli, it was unanimously

VOTED: To remand the decision to the Hearing Officer.

VI. Approval of December pensions as presented by ERSRI

On a motion by John P. Maguire and seconded by Linda C. Riendeau, it was unanimously

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

VII. Legal Counsel Report

Attorney Barricelli presented the Board with the legal counsel report. He indicated that there was one new legal matter in the report – Donald Panarello v. State of Rhode Island, Department of Corrections, et al and the Employees' Retirement System of Rhode Island. He indicated that this new matter is a unique claim and concerns a correctional officer who is also in the Air National Guard. Mr. Panarello volunteered for federal service in the "War on Drugs". He works in Rhode Island and participates in the "War on Drugs" by visiting elementary schools, working with local employers and advising municipal police departments. Mr. Panarello's current claim is against the

Department of Corrections for employment discrimination based on the loss of promotions and ability to work in accordance with USERRA. Mr. Panarello decided to include the Retirement System as a party to his case for failure to accumulate retirement benefits as prescribed by USERRA. The Retirement System will be participating in this matter in state court.

On a motion by Jerome F. Williams and seconded by John A. Marginson, 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 January 7, 2005 meeting for approval by the full Board:

<u>Name</u>	<u>Membership Group</u>	<u>Type</u>	<u>Action</u>
1. Elizabeth Baxter	State	Ordinary	Approve
2. John Cullen	State	Ordinary	Approve
3. Joan Grenga	State	Ordinary	Approve
4. Robert Matteucci	State	Ordinary	Approve
5. Janet Tobin	Teacher	Ordinary	Approve
6. Paula Torregrossa	State	Ordinary	Approve
7. Robert Vitale	State	Ordinary	Table
8. Laurie Pike	State	Accidental	Table
9. Frederick Sullivan	State	Accidental	Table
10. Robert Vespia	Municipal	Accidental	Approve
11. Cheryle Rhodes	State	Appeal of Accidental	Reaffirm denial

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, January 7, 2005 on item 5.

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

Mr. Williams clarified that with respect to Item #2, the Disability Sub-Committee based the recommended approval upon a one-year review.

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, January 7, 2005 on items 1,2,3,4,6,7,8,9, and 10.

On a motion by William B. Finelli and seconded by Jerome F. Williams it was

VOTED: To approve the recommendation of the Disability Sub-Committee meeting on Friday, January 7, 2005 on item 11.

Mr. Boyce voted against the recommendation to approve Item #11.

Continuance of Stephen Costa matter

Michael R. Boyce motioned and William B. Finelli seconded the recommendation of the Disability Sub-Committee to approve the accidental disability of Stephen Costa.

The Treasurer noted that the continuance was based on the hope that the parties would reach agreement on the possible offer of other municipal employment for Mr. Costa. The Treasurer asked if there was further discussion on the matter. Attorney Barricelli asked Director Karpinski if the Retirement System had received formal notification from the parties regarding the status of this matter. Director Karpinski responded that the Retirement System has received no notification of any additional movement since last month from the parties.

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, and Linda C. Riendeau. The following members voted in opposition to the motion: Rosemary Booth-Gallogly, John A. Marginson, General Treasurer Paul J. Tavares and Jerome F. Williams. There being 9 votes cast, 5 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.

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

VOTED: To continue the Stephen Costa matter to the February 9, 2005 Board meeting for a vote

Mr. Boyce recommended that the Board invite the parties to the next meeting in order to provide additional information and therefore allowing the Board to reach final resolution in this matter. Mr. Williams questioned whether the parties should present such information at the next Disability Sub-Committee meeting. Mr. Boyce stated that he could not support that approach as the Disability Sub-Committee has already reached a final decision with respect to Mr. Costa's application for accidental disability. Mr. Boyce noted that the only issue holding up the Board's decision was the information concerning the possible offer of alternative municipal employment for Mr. Costa and therefore the parties should present such information to the Board. Mr. Finelli concurred with Mr. Boyce stating that there is nothing more for the Disability Sub-Committee to act on. Treasurer Tavares stated that notification would be sent to all the parties that the matter would be considered at the next meeting.

IX. New Business

There was no new business brought before the Board.

X. Adjournment

There being no other business to come before the Board, on a motion by Michael R. Boyce and seconded by Linda C. Riendeau, the meeting was adjourned at 10:40 a.m.

Respectfully submitted,

Frank J. Karpinski

Executive Director