

## **Commission Meeting Minutes**

**March 13, 2024**

Chairman Philip Y. Brown called the meeting (held at PERAC Offices, 5 Middlesex Ave., Somerville) to order at 11:10 AM. Chairman Brown acknowledged the other Commissioners participating: Kathleen Fallon, Kate Fitzpatrick, Richard MacKinnon, Michael Leung-Tat, and James Guido. Chairman Brown and Commissioner MacKinnon each participated remotely. Therefore, the Chairman explained, all motions made at this meeting will be voted on by roll call vote. The Chairman announced the meeting was being recorded. Commissioner Sullivan was not in attendance.

PERAC Staff in attendance: Interim Executive Director Bill Keefe, Deputy Executive Director Caroline Carcia, General Counsel Judith Corrigan, Assistant Deputy Directors Ken Hill, Director of Audits Caryn Shea, Actuary John Boorack, Deputy General Counsel Patrick Charles, Associate General Counsel Felicia McGinniss, Compliance Manager John Galvin, and Project Manager Anthony Tse.

PERAC staff attending remotely: Fraud Prevention Manager Sandra King and Executive Assistant Doreen Duane.

Guests in attendance: Tom Gibson representing the Middlesex County and Belmont Retirement Systems.

Guests attending remotely: Padriac Lydon representing the Plymouth County Retirement System and Elizabeth Morocco representing the State Retirement System.

Commissioner Fitzpatrick made a motion to adopt the February 14, 2024 Commission minutes. Commissioner Guido seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Richard MacKinnon YES, Kathleen Fallon YES, and Michael Leung-Tat YES and the minutes were adopted.

### **Executive Session**

At 11:08 a.m. Chairman Brown called for a vote of the Commission to go into Executive Session for the purposes of discussing the New Executive Director's Employment Contract Agreement in accordance with G.L. c. 30A, § 21 (a)(2). Chairman Brown indicated that the Commission would return from Executive Session to Open Session.

Commissioner Leung-Tat made a motion to go into Executive Session. Commissioner Fitzpatrick seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Richard MacKinnon YES, Kathleen Fallon YES, and Michael Leung-Tat YES and the motion was adopted.

A roll call vote was taken in Executive Session to return to open session and to adjourn the Executive Session at 11:30 a.m.

## **Open Session**

Upon return to Open Session, the Commission announced it had reached an employment agreement with its new Executive Director while in Executive Session. Commissioner Guido made a motion to ratify the employment contract between William T. Keefe and the Public Employee Retirement Administration Commission for a three-year term beginning on March 13, 2024 with an annual salary of \$187,500. Commissioner Fitzpatrick seconded the motion and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Richard MacKinnon YES, Kathleen Fallon YES, and Michael Leung-Tat YES and the motion was adopted.

## **Legal Update**

Ken Hill updated the Commission on the case of *Conway v. PERAC*, (CR-22-0439) (DALA Feb. 23, 2024). Paul Conway, a firefighter from the Medford Fire Department was granted an accidental disability retirement on April 7, 2001. Pursuant to G.L. c. 32, § 8, accidental disability retirees must provide PERAC with updated medical records every few years to ascertain whether they are eligible to return to work as part of the comprehensive medical examination (“CME”). In September 2022, Mr. Conway underwent a CME and was found unable to return to work. Mr. Conway challenged that determination and filed an appeal at the Division of Administrative Law Appeals (“DALA”). While this matter was pending at DALA, Mr. Conway turned age 65, which is the maximum age a firefighter can attain before facing mandatory retirement. PERAC filed a motion to dismiss this appeal as moot. DALA agreed with PERAC. Mr. Conway has until March 11, 2024 to file an appeal with the Contributory Retirement Appeal Board (“CRAB”).

Ken Hill then reported to the Commission that the Supreme Judicial Court (“SJC”) will be taking up the Hartnett matter which involves one of the anti-spiking provisions inserted into Chapter 32 by Chapter 175 of the Acts of 2011. Mr. Hill noted that the Attorney General’s Office will be representing PERAC in this matter. He further noted that the SJC is seeking amicus briefs from interested entities.

Felicia McGinniss updated the Commission in the matter of *Edith Smith v. State Board of Retirement*, CR-22-0375 (DALA Jan. 26, 2024) involving anti-spiking relating to the Massachusetts Equal Pay Act, Chapter 149, Section 105A (“MEPA”). Ms. Smith received salary increases in the two years directly preceding her retirement which had an effect of decreasing her retirement allowance due to the anti-spiking provisions of G.L. c. 32, § 5(2)(f). The DALA Magistrate found that Ms. Smith’s retirement allowance was subject to the anti-spiking provision as a result of the MEPA increases. The DALA Magistrate further provided that the Legislature needs to address this either by amending the anti-spiking provision or MEPA. Ms. McGinniss further reported that PERAC has worked to pass an amendment to Section 5(2)(f) to exclude any salary increase received as a result of MEPA from the anti-spiking provision. For this current legislative session, two legislators have proposed bills to address this issue. Senate Bill No. 1691, filed by Senator Jehlen, is currently before the Senate Ways and Means Committee after being reported favorably by the Joint Committee on Public Service. Lastly, Ms. McGinniss indicated that Ms. Smith has appealed the DALA Decision to the CRAB.

## **Legislative Update**

Mr. Keefe reported on the Governor's municipal bill S 2571 in which representatives from PERAC and Administration and Finance submitted testimony to ensure these waivers would only apply to superannuation retirees. This bill includes a proposal to expand post-retirement work by allowing executive agencies, departments, counties, cities, towns, districts, and authorities to petition the Secretary of Administration and Finance to declare a critical shortage exists for qualified applicants for a job title or class of job titles. The critical shortage declaration would be for 24 months, could be renewed and retirees would be allowed to fill these positions with the Section 91 hours and earnings limits waived.

Mr. Keefe further discussed the DALA decision that upheld a State Retirement Board determination regarding the anti-spiking provision that was discussed earlier in the Legal Unit update. He also discussed the City of Springfield home rule petition allowing a police officer to work past 65 while continuing to contribute to his pension. To PERAC's knowledge, this has never happened in the past and we have notified the Public Service Committee regarding this matter.

Mr. Keefe also explained that DOR's February collection of \$2 billion was \$11 million or 0.6% below benchmark. According to the State House News Service, it is the longest streak of below-benchmark revenue months in more than 20 years. For FY24, the state has collected \$23.47 billion, 1.2% or \$275 million below the revised benchmark.

Lastly, Mr. Keefe reported on a special House election result and legislators who had announced they were not running for re-election.

## **Audit Update**

Caryn Shea reported that since the last Commission meeting, PERAC has released the Milford and Taunton Audits and a Follow-Up letter for the Swampscott Retirement Board. Ms. Shea explained that the Taunton Retirement Board Audit had no findings, and the Milford Retirement Audit had several findings. Ms. Shea explained the findings listed in the Milford Audit. She also explained that the Swampscott Retirement Board has resolved most of the issues identified in the original audit. She went on to point out the status of all audits as outlined in the Audit Tracking Log included in the Commission packet. She then told the Commissioners that several staff members of the Audit Unit will be participating in the next Administrators' training in Norwood. Finally, she reported that PERAC has received two Annual Statements to date and that the Audit Staff will review the statements as we receive them.

## **Compliance Unit**

John Galvin reported that PRIM's return for January was .03%. The fund balance as of January 31, 2024 was \$100.8 billion.

Mr. Galvin told the Commission that to date the Annual Vendor Disclosures have a completion rate of 76% and that PERAC has received over 208 Statement of Financial Interests from active board members. Lastly, he noted that we are reaching out to former board members who have not filed their Statement of Financial Interest forms to date.

## **Executive Director's Report**

Mr. Keefe discussed numerous staff activities since the last Commission meeting, which are highlighted in the meeting materials. He noted that Natacha Dunker has been on site visits to find the venue for PERAC's 2024 Emerging Issues Forum as Holy Cross will no longer be an option. He indicated that we have just about narrowed it down to the DoubleTree in Westborough. He noted that over 147 individuals attended the Annual Statement Training held on February 15, 2024. He then noted that John Boorack was not in attendance for the Commission meeting today as he was attending the Enrolled Actuaries Conference in Washington, DC.

Mr. Keefe then stated that PERAC has added another component of the PROSPER Application targeting a large population of retirees, encouraging them to submit their Annual Earned Income forms online. However, we have not received the outcome we were expecting. We will continue to monitor this and plan to do more to reach out about this new feature. Another feature of PROSPER that was recently rolled out is having retirement boards submit their annual COLA filings and COLA Base filings electronically. This will provide the boards with additional tools to store, track, and maintain essential functions of their responsibilities.

He updated the Commission on the Belmont Retirement Board's fifth member election and noted that the Belmont Select Board will rescind the complaint filed regarding the Open Meeting Law.

Chairman Brown announced that a Resolution for John Parsons has been put together and will be presented to him at his upcoming retirement party. Commissioner Fitzpatrick made a motion for the Commission to adopt the resolution to honor John Parsons. Commissioner Leung-Tat seconded the motion and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Richard MacKinnon YES, Kathleen Fallon YES, and Michael Leung-Tat YES and the motion was adopted.

Chairman Brown then announced that the next Commission meeting will be held on Wednesday, April 10, 2024 at 11:00 AM at the PERAC offices.

Commissioner Guido made a motion to adjourn the meeting. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Richard MacKinnon YES, Kate Fitzpatrick YES, Kathleen Fallon YES, and Michael Leung-Tat YES. Thus, the motion was adopted. The meeting was adjourned at 12:00 PM.

**Commission Meeting Documents**

Commission Agenda for the meeting of March 13, 2024  
Commission Minutes dated February 14, 2024

**Legal Update**

*Conway v. PERAC*, (CR-22-0439) (DALA) (Feb. 23, 2024)  
Supreme Judicial Court Case Docket – Susan Hartnett v. Contributory Retirement Appeals Board & others, SJC-13568  
*Edith Smith v. State Board of Retirement*, CR-22-0375 (DALA) (January 26, 2024)

**Legislative Update**

Memorandum regarding Legislative updates

**Audit Update**

Milford Retirement Board Audit  
Swampscott – Follow-Up Letter  
Taunton Retirement Board Audit  
Audit Tracking Report

**Compliance Update**

Memorandum regarding Compliance updates  
PRIM Summary of Plan Performance – As of January 31, 2024  
Pension & Investments Article dated February 6, 2024, “SEC, Trade groups spar over private funds rule in federal court.”

**Executive Director’s Report**

Staff Activities Memorandum  
Belmont Voice Article dated March 6, 2024, “Retirement Board Breaks Deadlock, Re-Elects Thomas Gibson.”  
Resolution for former Executive Director John Parsons

Approved:



Philip Y. Brown, Chairman  
Public Employee Retirement  
Administration Commission