



Employees' Retirement Board of Rhode Island
Monthly Meeting Minutes
Wednesday, October 10, 2012
9:00 a.m.
2nd Floor Conference Room, 50 Service Avenue

The Monthly Meeting of the Retirement Board was called to order at 9:07 a.m. Wednesday, September 12, 2012, in the 2nd Floor Conference Room, 50 Service Avenue, Warwick, RI.

I. Roll Call of Members

The following members were present at roll call: Deputy Treasurer Mark A. Dingley, Esq., designee for Treasurer Gina M. Raimondo; Gary R. Alger, 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; Claire M. Newell and Jean Rondeau.

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

Recognizing a quorum, Deputy Treasurer Dingley called the meeting to order.

Mr. Richard A. Licht arrived at 9:16 a.m.

II. Approval of Minutes

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 12, 2012 meeting of the Employees' Retirement System of Rhode Island Board.

On a motion by Gary R. Alger, Esq., and seconded by Thomas A. Mullaney, it was unanimously

VOTED: To approve the Draft Executive Session Minutes of the September 12, 2012 meeting of the Employees' Retirement System of Rhode Island Board.

III. Chairperson's Report

Deputy Treasurer Dingley apprised the Board that the disability hot-line is active. He said there were 70 calls received, 60 callers have been contacted. Deputy Treasurer Dingley said some of the claims are not ERSRI or MERS members and are being referred to applicable Plans. He told the Board that Treasury will be preparing an RFP for a private investigator to investigate those situations that warrant further review. Additionally, Attorney Dingley said the compliance officer position should be filled by the next Board meeting.

Mr. Boyce noted that he had asked Director Karpinski to put the “disability hotline update” on the agenda as an item for discussion and was disturbed that it was only on as part of the Treasurer’s Report.

He then voiced his concern over some media coverage and where he felt there are incomplete and inaccurate conclusions made. Mr. Boyce read an article to the Board that was placed in his local newspaper about the validity of disability cases; he said he called the editor and asked what facts were obtained for publishing the article and was told that there were none. He told the Board that such journalism puts the word “disability” in a negative connotation and shows a blatant lack of understanding that disabilities are not always physical in nature.

Deputy Treasurer Dingley said he appreciated Mr. Boyce’s concerns. Both Treasurer Raimondo and the Attorney General identified a need to have calls handled through a central location which is the hot line.

Deputy Treasurer Dingley then provided the Board an update on investments. He said the investment returns were very good for the first quarter. Through August, the one-year return was 8.1%, and the one month performance was up 1.4%.

IV. Executive Director’s Report

Director Karpinski apprised the Board that they are in possession of the Pension Application Report with new data reflecting a fiscal year-to-year comparison back to July 2003 as requested by Mr. Licht. Also included is the Disability Subcommittee Report of October 5, 2012, a draft regulation relating to Access to Public Records, and a memo on Retirement Board Training.

Director Karpinski told the Board that there were 3 subcommittee meetings since the September Board meeting. The Director said the Audit Subcommittee met on September 27, 2012 with committee members present consisting of Louis M. Prata, Michael R. Boyce, Jean Rondeau, M. Carl Heintzleman and Deputy Treasurer Mark A. Dingley, Esq. Auditor General Dennis Hoyle and William Gallogly, Senior Audit Manager, presented an overview of the 2011 audit report, findings and corrective actions taken to date. They then reviewed the current status of the 2012 audit and apprised the Subcommittee that they will meet again when they issue their report at the conclusion of the audit.

The Director said the Rules and Regulations Subcommittee met on October 2, 2012 and Mr. Maguire, Chair of the Subcommittee, will give an update during the committee reports. Director Karpinski said a draft regulation for Access to Public Records will require a motion for acceptance if Board members are in agreement with the recommendations of the Subcommittee.

Lastly, the Board Education Subcommittee met on October 3, 2012. Mr. Finelli, Chair of the Subcommittee, was not present as he was at the National Council on Teacher Retirement (NCTR) Convention where he will be sworn in as President. Director Karpinski said he would provide the report and will be seeking approval of the training program recommended by the subcommittee.

Director Karpinski then updated the Board on the computer system upgrade. He said the RFP review team is planning site visits to vendors to complete their due diligence.

The Director said he will be looking to convene the Procurement Subcommittee during November and then in December to bring a recommendation to the full Board.

V. Administrative Decisions

Disability Appeal – Peter S. Ferraro vs. ERSRI

Attorney Robinson apprised the Board that this matter is back before the Board for a second hearing with respect to Mr. Ferraro's appeal of the Board's earlier decision to deny his application for an accidental disability pension. Consistent with ERSRI's regulation, the matter resulted in a tie vote at the September Board meeting which results in bringing this matter back before the Board for a rehearing.

Included in the board books, under separate cover, were the Findings of Fact as concluded by the Disability Subcommittee, transcripts from the appeal to the Disability Subcommittee and from the full Board meeting of September 12, 2012, medical and supporting information for the matter of *Peter S. Ferraro vs. ERSRI*. Attorney Robinson asked if consistent with Regulation Number 9, *Rules pertaining to the application to receive an Ordinary or Accidental Disability Pension*, there were any written briefs, legal memoranda, or exceptions to the conclusions and recommendation of the Disability Subcommittee 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 was none other than the additional information of the hearing transcript from last month's Board meeting which was provided to the Board.

Attorney Robinson then said that pursuant to ERSRI's regulations, each party to the proceeding has the right to appear and to make oral arguments before the Retirement Board. Consistent with the Board's long standing policy, he apprised the appellant that this is not an opportunity to present new factual material or evidence to the Board. He said the Board affords deference to the conclusions of its Disability Subcommittee on factual determinations and questions of credibility and will not overturn those determinations and assessments unless they are found to be clearly wrong. Attorney Robinson apprised the Board that Mr. Ferraro was being represented by Attorney Michael P. Lynch.

Attorney Robinson then provided a synopsis of the *Peter S. Ferraro vs. ERSRI* matter. There being a stenographer present, the parties presented their cases. At the conclusion of the hearing a motion was made by Jean Rondeau and seconded by Daniel L. Beardsley to affirm and adopt the findings of fact and conclusions of law as set forth by the Disability Subcommittee, and to accept the recommendation of the Disability Subcommittee to deny Mr. Ferraro's application for disability benefits. A roll call was taken. The following members voted Yea: Deputy Treasurer Mark A. Dingley, Esq.; Gary R. Alger, Esq.; Daniel L. Beardsley; Frank R. Benell, Jr.; M. Carl Heintzelman; Richard A. Licht; Thomas A. Mullaney and Jean Rondeau. The following members voted Nay: Roger P. Boudreau; Michael R. Boyce; John P Maguire; John J. Meehan and Claire M. Newell.

There being 13 votes cast, 8 voted in the affirmative, and 5 nay, consistent with Rhode Island 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 affirm and adopt the findings of fact and conclusions of law as set forth by the Disability Subcommittee, and to accept the recommendation of the Disability Subcommittee to deny Mr. Ferraro's application for disability benefits.

VI. Approval of the September Pensions as Presented by ERSRI

On a motion by Michael R. Boyce and seconded by John P. Maguire, it was unanimously

VOTED: To approve the September pensions as presented.

Mr. Boudreau asked Director Karpinski if members are still exercising the SRA Plus Option and whether it is still the practice to provide them with the monthly benefit showing no COLA. Director Karpinski said yes and noted that members are given the social security amount based on their age and the percentage reduction with no COLA. Mr. Boudreau asked what assumptions are used; Director Karpinski said anyone after June 30, 2012 would use the new assumptions.

VII. Legal Counsel Report

Attorney Robinson apprised the Board on the matter of *Rivera vs. ERSRI*, which he will be arguing before the Rhode Island Supreme Court on October 24, 2012, which involved a Cranston police officer who applied for an accidental disability pension and was denied by the Board. He said the issue on appeal relates to the Administrative Procedures Act, and the timeliness of an appeal taken from the adverse decision of the Board.

Attorney Robinson then provided a response to a matter that Mr. Maguire had inquired about regarding the recommendations in the Disability audit from Sullivan & Company regarding obtaining authorization from members to gain access to Social Security Administration or IRS records. Attorney Robinson said that Titles 36 and 16, relating to state employees and teachers, specifically state that retirees receiving an accidental disability pension, annually may under penalty of perjury, be required to provide the Board with such affidavits and accurate evidence of earnings, employment, and gainful activity as the Board may require including but not limited to joint and/or individual tax returns requested by the Board. He noted that the same language does not appear in either Title 45 or the ordinary disability statutes, but indicated that there is an implied obligation on the part of members to cooperate with reasonable investigations, and that he was not aware of any prohibition on requesting such information from members.

Mr. Beardsley queried why Teacher and State Employee statutes require such information be provided and not Municipal and Public Safety members. Attorney Dingley said the reforms in 2009 added those provisions for Teachers and State Employees; Municipal pensions under Title 45 were not addressed in that legislation. Mr. Beardsley suggested that a new bill may need to be introduced for the MERS statute.

Mr. Boudreau asked Attorney Robinson about the status of the litigation pending against the Board by various organizations regarding the recently enacted pension reforms. Attorney Robinson said he is not involved in this matter and directed the question to Attorney Mark Dingley. Attorney Dingley said the most recent action

occurred in August when the State filed motions to dismiss or clarify the suits. He said the State has asked that the cases be dismissed and if not dismissed then to specify what contracts the plaintiffs are claiming are being violated. Attorney Dingley said the State has not received any responsive memos from the plaintiffs as of yet, nor heard from the Judge for a scheduling order. Mr. Boudreau asked that the mechanism to update the Board be provided by Attorney Dingley on a monthly basis under the Legal Counsel Report.

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 5, 2012:

Name	Membership Group	Type	Action
1. Everett McCain	Municipal	Ordinary	Deny
2. Raymond Cappelli	Municipal	Accidental	Deny
3. Ronald Wilson	State	Accidental	Deny
4. Paul Venditto	Municipal	Accidental	Deny
5. Michelle Cavanagh	State	Ordinary	Postpone
6. Louise Narducci	State	Ordinary	Approve
7. Thomas Finnerty	Municipal	Ordinary	Approve

On a motion by Michael R. Boyce and seconded by Roger P. Boudreau, it was unanimously

VOTED: To approve the recommendation of the Disability Subcommittee meeting of Friday, October 5, 2012 on items 1 through 7.

Mr. Maguire queried Attorney Robinson regarding the Everett McCain matter listed on the disability report and recalled that there was a recent decision involving him. Attorney Robinson said yes and it was regarding Mr. McCain's eligibility for IOD benefits. Attorney Robinson said the decision does not have any bearing on his pending disability application. The issue before the Court related to whether or not Mr. McCain was a member of the fire department for purposes of qualifying for IOD benefits.

Rules and Regulations Subcommittee:

Chairman John Maguire thanked the Rules and Regulations Subcommittee members who met on October 2, 2012 and acknowledged those in attendance; namely, Deputy

Treasurer Mark A. Dingley, Esq., H. Carl Heintzelman, Thomas A. Mullaney, Legal Counsel/Policy Analyst Gayle Mambro-Martin, Executive Director Frank J. Karpinski, and Board Counsel Michael P. Robinson. Mr. Jean Rondeau was also in attendance.

He said the committee first discussed a draft rule concerning indemnification of Retirement Board Members and Members of the Administration of the Retirement System. After review, the committee postponed the matter and requested some additional information for consideration.

The committee then discussed a recommendation to promulgate a draft rule concerning Access to Public Records pursuant to Rhode Island General Law §38-2-3(d). In connection with the recently enacted changes to the Access to Public Records Act, ERSRI formalized its policy regarding access to public records.

Chairman Maguire said a proposed version of the policy has been provided to Board members and is in draft form on the ERSRI website. Upon approval by the Board, the policy will be formally promulgated and added to ERSRI's promulgated regulations. He said the committee would recommend approval of the proposed draft rule concerning Access to Public Records pursuant to Rhode Island General Law §38-2-3(d).

On a motion by John J. Meehan and seconded by Roger P. Boudreau, it was unanimously

VOTED: To accept the report of the subcommittee and to accept the Subcommittee's recommendation of the approval of the proposed Draft Rule regarding Access to Public Records pursuant to RIGL 38-2-3(d) and to authorize the Executive Director to begin the formal promulgation process.

Board Education Subcommittee:

Director Karpinski, in the absence of Mr. Finelli who chaired the subcommittee, gave an update overview of the memo regarding Board education. He first thanked the members of the subcommittee who were present namely; William B. Finelli, Susan Knorr Rodriguez, John J. Meehan, Jean Rondeau and Attorney Mark Dingley.

He said the committee met on Wednesday October 3rd to discuss and adopt a curriculum and suggested speakers for the Board Education Program. The Director noted that Rhode Island General Laws (RIGL) §36-8-4 and newly enacted §36-8-4.1 as well as ERSRI Regulation No.1 set forth educational requirements for Retirement Board Members. Generally, as defined in Regulation No.1, Board Members are required to become educated, over time, by gaining a meaningful level of understanding in 6 topics by attending conferences that contain at least five (5) hours of educational content **and** annually participate in at least 8 hours of investment and fiduciary training, including fiduciary conduct and Board governance.

Director Karpinski said the committee was provided with the memo members have today and recommended approval of the speakers and curriculum. The committee proposed an annual one day seminar, during the month of March, to capture a large majority of training, and 6 separate 1 to 1 ½ hour sessions during the year to ensure the requirement is met as well as cover training to those members unable to attend the one day seminar.

Attorney Dingley said there are a number of cases coming from other states that relate to Board fiduciary liability and all of those cases make reference to whether Board members are adhering to training requirements. He stressed that although Board education was a policy before that was strongly encouraged, it is now statutory as Director Karpinski pointed out and Board members must adhere to the training going forward.

On a motion by Jean Rondeau and seconded by Frank R. Benell, Jr., it was unanimously **VOTED: To accept the report of the subcommittee and to recommend approval of the curriculum and suggested speakers.**

IX. New Business

Mr. Boyce asked Attorney Dingley who is the lead counsel on the Pension reform lawsuit. Attorney Dingley apprised the Board that there are 4 defendants. The Governor and the Treasurer are represented by the Attorney General by statute. The Retirement System and the Executive Director are represented by Attorney John Tarantino of Adler Pollock & Sheehan. Mr. Boyce asked if there will be periodic reports on legal costs, and Attorney Dingley said the Board will be updated periodically.

Mr. Boyce asked when the budget will be presented. Director Karpinski said a budget presentation will be provided at the November Board meeting.

Mr. Maguire noted that he has received calls from members as to whether there is availability for additional contributions that may be made to the TIAA-CREF 401(a) plan. Attorney Dingley said the law prohibits elective pre-tax contributions to a 401(a) plan. Additional contributions can be made through the 457 plans for State and municipal employees or 403(b) plans for teachers.

Mr. Licht apprised the Board that the matter he had previously brought to the attention of the Board regarding the State Police may be worked out administratively. He said if for any reason the matter cannot be resolved, it will come before the full Board.

Mr. Boudreau recommended an acknowledgement and collective congratulations to Mr. Finelli on his new position that he is taking today with National Counsel on Teacher Retirement (NCTR).

X. Adjournment

There being no other business to come before the Board, on a motion by Roger P. Boudreau and seconded by John P. Maguire the meeting adjourned at 10:31 a.m.

Respectfully submitted,

Frank J. Karpinski
Executive Director