

## **Commission Meeting Minutes**

**December 7, 2022**

Chairman Philip Y. Brown called the meeting (held at PERAC Offices, 5 Middlesex Ave., Somerville) to order at 11:12 AM. Chairman Brown acknowledged the other Commissioners participating: Commissioners Kathy Fallon, Kate Fitzpatrick, Michael Leung-Tat, Jennifer Sullivan, and James Guido. Commissioner Sullivan participated remotely. Therefore, the Chairman explained, all motions made at this meeting will be voted on by roll call vote. Commissioner MacKinnon was not in attendance. The Chairman announced the meeting was being recorded.

PERAC staff in attendance: Executive Director John Parsons, Deputy Executive Director Caroline Carcia, General Counsel Judith Corrigan, Assistant Deputy Director Bill Keefe, Actuary John Boorack, Assistant Deputy Director Ken Hill, Compliance Analyst John Galvin, Senior Associate General Counsel Patrick Charles, Associate General Counsel Felicia McGinniss, Fraud Prevention Manager Sandra King, Director of Audits Caryn Shea, Communications Director Natacha Dunker, and Project Manager Tony Tse.

Guests in attendance: Massachusetts State Auditor Suzanne Bump, Attorney Tom Gibson representing the Middlesex County & Belmont Retirement Boards, and John Brown representing the Middlesex County and Fitchburg Retirement Boards, and MACRS.

Guests participating remotely: Erika Glaster representing the Teachers' Retirement Board, Nick Favorito representing the State Retirement Board, Pat Brock representing the Berkshire County Retirement Board and James Quirk representing the Law Offices of James Quirk.

John Parsons discussed the recent passing of former PERAC Commissioner Robert B. McCarthy on December 6, 2022. He indicated that Bob served on the Commission for twenty years as the designee of the President of the AFL-CIO, as appointed by the State Auditor. Bob McCarthy was first appointed to the Commission in October 2007. Mr. Parsons requested a moment of silence to acknowledge Commissioner McCarthy's passing and his many years of protecting public employee benefits throughout Massachusetts. There was a brief discussion regarding Commissioner McCarthy before the meeting continued on to its regular business.

Commissioner Guido made a motion to adopt the November 9, 2022 Commission minutes. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners Kathy Fallon YES, Kate Fitzpatrick YES, Michael Leung-Tat YES, Jennifer Sullivan YES, and James Guido YES and the minutes were unanimously adopted.

### Massachusetts State Auditor Suzanne Bump

Massachusetts State Auditor Suzanne Bump, who is soon to leave office, attended this Commission meeting and was introduced by Chairman Brown. Auditor Bump reminisced about her time as Auditor and the Auditor's office's interactions with PERAC. She thanked the Commission and staff for all their hard work throughout the years. She continued how important PERAC's role is to Massachusetts active and retired members in preserving and overseeing the

pension system. Executive Director Parsons in turn thanked Auditor Bump for her work and continued support, and thanked her for attending today's meeting.

### Legal Update

Mr. Hill provided the Commission with an update on the case of *Hartnett v. Contributory Retirement Appeal Board, PERAC, and Boston Retirement Board*, Suffolk Superior Court, No. 21844-CV-02258. This case involves one of the two anti-spiking provisions inserted by Chapter 176 of the Acts of 2011, which requires an analysis of regular compensation received in "consecutive years."

Susan Hartnett ("Ms. Hartnett") began public employment in 1978, working from 1978 to 1990 as a member of the State Retirement System. She returned to public service as a member of the Boston Retirement System in July of 2002, accruing approximately 3 years and 8 months of creditable service and earning a substantially higher salary than she had in 1990. Ms. Hartnett left employment with Boston in April of 2006. In November of 2011, the Legislature enacted Chapter 176 of the Acts of 2011, which included the provision in question here.

When Ms. Hartnett applied to retire in 2016, the Boston Retirement Board ("Board") determined that there was an over 100% increase in her regular compensation between 1990 and 2002, thus triggering the anti-spiking provision. Ms. Hartnett argued that the anti-spiking provision should not apply to her, reasoning that the years 1990 and 2002 were not consecutive. The Division of Administrative Law Appeals ("DALA") the Contributory Retirement Appeal Board ("CRAB") and the Superior Court all ruled that the phrase "2 consecutive years" in the statute must be read in the context of the "5 years of creditable service immediately preceding retirement", and that 1990 and 2002 were consecutive years for that purpose. Thus, PERAC and the Board's interpretation of the phrase "consecutive years" was upheld. However, the Superior Court further found that since Ms. Hartnett became a member of the system prior to the enactment of Chapter 176 of the Acts of 2011, she should retire with the allowance to which she should have been entitled to prior to the enactment of that law, and the anti-spiking provisions should not be utilized in her calculation.

PERAC intends to appeal this decision, with the approval of the State Solicitor General's office. The Boston Retirement Board had indicated that it intends to appeal. Such an appeal must be filed by January 3, 2023.

Ms. McGinniss then provided the Commission with an update in the case of *JT Travers v. Winchester Ret. Bd. & PERAC*, CR-21-0080. Mr. Travers is a member of the Winchester Retirement System who originally applied for accidental disability retirement benefits well over a decade ago. He was originally denied by the Winchester Retirement Board ("Board") but was later approved by the Contributory Retirement Appeal Board ("CRAB") following an appeal. Mr. Travers was awarded retroactive payments from 2011-2020. After examining his 2019 income documents, PERAC informed Mr. Travers that he was an overearner under G.L. c. 32, § 91A and owed the retirement board \$29,794.24 for calendar year 2019. Mr. Travers appealed and on November 18, 2022, the Division of Administrative Law Appeals ("DALA") affirmed PERAC and the Board's decision that Mr. Traver's overearned. Mr. Travers made several arguments, including that Section 91A should not apply to those who are retired retroactively as happened in his case. However, DALA agreed with PERAC and the Board. Mr. Travers has filed objections with CRAB.

Mr. Charles discussed the proposed amendments to PERAC Regulations 840 CMR 3.00 and 840 CMR 13.00 pertaining to compliance with the IRS Code. He informed the Commission that PERAC will be holding public hearings in December 2022 as well as soliciting written comments. Mr. Charles will update the Commission at the January 2023 meeting as we proceed with the next steps in the regulation process.

### **Legislative Update**

Bill Keefe reported that PERAC issued a memorandum to the retirement boards providing guidance on the implementation of the new statute allowing up to a 5% local COLA. He also reported that the Governor returned Section 254 of Chapter 268 of the Acts of 2022 to the Legislature for amendment. Section 254 involves those who had elected to stop contributing to the retirement systems upon reaching age 70. The proposed legislation would allow people who elected to stop continuing to the retirement system to reverse that election and buy back some of the time served following the election. Governor Baker outlined three main concerns in regard to this legislation which he wants the Legislation to address.

Mr. Keefe reported that informal sessions will continue through Tuesday, January 3, 2023.

Mr. Keefe reported that DOR's November revenue was \$2.38 billion, 10.2% over benchmark.

### **Audit Update**

Caryn Shea reported that since the last Commission meeting, PERAC has released the Swampscott and Winchester Retirement Board audits. She then explained the findings in each of the audits. Ms. Shea reported on the status of audits as outlined in the Audit Tracking Log included in the Commission packets. She also reported that staff are preparing for the Annual Statement training in the first quarter education curriculum.

### **Compliance Update**

John Galvin reported that PRIM's return for October was 2.05% with a calendar year to date return through October 31 -12.63%. The fund balance as of October 31 was \$90 billion.

Mr. Galvin reported that Goldman Sachs paid SEC \$4 Million settlement on the Environmental, Social and Governance Fund ("ESG") Investigation. The SEC found that Goldman Sachs did not have policies and procedures in place regarding how they chose and evaluated ESG criteria. After Goldman Sachs outlined policies and procedures, they continuously failed to follow their own controls. To date, no Chapter 32 boards have investments with this manager. ESG is gaining popularity and being closely monitored by government agencies.

Mr. Galvin further reported on the recent Chapter 11 bankruptcy filing by FTX which was once valued at \$25 Billion. He informed the Commission that PERAC's regulations would not permit retirement boards to invest in FTX. He did indicate that Ontario Teachers' Pension Plan had invested \$95 million into FTX, but he was not aware of any other retirement systems in the US which had done so. FTX is registered with FINRA as a broker dealer and not as an Investment Advisor with the SEC.

## **Executive Director's Report**

John Parsons discussed numerous staff activities since the last Commission meeting which are highlighted in the meeting materials.

Mr. Parsons reported that boards from the Southern Region requested PERAC to hold an Administrator's Training in their area. We are currently trying to find a location and a date for the first quarter next year.

Mr. Parsons indicated that included in the Commission materials is the 2023 Commission Meeting Schedule which needs to be approved. Commissioner Guido made a motion to accept the 2023 Commission Meeting schedule. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners Kathy Fallon YES, Kate Fitzpatrick YES, Jennifer Sullivan YES, Michael Leung-Tat YES, and James Guido YES and the 2023 Commission meeting schedule was unanimously adopted.

Mr. Parsons updated the Commission that in accordance with PERAC Regulation 840 CMR 10:10(3) and 10:15(1)(c), an Annual Review of Medical Testing Fees must take place. His recommendation is that PERAC continue the same limit of \$100.00 for any possible non-invasive medical testing for calendar year 2023.

Commissioner Fitzpatrick made a motion to keep the Medical Testing Fee at \$100.00 according to the recommendation made. Commissioner Guido seconded the motion and a roll call vote was taken as follows:

Chairman Philip Brown YES, Commissioners Kathy Fallon YES, Michael Leung-Tat YES, James Guido YES, Kate Fitzpatrick YES, and Jennifer Sullivan YES, and the motion was adopted.

Lastly, Mr. Parsons pointed out that included in the Commission materials are copies of the letters sent to the Administration regarding the Funding Schedule Alternatives that the Commission recommended at the November 2022 meeting.

Commissioner Fitzpatrick 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 Kathy Fallon YES, Kate Fitzpatrick YES, Michael Leung-Tat YES, James Guido YES, and Jennifer Sullivan YES. The motion was unanimously adopted. The meeting was adjourned at 12:10 PM.

## **Commission Meeting Documents**

Commission Agenda for the meeting of December 7, 2022  
Commission Minutes dated November 9, 2022

### **Legal Update**

Hartnett v. Contributory Retirement Appeals Board, PERAC, and Boston Retirement Board,  
Suffolk Superior Court, No. 21844-CV-02258  
JT Travers v. Winchester Ret. Bd. & PERAC, CR-21-0080  
Proposed Draft Regulations 840 CMR 3.00 & 13.00

### **Legislative Update**

Memorandum regarding Legislative updates  
Letters congratulating newly elected Governor-Elect Maua Healey and State Auditor-Elect Diana DiZoglio.

### **Audit Update**

Swampscott Retirement System Audit Report  
Winchester Retirement System Audit Report  
Audit Tracking Report

### **Compliance Update**

Memorandum regarding Compliance updates  
Wall Street Journal Article, written by Dave Michaels titled "Goldman Sachs to Pay \$4 Million to Settle Investigation Over ESG Funds".

### **Executive Director's Report**

Staff Activities Memorandum  
2023 Commission Meeting Schedule  
Memorandum to Commissioners regarding Medical Testing Fees in accordance with 840 CMR 10:13(3) and 10:15(1)(c)  
Copies of letters to Mass Medical Society and Department of Health seeking recruitment of medical physicians to provide regional medical panel examinations.  
Copies of letters to Administration and Finance regarding Funding Schedule Alternatives

Approved:



Philip Y. Brown, Chairman  
Public Employee Retirement  
Administration Commission