



Employees' Retirement Board of Rhode Island
Monthly Meeting Minutes
Wednesday, September 10, 2008
9:00 a.m.
8th Floor Conference Room, 40 Fountain Street

The Monthly Meeting of the Retirement Board was called to order at 9:11 a.m., Wednesday, September 10, 2008 in the 8th Floor Conference Room, 40 Fountain Street, Providence, RI.

I. Roll Call of Members

The following members were present at roll call: Gary R. Alger; Frank R. Benell Jr.; Rosemary Booth-Gallogly; Roger P. Boudreau; Michael R. Boyce; General Treasurer Frank T. Caprio; William B. Finelli; M. Carl Heintzelman; John P. Maguire; John J. Meehan; Louis M. Prata; Linda C. Riendeau; Susan K. Rodriguez and Jean Rondeau.

Also in attendance: Frank J. Karpinski, ERSRI Executive Director; Attorney Michael P. Robinson, Board Counsel.

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

II. Approval of Minutes

On a motion by Gary R. Alger and seconded by Frank R. Benell, Jr., it was unanimously **VOTED: To approve the minutes of the July 9, 2008 meeting of the Employees' Retirement System of Rhode Island Board.**

III. Chairman's Report

Treasurer Caprio asked the Board to change the order on the agenda. He said a recent legal decision from Superior Court has an impact on the disability appeal of *Duc Powers vs. ERSRI* and it would be more economical to allow Attorney Robinson to present the legal report and then address the appeal. The Board agreed.

Treasurer Caprio apprised the Board that the System is currently processing a record number of retirement applications. The Treasurer commented that the retirement staff is performing at top rate; and from the State House perspective not a single member complaint has been received with regard to backlog. The Treasurer stated that this is a testament to the team as a whole, and to the Board in particular which has allocated the appropriate resources as it has continued to remain focused. The Treasurer continued by stating that the positive results are a tribute to the Budget Office, which placed a lot of thought into the timing of the project so that the system would not be forced into a July 1 timetable which would have conflicted with teacher retirements. Treasurer Caprio said once the September 30 numbers are in, the actuary will review the status of the number of employees and overlay the most recent fiscal year's asset performance so

that going forward the Pension Study Commission will have some numbers to factor new developments into what it plans to do next session.

Regarding the study commission, Attorney Mark Dingley, Treasurer Caprio's chief of staff, apprised the Board that the Pension Commission has been meeting and that during the past legislative session, new legislation was passed which provides the Pension Commission the ability to request pension studies and assess the costs of those studies against the pension fund's administrative budget. Also, Attorney Dingley explained that at this juncture, Gabriel, Roeder, Smith and Company (GRS), the system's actuary, apprised the commission that it should not precede with any analysis until the outcome of pending retirements as a result of Article 4 is determined. Attorney Dingley said GRS will need to determine the impact on funding resulting from fewer contributing members before they can provide the commission with meaningful analysis.

Director Karpinski followed Mr. Dingley's comments by reminding the Board that the result of the June 30, 2007 valuation required a supplemental appropriation since the FY 2010 employer contribution rate decreased from the prior year. Director Karpinski said GRS recommended the Board reevaluate the FY 2010 contribution rate and the statutory supplemental appropriation after determining the impact of the pending retirements.

Mr. Maguire asked Attorney Dingley what the Pension Study Commission had requested for analysis from GRS. Attorney Dingley stated that the Pension Commission had in fact made a decision to perform a number of studies. He said GRS will provide analysis to determine the impact of implementing a defined contribution plan for new employees, extending Schedule B to all employees on a "go-forward" basis and implementation of a program that mirrors the federal employee retirement system. The federal system, Mr. Dingley explained, has a defined benefit pension plan as well as a defined contribution plan and it would be implemented for new employees or for non-vested employees.

Regarding the Schedule B extension analysis, Mr. Maguire asked if the commission was contemplating protecting members within a certain range of retirement when applying schedule B or would it be applicable to everyone regardless of service. Attorney Dingley said that the commission discussed looking at protecting people within a certain range of retirement

Mr. Prata asked Director Karpinski whether enough money has been appropriated for these studies. Director Karpinski said money has been appropriated for FY 2010. However, he said the FY 2009 budget was submitted prior to enactment of the legislation requiring the system to fund such studies. Director Karpinski said while there is money appropriated for FY 2009 it may not be sufficient to cover a large volume of analysis.

IV. Legal Counsel Report

Attorney Robinson informed the Board that there were two new cases. The first involves Lillian Rivera, a Cranston Police officer, who was seeking an accidental disability pension based on allegations of harassment at work; that matter was filed in Superior Court. Attorney Robinson apprised the Board that he was in the process of trying to work out a briefing schedule. The other new case involves Michael Marcello, a Warren

Police officer, who is seeking an accidental disability pension based on a back injury. Attorney Robinson said he was also awaiting a briefing schedule.

Attorney Robinson then apprised the Board that two new decisions have come down from the Superior Court in the past two weeks. The first one involves *Fred Worley vs. ERSRI*, a correctional officer who was denied an accidental disability pension based on a back injury while moving a tree limb. Attorney Robinson said the Superior Court affirmed the Board's decision denying Mr. Worley's accidental disability application. They found that the weight of the evidence did not support that the injury was the natural and proximate result of an accident during the course of his employment. Attorney Robinson said there was very good language in the decision regarding the deference afforded to the Board on questions of analysis of medical evidence. Attorney Robinson also apprised the Board that there is a footnote in the decision where the Court commented that even if an applicant is applying for a disability based on an aggravation of a pre-existing injury, that the pre-existing injury itself must have been work related. Attorney Robinson stated that the Judge clarified what was an ambiguous part of the law.

Attorney Robinson said the other new decision, which was decided within the past two days, involves *Craig Marciniak vs. ERSRI*. Attorney Robinson explained that the case involved a Cranston firefighter who was seeking an accidental disability pension based upon a cardiac issue. He said the Board denied the application on the basis that there was no specific identifiable accident, but rather, Mr. Marciniak was simply suffering from a cardiac issue. The decision was appealed to the Superior Court. Attorney Robinson said the thrust of the appeal was that RIGL §45-21.2-5 permitted the Cranston Firefighters' Collective Bargaining Agreement (CBA) to expand the scope of injuries beyond what the accidental disability statute requires. The Court rejected the appeal and upheld the Board's decision. Attorney Robinson stated that in his opinion the Court's decision was particularly well-reasoned and that the statute never intended to give Cranston the right to eliminate the need for meeting the specific and identifiable incident requirement. The Superior Court commented that even if the legislature had intended to do that, it would be an unconstitutional delegation of power to Cranston. Attorney Robinson noted that the Court rendered a good decision and that as a matter of law, it clarifies a gray area.

Attorney Robinson then suggested that the Board may wish to consider addressing an issue which he recommended the Board convening into executive session pursuant to Rhode Island General Laws §42-46-5 (a)(2) to discuss potential litigation. Treasurer Caprio agreed and recommended the session be deferred to the end of the meeting to accommodate the administrative hearing.

V. Administrative Decisions

Disability Appeals

Duc Powers vs. ERSRI

Included in Board Members' Books was the decision, exhibits and supporting information for the matter of *Duc Powers vs. ERSRI*. Attorney Robinson then provided a synopsis of the matter. He apprised the Board that Mr. Powers was a detective with the Cranston Police Department. He applied for an accidental disability pension on

September 7, 2007 on the basis of cardiomyopathy and hypertension. Attorney Robinson told the Board that this case was very similar to the recent decision from the Superior Court in *Craig Marciniak vs. ERSRI*. Attorney Robinson told the Board that he had spoken with Mr. Powers's attorney, Gary Gentile regarding the Marciniak decision. Given the outcome favoring ERSRI, Attorney Gentile chose not to appear to contest the Board's denial of Mr. Powers's application.

There being a stenographer present, Attorney Robinson read the denial information into the record. At the conclusion of the discussion, a motion was made by William B. Finelli and seconded by Roger P. Boudreau to uphold the decision of the hearing officer denying Mr. Powers' application for an accidental disability pension. A roll call was taken. The following members voted Yea: Gary R. Alger; Frank R. Benell, Jr.; Roger P. Boudreau; Rosemary Booth-Gallogly; Michael R. Boyce; General Treasurer Frank T. Caprio; William B. Finelli; M. Carl Heintzelman; John P. Maguire; John J. Meehan; Louis M. Prata; Linda C. Riendeau; Susan K. Rodriguez and Jean Rondeau. It was then unanimously

VOTED: To uphold the decision of the Disability Subcommittee denying Mr. Powers application for an accidental disability pension.

VI. Approval of the July and August Pensions as Presented by ERSRI

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

VOTED: To approve the July and August Pensions as presented.

VII. Executive Director's Report

Director Karpinski introduced Zachary Saul, the Assistant Director of Finance to present the Board with the proposed fiscal 2010 budget.

Mr. Saul began his presentation discussing the relevant laws and regulations for the Board regarding approval of a budget. He said RIGL. §36-8-3 provides the Board with responsibility for the proper operation of the retirement system. In conjunction with §36-8-3, Mr. Saul said *Regulation 1 (A) 5 (10) Board Authority and Duties* requires the Board to approve a yearly budget. He reminded the Board that the ERSRI budget is part of the overall Treasury budget.

Mr. Saul then discussed some funding and budgeting principles. He summarized RIGL. § 36-8-20 which states that funds of the trust are for the exclusive benefit of members and beneficiaries. He then discussed RIGL. § 36-8-10.1 which defines a restricted receipt account used solely to pay the expenses of the retirement board, the cost of maintaining the retirement system, and the costs of administering the retirement system. Mr. Saul told the Board the law provides that seventeen and one-half (17.5) basis points (0.175%) of the average total investments before lending activities as reported in the annual report of the auditor general for the next preceding five fiscal years determine the budget cap. He provided the Board with the following analysis of prior year expenditures versus budget caps:

Fiscal Year Budget	Investment Value Years					Average Market Value	Budget Cap Per RIGL	Actual Expenditures
	Year 1	Year 2	Year 3	Year 4	Year 5			
2005	2003	2002	2001	2000	1999		2005	
	5,386,660,939	5,417,634,814	6,127,969,948	7,042,154,081	6,556,763,112	6,106,236,579	\$ 10,685,914	6,451,288
2006	2004	2003	2002	2001	2000		2006	
	6,193,830,376	5,386,660,939	5,417,634,814	6,127,969,948	7,042,154,081	6,033,650,032	\$ 10,558,888	6,960,499
2007	2005	2004	2003	2002	2001		2007	
	6,700,133,284	6,193,830,376	5,386,660,939	5,417,634,814	6,127,969,948	5,965,245,872	\$ 10,439,180	7,590,382
2008	2006	2005	2004	2003	2002		2008	
	7,271,872,277	6,700,133,284	6,193,830,376	5,386,660,939	5,417,634,814	6,194,026,338	\$ 10,839,546	8,392,412 <-est
2009	2007	2006	2005	2004	2003		2009	
	8,432,879,083	7,271,872,277	6,700,133,284	6,193,830,376	5,386,660,939	6,797,075,192	\$ 11,894,882	
2010	2008	2007	2006	2005	2004		2010	
2008 est->	7,816,954,854	8,432,879,083	7,271,872,277	6,700,133,284	6,193,830,376	7,283,133,975	\$ 12,745,484	

Mr. Saul then discussed some primary budget changes with the Board. He discussed some major drivers that included upgrades to the ANCHOR computer System, updates to the ERSRI web-site and associated third party software and required hardware. Additionally, Mr. Saul said the system will continue to perform semi-annual system security audits. He also anticipates an internal audit engagement in FY2010. As discussed earlier, Mr. Saul anticipated an increase in actuarial studies due to new changes in RIGL §36-10-39 as a result of Budget Article 23. Finally, Mr. Saul told the Board the system intends on performing another CEM study in FY2010 and engaging special legal counsel to perform an IRS compliance review.

Mr. Saul concluded by telling the Board that the proposed \$9,066,010 budget may change before it becomes final. He reminded the Board that the legislature ultimately determines the final budget.

On a motion by John P. Maguire and seconded by Jean Rondeau, Roger P. Boudreau and Frank R. Benell, Jr., it was unanimously

VOTED: To accept the proposed \$9,066,010 budget for fiscal year 2010 as presented.

VIII. Committee Reports

The Disability Subcommittee recommended the following actions on disability applications as a result of its August 8, 2008 meeting for approval by the full Board.

Name	Membership Group	Type	Action
1. Eugene Matera	State	Accidental	Table
2. Omer Boucher	Municipal	Accidental	Approve
3. Min-Young Lee	State	Accidental	Approve
4. Louis Supino	State	Accidental	Table
5. Patricia Plante	State	Accidental	Approve
6. Carmella Coppa	Municipal	Accidental	Table
7. Douglas Randall	Municipal	Accidental	Deny
8. Patricia Patterson	State	Accidental	Table
9. Susan Vendetti	State	Ordinary	Approve
10. Joyce Carter	Teacher	Ordinary	Approve
11. Edwin Souza	State	Ordinary	Approve
12. Sharon Petraca	State	Ordinary	Approve
13. Cheryl Monteiro	State	Ordinary	Approve
14. Cheryl Rodrigues	Municipal	Ordinary	Approve
15. Douglas Pierson	Teacher	Ordinary	Approve
16. Brian Castro	State	Accidental	Deny
17. David Thatcher	State	Accidental	Deny
18. Everett McCain	Municipal	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 Subcommittee meeting of Friday, August 8, 2008 on item 3.

John J. Meehan recused himself from item 3.

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

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, August 8, 2008 on items 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18.

The Disability Subcommittee recommended the following actions on disability applications as a result of its September 5, 2008 meeting for approval by the full Board.

Name	Membership Group	Type	Action
1. John Houle	Municipal	Accidental	Table
2. Donald Deshaies	State	Accidental	Table
3. Cynthia Bacon	State	Accidental	Table
4. Alfred Raymond	Municipal	Accidental	Approve
5. Michelle Ploude	State	Accidental	Table
6. Joyce Seravo	Teacher	Accidental	Table
7. Deirdre Balzano	State	Ordinary	Approve
8. Carmine Crespo	State	Ordinary	Approve
9. Marjorie Beaubien	State	Ordinary	Approve
10. Joelle Gordon	State	Ordinary	Approve
11. James Barnaby	Teacher	Ordinary	Approve
12. Jacquelyne Lozowski	State	Ordinary	Approve
13. Joseph Cardillo	State	Ordinary	Approve
14. Teresa Carr-Hopkins	State	Ordinary	Approve
15. Theodore DeWolf	State	Accidental	Approve
16. Richard DelBonis	Municipal	Ordinary	Table
17. Cindy Conti-Cook	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 Subcommittee meeting of Friday, September 5, 2008 on items 13, 15 and 17.

John J. Meehan recused himself on all three items.

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

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, September 5, 2008 on items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 16.

IX. Executive Session

A motion was made by Jean Rondeau and seconded by William B. Finelli to convene into executive session consistent with RIGL §42-46-5 (a)(2) of the Rhode Island General Laws to discuss potential litigation.

A roll call was taken. The following members voted Yea: Gary R. Alger; Frank R. Benell, Jr.; Roger P. Boudreau; Rosemary Booth-Gallogly; Michael R. Boyce; General Treasurer Frank T. Caprio; William B. Finelli; M. Carl Heintzelman; John P. Maguire; John J. Meehan; Louis M. Prata; Linda C. Riendeau; Susan K. Rodriguez and Jean Rondeau. It was then unanimously

VOTED: To convene into executive session consistent with RIGL §42-46-5 (a) (2) to discuss potential litigation.

On a motion Frank R. Benell Jr. and seconded by Gary R. Alger it was unanimously

VOTED: To exit executive session and return to open session.

Attorney Robinson noted for the record that a vote was taken in executive session the substance of which was to authorize him to initiate a civil action in Superior Court pursuant to RIGL §36-10.1-3 (1) for the revocation or reduction of any retirement or other payment to which John Card might otherwise be entitled under the Public Employee Pension Revocation and Reduction Act.

Attorney Robinson then asked Director Karpinski to disclose the results of the vote. Director Karpinski recorded the following vote: The following members voted Yea: General Treasurer Frank T. Caprio; Gary R Alger; Frank R. Benell, Jr.; Rosemary Booth-Gallogly; Roger P. Boudreau; M. Carl Heintzelman; John J. Meehan; Louis M. Prata; Susan K. Rodriguez and Jean Rondeau. The following members voted Nay: William B. Finelli; Michael R. Boyce; John P. Maguire; and Linda C. Riendeau.

There being 14 votes to cast, 10 voted in the affirmative and 4 nay, consistent with Rhode Island General Laws section 36-8-6, Votes of the Board –Record of Proceedings, there was a majority vote of the members present and voting at which a quorum was present.

X. New Business

None this month

XI. Adjournment

There being no other business to come before the Board, on a motion by Rosemary Booth-Gallogly and seconded by Jean Rondeau, the meeting adjourned at 11:20 a.m.

Respectfully submitted,

Frank J. Karpinski

Executive Director