

# **Employees' Retirement Board Of Rhode Island Monthly Meeting Minutes Date of Meeting: May 11, 2005**

The Monthly Meeting of the Retirement Board was called to order at 9:05 a.m., Wednesday, May 11, 2005 in the 8<sup>th</sup> Floor Conference Room, 40 Fountain Street, Providence, RI.

## **I. Roll Call of Members**

The following members were present at roll call: Daniel L. Beardsley; Rosemary Booth-Gallogly; Michael R. Boyce; William B. Finelli; John P. Maguire; John A. Marginson; 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 Attorney Andrew Murray, Board Counsel.

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

## **II. Approval of Minutes**

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

**VOTED: To approve the minutes of the April 13, 2005 meeting of the Employees' Retirement Board of Rhode Island.**

## **III. Chairman's Report**

Treasurer Tavares announced to Board members that the law firm of Holland and Knight has been retained to represent the Employees Retirement System of Rhode Island. Attorney William O'Gara will be the attorney assigned as Legal Counsel to the Retirement Board.

Treasurer Tavares then introduced Attorney Andrew Murray from Holland and Knight. He attended the meeting on behalf of Attorney William O'Gara who was unable to attend.

## **IV. Executive Director's Report**

Consistent with Regulation 5 section 1(b), section 10, Director Karpinski certified the results of the special election for an active state employee representative to the Board. He apprised the Board that consistent with Section 9 of the regulation, any candidate may seek explanation or ballot recount within 72 hours of legal notification. The Board

of Elections held the counting of ballots and certification of results on May 10, 2005. Director Karpinski informed the Board that 3,607 ballots were cast, of those, there were 17 over-votes which are members who voted for three candidates instead of two and thus the ballot is invalid i.e., not counted. There were 5 under votes, which are members who voted for only one candidate instead of two and thus only one candidate was counted. The Director then provided the following results on the candidates:

John J. Meehan	1,795
John J. Igliazzi	1,249
Michael F. Reynolds	541

Director Karpinski told the Board that Mr. John J. Meehan will hold the Board position of active state employee representative and will be sworn in at the June 8, 2005 Board meeting. Mr. Meehan will complete the term that was previously held by Roger Boccanfuso, which ends February 2008.

As a result of a request from the April 13, 2005 Board meeting, Director Karpinski was instructed to obtain the number of available studies (pursuant to the contract) and any additional invoices to the Board from Gabriel, Roeder Smith and Company (GRS). Director Karpinski informed the Board that all 12 studies included in the contract are still available to Board and no additional invoices to date have been received by the Retirement System for work outside the contract.

Director Karpinski then provided the Board the pension application processing report and called the Board's attention to the 182 members pending retirement for the end of the fiscal year. He noted the number will increase as July 1<sup>st</sup> approaches since many of the prospective retirees are teachers.

Mr. Finelli asked Director Karpinski if he was aware of any IRS Minimum Distribution Rules (MDR) being provided in studies commissioned by the Governor or Legislature on pension reform proposals.

Mr. Finelli informed the Board that he had attended the National Council on Teacher Retirement (NCTR) conference, and learned that any plan making a change after April 2002 must comply with MDRs or risk potential penalties such as losing tax-exempt status. He was concerned that as the legislature contemplates changes, they should be aware of the MDRs so legislation is not enacted that creates a negative effect to members.

Treasurer Tavares suggested that the matter be referred to the actuary and legal counsel to identify if there are any potential issues on proposed legislation. Director Karpinski informed the Board that he had apprised them roughly a year ago on the temporary MDR rules. He said there were issues on cost of living adjustments that could not be paid in excess of the CPI if the member was over 70 ½ years old. However, Director Karpinski along with other public retirement system Directors worked with NCTR and NASRA lobbyists to relax some of the provisions and provide the IRS some insight on how public plans operate. He said the final MDR rule permits the current COLA and all of the current proposed pension reform bills in the legislature calling for COLAs to be linked to the CPI, which is permitted under the final MDR. He apprised the Board the he is currently reviewing a section of the MDR which limits non-spouse joint and survivor benefits (option 1 and 2). Director Karpinski said he believes there is a limit on

the beneficiary amount for non-spouses when the difference in age between the member and beneficiary is greater than 10 years. He said he would provide this information to Attorney O’Gara and contact GRS to determine what, if any, information on MDRs was forwarded on studies performed thus far.

Mr. Finelli inquired on the status of the Teacher Survivor Benefits. Attorney Walsh informed the Board that the IRS had asked some follow-up questions and he was in the process of formulating responses. Director Karpinski also responded saying that it would be approximately 3-4 weeks to get coding changes in the system to process the refunds.

## **V. Administrative Decisions**

### Vanessa Cooley vs. ERSRI

Attorney Walsh provided the Board a summary of the matter. He said the original decision was remanded back to the hearing officer for clarification. Attorney Walsh pointed out that the original decision reflected that Ms. Cooley was not entitled to make the purchase partly because she was not a member of the Teachers Retirement System. The Board had requested that the hearing officer provide a clarification on the decision regarding membership status in ERS relative to purchasing the time Ms. Cooley requested. Attorney Walsh felt the hearing officer clarified the matter as requested by the Board.

On a motion by John P. Maguire and seconded by William B. Finelli, it was unanimously

**VOTED: To affirm the decision of the hearing officer in the matter of Vanessa Cooley vs. ERSRI.**

## **VI. Approval of April pensions as presented by ERSRI**

On a motion by Louis M. Prata and seconded by Linda C. Riendeau, it was unanimously

**VOTED: To approve the April pensions as presented by ERSRI.**

## **VII. Legal Counsel Report**

Attorney Walsh referred Board members to the legal report in the Board book. He then reported the status on the matter of the Cranston Crossing Guards vs. ERSRI. Attorney Walsh indicated that Judge Procaccini issued a decision on May 5, 2005. He said it was a two-fold decision, which was based on the facts that the Collective Bargaining Agreement (CBA) included. The decision stated that the Cranston Crossing Guards did in fact meet the statutory mandate that they were 20 hour per week employees. The second half of the decision was based on equitable estoppel stating that the City contributed on behalf of the Crossing Guards and the Crossing Guards themselves, continued to have deductions taken from their check for the past 9 years, even though the statute had changed regarding the 20-hour requirement and based on that premise,

Judge Procaccini's decision precluded ERSRI from denying benefits based on the service derived from the contributions made after 1994.

Attorney Walsh advised the Board that there were the three options available to them. First, they could vote to appeal the decision and if the motion is carried, it will go to the Supreme Court. Second, the Board could vote not to appeal and then Judge Procaccini's order will stand. Lastly, the Board can do nothing, the 20-day appeal period will lapse, and Judge Procaccini's decision will become final.

Attorney Walsh felt that Judge Procaccini's decision should not have taken into account the CBA. He said the Board historically has had no involvement with nor taken into account a CBA when determining eligibility. He said that former Board counsel Barricelli had previously advised the Board not to be involved in the terms of a CBA. Concerning the estoppel theory, Attorney Walsh felt it would be difficult to appeal as it is in the Judge's discretion. Attorney Walsh advised the Board that some measures should be taken to avoid this type of problem in the future. He advised the Board that the Retirement System should notify employers that they must certify that members are at least 20-hour per week employees. Attorney Walsh also advised the Board that legislation should be introduced to mandate that employers be required to certify, to the Retirement System, that members are 20 hour per week employees.

Treasurer Tavares concurred with the decision of Judge Procaccini from an equity point of view. He felt it would not be in the Board's best interest to appeal the decision since the circumstance no longer exists in Cranston. However, the Treasurer felt the Board should take measures so that this Board or future Boards will not be put in the position to interpret labor contracts. He also requested the Retirement System contact all employers and remind them of the 20-hour eligibility rule.

Mr. Beardsley voiced concerns on the decision regarding the inclusion of the CBA. He felt there was a conflict in the statute regarding municipal employees bargaining rights and municipal retirement law. He felt it may be prudent to seek legislation to clarify how and if the CBA is used in retirement law. He also queried the possibility of appealing the decision. The Treasurer said he agreed with Mr. Beardsley's concern of the CBA matter but was advised by counsel that it was not possible to bifurcate the appeal to challenge the inclusion of the CBA. He was advised that the outcome of a total appeal is uncertain. Thus, The Treasurer reiterated that he felt legislation was the better approach.

Ms. Booth Gallogly asked if hypothetically there is a problem with minimum distribution rules with one particular unit in the MERS plan, does it affect other or all units. Director Karpinski provided the Board some examples of particular units that may be enforcing various statutes or regulations inconsistently. He said it generally affects that group only and does not affect the entire MERS fund.

In response to Ms. Booth Gallogly and Director Karpinski's comments, Mr. Beardsley provided some additional examples of conflicts between CBAs and retirement statutes and reiterated his concern for corrective legislation. The Treasurer asked Mr. Beardsley if he could compile a list his concerns so appropriate legislation could be drafted. Mr. Beardsley agreed.

Mr. Boyce expressed a concern that the Employees' Retirement System should process the additional pension payments provided for by the decision of Judge Procaccini immediately. He felt the Board has done its due diligence and should act based on the decision handed down by the courts and nothing else.

Mr. Williams asked Director Karpinski if any contributions received for these members were ever returned to the City of Cranston. Director Karpinski said they were not. The Director informed the Board that employers were notified in 1994 when the statute changed that they needed to comply and not report those employees who were working under 20 hours per week. In addition, Director Karpinski informed the Board that information regarding 20-hour eligibility and confirmation is in the membership handbook and application. Mr. Williams suggested that the Retirement Board should reinforce compliance with employers.

On a motion by Michael R. Boyce and seconded by Linda C. Riendeau, it was unanimously

**VOTED: To accept the decision rendered by Judge Procaccini in the Cranston Crossing Guards vs. ERSRI and adjust pension payments accordingly.**

There being no further questions of Attorney Walsh, on a motion by William B. Finelli and seconded by Linda C. Riendeau, it was 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 May 6, 2005 meeting for approval by the full Board:

<u>Name</u>	<u>Membership Group</u>	<u>Type</u>	<u>Action</u>
1. Joaquim Costa	Municipal	Ordinary	Approve
2. Leonard Gregory	Municipal	Ordinary	Approve
3. Vincent Guglietti	Municipal	Ordinary	Approve
4. Anthony Moretti	State	Ordinary	Approve
5. Ann Marie Wolf	State	Ordinary	Approve
6. Edmund Borges	State	Accidental	Approve
7. Leonard Coleman	State	Accidental	Approve
8. Joao Furtado	Municipal	Accidental	Approve
9. Tina Mathis	State	Accidental	Approve
10. Joanne Mitola	Municipal	Accidental	Approve
11. Marsha Monteliberto	State	Accidental	Deny

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, May 6, 2005 on items 1,2,3,4,5,6,7,8,11.**

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

**VOTED: To approve the recommendation of the Disability Sub-Committee meeting on Friday, May 6, 2005 on item 9.**

Mr. Williams voted against the motion to approve item 9.

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, May 6, 2005 on item 10.**

Mr. Prata recused himself from item 10.

The Disability Sub-Committee recommended the following actions on disability applications as the result of its April 8, 2005 meeting for approval by the full Board. There were insufficient votes to move approval at the April Board meeting:

<u>Name</u>	<u>Membership Group</u>	<u>Type</u>	<u>Action</u>
4. Joan Riciuti	Teacher	Ordinary	Approve
8. Raymond Enright	Municipal	Accidental	Approve

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, April 8, 2005 on item 4.**

Mr. Maguire recused himself from item 4.

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, April 8, 2005 on item 8.**

Mr. Prata recused himself from item 8.

## **IX. New Business**

Mr. Maguire referred to the Post Retirement Employment Report and inquired about Robert Yates, who reported 91.5 days. Director Karpinski informed the Board that both the employer and Mr. Yates had been contacted in regards to the 90-day rule and pension payments will be adjusted accordingly.

## **X. Adjournment**

There being no other business to come before the Board, on a motion by Linda C. Riendeau and seconded by Louis M. Prata, the meeting was adjourned at 10:00 a.m.

Respectfully submitted,

**Frank J. Karpinski**

Executive Director