Employees' Retirement Board of Rhode Island
Monthly Meeting Minutes
Wednesday, October 12, 2011
9:00 a.m.
8th Floor Conference Room, 40 Fountain Street

The Monthly Meeting of the Retirement Board was called to order at 9:00 a.m. Wednesday, October 12, 2011, on the 8th Floor Conference Room, 40 Fountain Street, Providence, RI.

I. Roll Call of Members

The following members were present at roll call: Deputy Treasurer Mark Dingley, Esq; for General Treasurer Gina M. Raimondo, Daniel L. Beardsley; Frank R. Benell, Jr.; Michael R. Boyce; M. Carl Heintzelman; John Maguire; John J. Meehan; Thomas A. Mullaney; Louis M. Prata; Linda C. Riendeau, and Jean Rondeau. Daniel L. Beardsley assumed the chair.

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

Recognizing a quorum, Chairman Beardsley called the meeting to order.

Richard A. Licht arrived at 9:15 a.m., and Roger P. Boudreau arrived at 9:18 a.m.

II. Approval of Minutes

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On a motion by Frank R. Benell, Jr., and seconded by M. Carl Heintzelman, it was unanimously

VOTED: To approve the draft minutes of the September 14, 2011 meeting of the Employees' Retirement System of Rhode Island Board.

III. Chairperson's Report

None this month

IV. Executive Director's Report

Director Karpinski noted that the Board members were in possession of the Retirement Application Report; the Disability Subcommittee Report, a document on the matter of *ERSRI vs. Brian Sullivan* which will be discussed in the Legal Counsel Report, a memo from Attorney Robinson regarding fiduciary liability insurance, and a presentation for the Fiscal 2013 System Budget. Copies were available of information that was passed out at the Legislative Subcommittee meeting of October 7th.

The Director then updated the Board on the analysis of procuring fiduciary liability insurance. He told the Board that he and Attorney Robinson had a conference call recently with the broker that provided the earlier draft policy and premium. Director

Karpinski said the broker restated some points of the premiums being predicated on the asset size and funding level, noting that lower funding levels drive higher premium costs. The Director called the Board's attention to a memo by Attorney Robinson that summarized the conversation. The Director apprised the Board that he and Attorney Robinson have scheduled a meeting with Mr. Kevin Carvalho, the State's Risk Manager, to explore additional options for obtaining insurance, assistance in policy evaluation and associated risk management. Finally, Director Karpinski told the Board he was contacting some colleagues for information on their systems and how they use fiduciary insurance. Attorney Robinson summarized his memorandum for the Board and noted that the benefits of insurance include the costs of defense, but that the benefits must be balanced against the premium costs.

Director Karpinski noted that the Legislative Subcommittee met on Friday October 7, 2011 to obtain an update on the Governor and Treasurer's Initiative on Retirement Security. He said copies of the presentation were available if members were interested.

Director Karpinski said ERSRI's IT consultant would be on site on Thursday and Friday to provide the RFP evaluation team with an overview on how to score the proposals. The Director told the Board that he would likely delay the review process given the current legislative review of the pension reform proposals. He told the Board it may not be prudent to award a contract and potentially immediately need a change order. He told the Board the review team would review the proposals for the company's quality and current administrative requirements from the RFP.

The Director then updated the Board on the Board election; he said that consistent with Regulation 5, signatures of whoever is running for the Board are due on October 17, 2011. He said ERSRI will validate the 100 signatures required by October 31st and will then certify, to the election subcommittee, the qualified candidates. At November Board meeting there will be a lottery for the ballot order; mailings will then be done to let membership know who the candidates are.

Director Karpinski then introduced Mr. Zachary Saul, Director of Finance, to provide the Board with a presentation on the fiscal 2013 operating budget for ERSRI. Mr. Saul told the Board that consistent with *Regulation 1 (A) 5 (10) Board Authority and Duties*, the Board must approve a yearly budget. He said the approved Budget is part of the overall Treasury budget. He also pointed out that RIGL §36-8.1 defines the budget cap ERSRI is allowed to operate under which is $12,676,740 for fiscal 2013.

Assistant Director Saul provided some of the highlighted changes for the Board. He said on-going upgrades to the ANCHOR System and implementation cost for the new system design were included. Also, he said the legal services contained a contingency for the pending litigation as a result of enacted pension reforms. There are also savings in occupancy costs due to the move to 50 Service Avenue in Warwick. Finally, Mr. Saul said the budget included contingency for actuarial studies by the Legislature as permitted by RIGL §36-10-39.

In conclusion, Mr. Saul told the Board that for Fiscal 2013 Budget, the total operating expenses are $4,658,590 with total expenditures of $12,188,668 which are below the $12,676,740 cap provided by RIGL.

On a motion by Jean Rondeau and seconded by John P. Maguire, it was unanimously

VOTED: To approve the Fiscal 2013 Expense Budget of the Employees' Retirement System of Rhode Island.

V. Administrative Decisions

Administrative Appeal – Pamela H. Johnson vs. ERSRI

Included in Board Members' Books was the Hearing Officer's written decision, along with exhibits and supporting information in the matter of *Pamela H. Johnson vs. ERSRI*. Chairman Beardsley asked if consistent with Regulation Number 4, Rules of Practice and Procedure for Hearings, there were any written briefs, legal memoranda, or exceptions to the decision of the Hearing Officer which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board that there were no additional documents submitted.

Attorney Robinson then provided a synopsis of the *Pamela H. Johnson* matter. He said this matter is here following a decision rendered by Hearing Officer Marcaccio on September 6, 2011. Ms. Johnson had challenged the Executive Director's administrative decision to preclude her from retiring under the optional police and fire statute of Chapter 21.2 of Title 45. There being a stenographer present, the parties presented their cases.

At the conclusion of the hearing a motion was made by Richard A. Licht and seconded by Roger P. Boudreau to postpone the matter of *Pamela H. Johnson vs. ERSRI* to determine how to address her contributory years. After some discussion, an amended motion was made by Mark Dingley, Esq., and seconded by Frank R. Benell, Jr., to amend the motion and to uphold the decision of the hearing officer denying Ms. Johnson's request to retire in the 20-year Police and Fire plan, subject to the applicant's being included in a municipal plan, and that the Executive Director be directed to report back to the Board within 60 days.

A roll call was taken. The following members voted Yea: Mark Dingley, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; Roger P. Boudreau; Richard A. Licht; John P. Maguire; Thomas A. Mullaney; and Jean Rondeau. The following members voted nay: Michael R. Boyce; M. Carl Heintzelman; John J. Meehan; Louis M. Prata and Linda C. Riendeau

There being 13 votes to cast, 8 voted in the affirmative and 5 nay, consistent with Rhode Island General Laws section 36-8-6, Votes of the Board–Record of Proceedings, there being a majority vote of the members present and voting at which a quorum was present, it was

VOTED: To amend the motion and to uphold the decision of the hearing officer denying Pamela H. Johnson's request to retire in the 20-year Police and Fire plan subject to the applicant's being included in a municipal plan, and that the Executive Director be directed to report back to the Board within 60 days.

Administrative Appeal – Richard Iverson vs. ERSRI

Included in Board Members' Books was the Hearing Officer's written decision, along with exhibits and supporting information in the matter of *Richard Iverson vs. ERSRI*. Chairman Beardsley asked if consistent with Regulation Number 4, Rules of Practice and Procedure for Hearings, there were any written briefs, legal memoranda, or exceptions to the decision of the Hearing Officer which must have been submitted to the Executive Director not later than 10 days prior to the hearing. Director Karpinski apprised the Board that all additional materials submitted were included in the Board Members' Books.

Attorney Robinson then provided a synopsis of the *Richard Iverson* matter. He said the matter is before the Board for consideration of Mr. Iverson's request to purchase service credit for the approximately 10 years that he served on the Town of Scituate Town Council. Attorney David D'Agostino was present on behalf of the Town of Scituate. Attorney Robinson provided RIGL §45-21.8 for reference. He said the hearing officer initially rendered a decision approving Mr. Iverson's ability to secure service credit upon receipt of his share and the town's municipal share of contributions. The Town of Scituate thereafter asked to address the full Board upon receipt of the bill for the employer's share of contributions, contending that it was deprived of the opportunity to participate in the administrative hearing. The town urged the Board to reconsider its original decision and came before the Board on November 10, 2010, at which time the Board voted to rescind its initial decision and to remand the matter back to the hearing officer to consider whether the town had the right to participate in the administrative appeal. On August 31, 2011, the hearing officer issued a decision declining to reopen the case on the basis that the Town lacked standing to participate in the appeal. Attorney Robinson concluded by apprising the Board that two matters are now before the Retirement Board for decision: 1) For determination of whether or not the Town would be permitted to participate in Mr. Iverson's underlying appeal; and 2) For determination of Mr. Iverson's appeal regarding his request to purchase service credit.

At the conclusion of the hearing a motion was made by Mark Dingley, Esq. and Frank R. Benell, Jr., to reverse the August 31, 2011 decision of the hearing officer and to permit the Town of Scituate to participate in the administrative hearing as it has standing. A roll call was taken. The following members voted yea: Mark Dingley, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; Roger P. Boudreau; Michael R. Boyce; M. Carl Heintzelman; Richard A. Licht; John P. Maguire; John J. Meehan; Thomas A. Mullaney; Jean Rondeau, and Linda C. Riendeau. The following member voted nay: Louis M. Prata.

There being 13 votes to cast, 12 voted in the affirmative and 1 nay, consistent with Rhode Island General Laws section 36-8-6, Votes of the Board–Record of Proceedings, there being a majority vote of the members present and voting at which a quorum was present, it was

VOTED: To reverse the August 31, 2011 decision of the Hearing Officer and to permit the Town of Scituate to participate in the administrative hearing as it has standing.

The Board then considered the matter involving *Richard Iverson vs. ERSRI,* regarding Mr. Iverson's request to purchase service credit during the approximately 10 years that he served on the town council; Mr. Iverson and Attorney David D'Agostino, on behalf of

the Town of Scituate, presented their respective positions. At the conclusion of the hearing a motion was made by Roger P. Boudreau and seconded by Michael R. Boyce to uphold the June 14, 2010 decision of the hearing officer permitting Mr. Iverson the ability to secure service credit for approximately 10 years that he served on the town council, upon ERSRI's receipt of the required affidavits, and the necessary employer and employee payments. A roll call was taken. The following members voted yea: Daniel L. Beardsley; Frank R. Benell, Jr.; Roger P. Boudreau; Michael R. Boyce; Richard A. Licht; John J. Meehan; Louis M. Prata; Linda C. Riendeau. The following members voted nay: Mark Dingley, Esq.; M. Carl Heintzelman; John P. Maguire; Thomas A. Mullaney and Jean Rondeau.

There being 13 votes to cast, 8 voted in the affirmative and 5 nay, consistent with Rhode Island General Laws section 36-8-6, Votes of the Board–Record of Proceedings, there being a majority vote of the members present and voting at which a quorum was present, it was

VOTED: To uphold the June 14, 2010 decision of the Hearing Officer permitting Mr. Iverson the ability to secure service credit during approximately 10 years that he served on the Scituate Town Council, upon ERSRI's receipt of the required affidavits, and the necessary employer and employee payments.

VI. Approval of the September Pension as Presented by ERSRI

On a motion by Louis M. Prata and seconded by Richard A. Licht, it was unanimously

VOTED: To approve the September pension as presented.

VII. Legal Counsel Report

Attorney Robinson updated the Board on the matter of Lillian Rivera v. ERSRI, involving the member's appeal of the Board's denial of her disability application. Attorney Robinson advised the Board that following a recent decision of the Superior Court dismissing the appeal, the Rhode Island Supreme Court issued a writ of certiorari, and will proceed to consider the case. Attorney Robinson said he will keep the Board apprised of its status with the RI Supreme Court.

Attorney Robinson then apprised the Board that the next matters for discussion would be pending and/or potential litigation matters involving the Board, regarding David Paiva, Brian Sullivan, and Douglas Rogers. Consistent with Rhode Island General Laws section §42-46-5 (a)(2) regarding pending and potential litigation involving the retirement system, a motion was made by Roger P. Boudreau and seconded by Jean Rondeau to convene the Board in Executive Session to discuss the matters of ERSRI v. David Paiva; C.A. No. PC 2011-4630, Brian Sullivan vs. ERSRI C.A. No. PC 2010-0069 and the potential initiation of a pension revocation action against Douglas H. Rogers pursuant to R.I.G.L. §36-10.1-1, et seq., each of which involves pending or potential litigation involving the Board.

A roll call vote was taken to enter into Executive Session, the following members were present and voted Yea: Mark Dingley, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; Roger P. Boudreau; Michael R. Boyce; M. Carl Heintzelman; John P. Maguire; John J.

Meehan; Thomas A. Mullaney; Louis M. Prata; Linda C. Riendeau, and Jean Rondeau. It was unanimously

VOTED: To convene the Board in Executive Session pursuant to Rhode Island General Laws section 42-46-5 (a)(2) to discuss pending and potential litigation involving the Board, regarding ERSRI v. David Paiva; C.A. No. PC 2011-4630, Brian Sullivan vs. ERSRI C.A. No. PC 2010-0069 and the potential initiation of a pension revocation action against Douglas H. Rogers pursuant to R.I.G.L. §36-10.1-1, et seq.

[Executive Session]

The Board thereafter convened in executive session. Richard A. Licht joined the Executive Session after it was convened.

[Return to Open Session]

Upon returning to open session, the Board noted for the record that the following votes had been taken in executive session:

A motion was made by Mark Dingley, Esq. and seconded by Jean Rondeau in the matter of *ERSRI v. David Paiva*, to authorize the System to settle the action based upon Mr. Paiva's full waiver of any pension benefits to which he might otherwise have been entitled. A roll call vote was taken and it was unanimously

VOTED: To authorize the System to settle the action based upon Mr. Paiva's full waiver of any pension benefits to which he might otherwise have been entitled.

A motion was made by Richard A. Licht and seconded by Mark Dingley, Esq. in the matter of *Brian Sullivan vs. ERSRI* to authorize the System to seek the issuance of a writ of certiorari from the Rhode Island Supreme Court with respect to Justice Vogel's decision rendered on September 14, 2011.

A roll call vote was taken, the following members were present and voted Yea: Deputy Treasurer Mark Dingley, Esq; Daniel L. Beardsley; Frank R. Benell, Jr.; M. Carl Heintzelman; Richard A. Licht; John P. Maguire; John J. Meehan; Thomas A. Mullaney; Louis M. Prata; Linda C. Riendeau and Jean Rondeau. The following members voted Nay: Roger P. Boudreau and Michael R. Boyce. There being 13 votes cast, 11 voted in the affirmative and 2 voted nay, consistent with Rhode General Laws §36-8-6, Votes of the Board – *Record of Proceedings*, there being a majority vote of the members present and voting at which a quorum is present, it was then

VOTED: To authorize the System to seek the issuance of a writ of certiorari in the Rhode Island Supreme Court with respect to Justice Vogel's decision rendered on September 14, 2011.

A motion was made by Mark Dingley, Esq. and seconded by Linda C. Riendeau not to file an action pursuant to the Public Employee Pension Revocation and Reduction Act against Douglas H. Rogers. A roll call vote was taken and it was unanimously

VOTED: Not to file an action pursuant to the Public Employee Pension Revocation and Reduction Act against Douglas H. Rogers.

A motion was made by M. Carl Heintzelman and seconded by Mark Dingley, Esq. to exit executive session and return to open session. It was unanimously

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

VIII. Committee Reports

Disability Subcommittee: The Disability Subcommittee recommended the following actions on disability applications for approval by the full Board as a result of its meeting on October 7, 2011:

	Name	Membership Group	Type	Action
1.	Robert Cahill, Sr.	State	Accidental	Deny
2.	Olga Ortiz	State	Accidental	Postponed
3.	Stephen Limoges, Sr.	State	Accidental (*New Law*)	Postponed
4.	Everett McCain	Municipal	Ordinary	Postponed
5.	Juvita Darosa	State	Ordinary	Deny

On a motion by Michael R. Boyce and seconded by Thomas A. Mullaney, it was unanimously

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, October 7, 2011 on item 2.

John J. Meehan recused himself from the vote on number 2.

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

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, October 7, 2011 on items 1, 3, 4, and 5.

IX. New Business

Roger P. Boudreau raised some questions regarding administrative inefficiencies relating to the proposed pension reform. He was unable to attend the legislative subcommittee meeting held on October 7th. However, he stated for the record his

concern about the elimination of COLA for retirees and the impact on the social security retirement allowance (SRA Plus) for retirees who selected that option. Mr. Dingley commented on the actuarial equivalent being equal and Mr. Maguire commented on the tables used in the calculation of the benefit and felt there may be a need to adjust them should COLA be eliminated.

X. Adjournment

There being no other business to come before the Board, on a motion by Louis M. Prata and seconded by Mark Dingley, Esq. the meeting adjourned at 12:45 p.m.

Respectfully submitted,

Frank J. Karpinski
Executive Director