

Commission Meeting Minutes

January 11, 2023

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: Kate Fitzpatrick, Michael Leung-Tat, Jennifer Sullivan, Richard MacKinnon 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 Fallon 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 at PERAC offices: James Machado representing Fall River Retirement Board.

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

Commissioner Fitzpatrick made a motion to adopt the December 7, 2022 Commission minutes. Commissioner Guido seconded the motion, and a roll call vote was taken:

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

Legal Update

Ms. McGinniss provided the Commission with an update on the case of Debra Kortekamp v. State Board of Retirement & PERAC, CR-20-0130. Ms. Kortekamp was a Personnel Officer for the Executive Office of Health and Human Services ("EOHHS"). Her employment began September 2010. Her case highlights the extremely strict causation standard an applicant must meet to be eligible for accidental disability retirement ("ADR") benefits. Ms. Kortekamp worked at the Springfield office location of EOHHS. In February 2016, she was required to attend a mandatory in-person training at the Boston location of EOHHS. Driving arrangements were made with her supervisor and co-workers to car-pool from the Big Y in Palmer, MA. While driving down the Turnpike, a large metal cage fell off the trailer of an 18-wheel commercial truck and collided with the hood and front bumper of the car. As a result of this accident, Ms. Kortekamp suffered serious injuries which prevented her from returning to work. She filed for accidental disability retirement. Although the State Board of Retirement approved the benefit, PERAC remanded her application because it appeared she had been injured on her commute to work. The Division of Administrative Law Appeals ("DALA") issued a decision on December 23, 2022 affirming PERAC's remand decision. To date, PERAC has not received notification that the DALA decision has been appealed to the Contributory Retirement Appeals Board ("CRAB").

Ms. Corrigan provided an update on the case of Wright & PERAC v. State Board of Retirement, CR-16-68 (CRAB 12/1/22) which was first reported at the November 9, 2022 Commission meeting. This matter involves a member of the State Retirement Board (“SRB”), Kim Wright, who was wrongfully excluded from membership for the period 1980 to June 1984. When Ms. Wright sought to buyback that service, the SRB assessed the buyback rate of interest to the purchase, 3.75%.

CRAB’s decision on October 18, 2022 affirmed Ms. Wright and PERAC’s position regarding the proper interest for service purchase v. buyback interest rate, however, CRAB failed to address Ms. Wright’s other argument regarding her incorrect contribution rate. Ms. Wright filed a Motion for Reconsideration to CRAB, which again agreed with Ms. Wright’s position and instructed SRB to reimburse Ms. Wright the excess contributions made based on her membership date of 1980. To date, we are not aware if the SRB will appeal either of these two decisions.

Ms. Corrigan provided an update on the case of David Cohen v. Norfolk County Retirement Board & others, Norfolk Superior Court, Civil Action No. 1982-01642 (December 9, 2022). This matter involves a Town of Stoughton police officer, David Cohen, who was convicted on July 30, 2007 of attempted extortion, witness intimidation and filing a false police report. These crimes related to his duties, thereby forfeiting any retirement allowance to which he may have been entitled. Because his crimes also invoked the provisions of G.L. c. 32, §15 (3A), he also forfeited any contributions he had paid into the Norfolk County Retirement System (“Board”). On January 7, 2010 the Supreme Judicial Court reversed his convictions and granted a new trial. On January 13, 2010, Mr. Cohen filed with the Board his request for a return of his accumulated deductions. PERAC advised the Board to delay returning the money due to his conviction and the likelihood that Mr. Cohen would be retried for the same crime. The Board voted to table Mr. Cohen’s application to withdraw funds pending resolution of criminal charges against him. Mr. Cohen was convicted of the same crimes and sentenced on February 22, 2011. Mr. Cohen did not appeal either the Board’s action or inaction, or PERAC’s actions in 2010 or 2011. Mr. Cohen renewed his application to withdraw his accumulated deductions on April 25, 2019, which the Board again denied. Mr. Cohen filed a complaint in Norfolk Superior Court on December 27, 2019. On December 9, 2022, the Norfolk Superior Court dismissed most the counts of Mr. Cohen’s complaint, largely due to failure to appeal timely and failure to exhaust administrative remedies. The only claim not dismissed was that the failure to return the accumulated total deductions constituted an excessive fine in violation of the Eighth Amendment of the United States Constitution. The Superior Court will need to determine whether this does constitute an excessive fine for Eighth Amendment purposes.

Mr. Charles updated the Commission on the status of PERAC’s regulations 840 CMR 3.00 and 840 CMR 13.00 which have been changed mainly due to IRS rules. He informed the Commission that PERAC held two virtual hearings and provided for a written comment period to address any concerns with such changes to the regulations. He indicated that there were no public concerns and/or responses and stated the next step in the process is to submit the regulations to the Legislature for their review upon the approval of the Commission.

Commission MacKinnon made a motion to submit Draft Regulations 840 CMR 3.00 and 840 CMR 13.00 to the Legislature for their review and approval. Michael Leung-Tat seconded the motion and a roll call vote was taken:

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

Ms. Corrigan discussed PERAC Memo #1/2023 which informed the retirement boards that the waiver for Earning and Hour Limitations on post-retirement work expired on December 31, 2022. Therefore, effective January 1, 2023, the hour and earning limitations on post-retirement work in Massachusetts as outlined in G.L. c. 32, § 91(b) and (c) are again in effect. Public employment earnings for the period of post-retirement in any calendar year, when added to a member's retirement allowance, cannot be greater than the salary currently being paid for the position from which the member retired plus \$15,000. However, the \$15,000 is only added to the formula after the member has been retired for a full calendar year.

Legislative Update

Bill Keefe reported on PERAC's Veteran Buyback bill, which was unfortunately not enacted before the 2021-2022 legislative session ended. Both Senator John Velis of Westfield and Representative Jerry Parisella will file the bill in the new legislative session of 2023-2024. Both legislators are veterans and will possibly have other veteran legislators co-sponsor the bill. PFFM, MassCOP, and some veterans' organizations have been supportive and worked hard to get this bill enacted and signed during this session. The same groups will again be committed to get this legislation passed in the next session. Mr. Keefe then discussed various bills that were signed into law on Governor Baker's last day in office.

Mr. Keefe reported on the results of the last election.

Mr. Keefe reported that DOR's December revenue was \$3.8 billion, 9.5% over benchmark. The Fiscal Year 2023 to date revenues total \$17.8 billion, 6.5% over benchmark.

Audit Update

Caryn Shea reported that since the last Commission meeting, PERAC has released the Medford, Winthrop, and Wellesley Retirement Board audits. She then explained the findings in both the Medford and Winthrop audits. The Wellesley audit had no findings. Ms. Shea reported on the status of audits as outlined in the Audit Tracking Log included in the Commission packets. She also reported that Scott Henderson, Deputy Chief Auditor visited a couple of retirement boards to assist Administrators with various accounting questions and other retirement related tasks.

Compliance Update

John Galvin reported that PRIM's return for November was 3.78% with a calendar year to date return through November 30 of -9.32%. The fund balance as of November 30 was \$93 billion.

Mr. Galvin reported on a potential bank fraud of a retirement board. The bank fraud was in relation to a retiree requesting a direct deposit change. However, due to the board's internal controls and processes, they immediately detected the fraud and reported it to PERAC and local authorities. Mr. Galvin explained that this is a good example of internal controls working to protect both members and retirees of the retirement systems.

Mr. Galvin informed the Commission that PERAC will be distributing the Calendar Year 2022 Statement of Financial Interests ("SFI") to members by the end of January.

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 we have secured March 28, 2023 in Norwood, MA for a Southern Region Administrator's training which was requested by retirement boards. He indicated that these trainings have had a large attendance and we have received excellent feedback from boards.

Mr. Parsons reported that some Commissioners and PERAC staff will be attending the upcoming NCPERS Legislative/Communication Summit Conference on January 22-24, 2023 in Washington, DC.

Mr. Parsons discussed the success of a particular retirement board who avoided a potential direct deposit fraud. He indicated that the board's strong internal controls led to protecting retirement system's assets. The board took immediate action and reported the situation to PERAC and law enforcement.

Ms. Carcia then updated the Commission on PERAC's Office Relocation. Ms. Carcia indicated that 16 proposals were submitted from this last RFP. After a review of each of these proposals which included a cost analysis, specification requirements, and locations, both DCAM and PERAC narrowed this list down to six possible locations. DCAM, John Parsons, and Caroline Carcia will be visiting the sites in anticipation of selecting PERAC's future office location.

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

Chairman Philip Brown YES, Commissioners Richard MacKinnon YES, Kate Fitzpatrick YES, Michael Leung-Tat YES, and James Guido YES. Commissioner Sullivan, who was participating remotely, did not respond when asked to vote and may have departed the meeting shortly before this motion was made and seconded. Thus, the motion was unanimously adopted. The meeting was adjourned at 12:00 PM.

Commission Meeting Documents

Commission Agenda for the meeting of January 11, 2023
Commission Minutes dated December 7, 2022

Legal Update

Debra Kortekamp v. State Board of Retirement & PERAC, CR-20-0130 (DALA 12/23/22)
Wright & PERAC v. State Board of Retirement, CR-16-68 (CRAB 12/1/22)
David Cohen v. Norfolk County Retirement Board & others – Norfolk Superior Court – Civil
Action No. 1982-01642 (December 9, 2022)
DRAFT PERAC Regulations 840 CMR 3.00 & 840 CMR 13.00
PERAC MEMO #1/2023

Legislative Update

Memorandum regarding Legislative updates

Audit Update

Medford Retirement System Audit Report
Winthrop Retirement System Audit Report
Wellesley Retirement System Audit Report
Audit Tracking Report

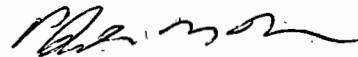
Compliance Update

Memorandum regarding Compliance updates

Executive Director's Report

Staff Activities Memorandum

Approved:



Philip Y. Brown, Chairman
Public Employee Retirement
Administration Commission