

Commission Meeting Minutes

November 8, 2023

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: Kate Fitzpatrick, Richard MacKinnon, Michael Leung-Tat, Kathleen Fallon, 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. 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 Directors Ken Hill and Bill Keefe, Director of Audits Caryn M. Shea, Actuary John Boorack, Deputy General Counsel Patrick Charles, Associate General Counsel Felicia McGinniss, Project Manager Anthony Tse, and Communications Director Natacha Dunker. Fraud Prevention Manager Sandra King and Senior System Engineer Robert Perez participated remotely.

Guests attending in person: Frank Zecha representing the Brookline Retirement System and Melvin Kleckner, former Town Manager of Brookline.

Guests attending remotely: Tom Gibson representing Belmont and Middlesex County Retirement System, Erika Glaster and Sean Neilon representing the Teachers Retirement System, and an individual who identified only as Katherine.

Commissioner Fitzpatrick made a motion to adopt the October 11, 2023 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, Kathleen Fallon YES, Richard MacKinnon YES, and Michael Leung-Tat YES and the minutes were unanimously adopted. Jennifer Sullivan reported that she was having internet issues intermittently throughout the meeting and therefore was unable to vote on this motion.

Commissioner Guido made a motion to adopt the October 11, 2023 Audit/Fraud Sub-Committee minutes. Commissioner MacKinnon seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Kathleen Fallon YES, Richard MacKinnon YES, and Michael Leung-Tat YES and the minutes were unanimously adopted. Jennifer Sullivan continued to have internet issues and therefore was unable to vote on this motion.

Commissioner MacKinnon made a motion to adopt the October 30, 2023 Administrative Sub-Committee minutes. Commissioner Guido seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Kathleen Fallon YES, Richard MacKinnon YES, and Michael Leung-Tat YES and the minutes were unanimously adopted. Jennifer Sullivan continued to have internet issues and therefore was unable to vote on this motion.

Administrative Sub-Committee Update

Chairman Brown indicated that the Administrative Sub-Committee met on Monday, October 30, 2023 to create an Executive Director Search Committee consisting of the following Commission members: Commissioner Fallon, Commissioner MacKinnon, and Chairman Brown. He also indicated that the Sub-Committee approved the Executive Director's Job Description, created a draft timeline of events, provided a list of publications and websites to advertise the position and updated the job announcement with current data pertaining to active membership and asset figures. He also reported that the Sub-Committee recommends December 1, 2023 as a deadline date for applications. He further indicated that the Sub-Committee added that applications must include a cover letter. The remaining update to the job posting is to determine the salary range. The Chairman indicated that included in the Commission packets is a list of current salaries of Executive Branch and Constitutional agency heads as well as other entities that will assist in determining the salary range to post for the position.

Discussion ensued regarding setting the salary range for the position. Commissioner Fitzpatrick made a motion to post the Executive Director's salary range at \$175,000-\$200,000. This motion was amended to include posting the job as soon as possible given the December 1, 2023 deadline date. Commissioner MacKinnon seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Kathleen Fallon YES, Richard MacKinnon YES, and Michael Leung-Tat NO and the motion was adopted. Jennifer Sullivan continued having internet issues and therefore was unable to vote.

Chairman Brown indicated that the full Commission needs to vote on several items recommended by the Administrative Sub-Committee in order to proceed with the search for the next Executive Director.

Commissioner Fitzpatrick made a motion to accept the recommendations of the Administrative Sub-Committee and to authorize the Executive Director Search Committee to take any and all steps it deems necessary to facilitate the hiring of PERAC's next Executive Director. Commissioner Guido seconded the motion, and a roll call vote was taken:

Chairman Philip Brown YES, Commissioners James Guido YES, Kate Fitzpatrick YES, Kathleen Fallon YES, Richard MacKinnon YES, and Michael Leung-Tat YES and the motion was adopted. Jennifer Sullivan continued to have internet issues and therefore was unable to vote on this motion.

Actuarial Update

Mr. Boorack discussed the results of the January 1, 2023 Massachusetts Teachers' Retirement System Actuarial Valuation. He indicated that the Unfunded Actuarial Liability increased from \$24.7 billion to \$25.7 billion, and the Funded Ratio decreased from 59.0% to 58.7% since the January 1, 2022 valuation. Mr. Boorack reported that the Investment return assumption remains the same as last year at 7.0%. He indicated that there was a small gain on the actuarial accrued liability of approximately \$63 million partly due to pay for continuing active members increasing more than assumed. He explained that this gain is small compared to the overall liability, thus indicating that the assumptions used in the last valuation are working. He also reported that there was a loss on plan assets of approximately \$1.02 billion. There was an overall loss of \$955 million since the last valuation.

Mr. Boorack further explained that this report does not disclose the requirements under ASOP 4 and that such disclosures will be included in the January 1, 2024 valuation report.

Commissioner Jennifer Sullivan made a motion to accept the results of the Draft Teachers Valuation Report as of January 1, 2023 and release both the Teachers and Commonwealth's final valuation report unless unforeseen results change the report dramatically. Commissioner MacKinnon seconded the motion, and a roll call vote was taken:

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

Legal Update

Felicia McGinniss updated the Commission on the cases of Marc Exarhopoulos v. Middlesex County Ret. Sys. & PERAC, CR-21-0211 and Jason Galofaro v. Middlesex County Ret. Sys. & PERAC, CR-21-0207. In 2014 and 2015, Mr. Exarhopoulos and Mr. Galofaro had purchased prior call firefighter service under G.L. c. 32, § 4(2)(b). In 2021, they were notified by the Board that their service credit for this purchase was being adjusted downward as required by G.L. c. 32, § 4(1)(o) because they did not earn more than \$5,000 in certain years after June 30, 2009. The Board made this adjustment pursuant to PERAC Memorandum #11/2020 that was issued after the Supreme Judicial Court decision in Plymouth Ret. Bd. v. CRAB & PERAC ("Gomes"), 483 Mass. 600 (2019). The Gomes case held that to purchase prior call firefighter service and receive creditable service subsequent to June 30, 2009, the member had to have received compensation of \$5,000 or more for the year. The Division of Administrative Law Appeals ("DALA") concluded that the Board's recalculation of Mr. Exarhopoulos and Mr. Galofaro's service credit was required pursuant to G.L. c. 32, § 20(5)(c)(2) because they were not entitled to the previously granted creditable service under G.L. c. 32, § 4(2)(b) pursuant to Gomes and G.L. c. 32, § 4(1)(o).

Ms. McGinniss also updated the Commission concerning the consolidated cases of Barnstable County Ret. Bd. & Daniel Parkka v. PERAC, CR-17-394 & 21-0155. Mr. Parkka was a police officer who retired for accidental disability retirement in 2004. As a disability retiree, Mr. Parkka is required to file an Annual Statement of Earned Income with PERAC pursuant to G.L. c. 32, § 91A. In his Annual Statements of Earned Income, Mr. Parkka indicated that he worked for his wife's business, Parkka Collision Consultants, Inc. ("PCC"), which had previously been his business prior to his retirement. Pursuant to PERAC Policy 19-002, PERAC attributed 50% of PCC's ordinary business income to Mr. Parkka as it was determined he generated a profit for the business that was not appropriately represented in his W-2 wages. PERAC instructed the Board to recover excess earnings for 2011-2015 and 2018-2019. DALA determined that Mr. Parkka's contribution to PCC was limited, and he was not responsible for the ongoing success of the business. As such, DALA concluded that there should be no split of the business profits and therefore, Mr. Parkka had no excess earnings for 2011-2015 and 2018-2019. PERAC appealed and the Contributory Retirement Board ("CRAB") affirmed the DALA decisions. CRAB concluded that Mr. Parkka's W-2 wages were consistent with the value of his contributions and thus he should not be attributed any ordinary business income from PCC. CRAB affirmed PERAC Policy 19-002 as a critical means to elicit information/documentation from retirees.

Legislative Update

Mr. Keefe reported that PERAC's Veteran buyback bills H. 2627 and S 1750 were both discharged from the Public Service Committee and reassigned to the Veterans and Federal Affairs Committee and would have been part of an omnibus veteran's bill for Veterans Day. However, that did not materialize and now that language will be included in an omnibus bill.

He then told the Commission that at the October 17, 2023 Public Service hearing various bills were heard providing for enhanced disability pensions for members disabled as a result of violent crimes. Various bills which were heard would provide a 100% pension without a cap on post-retirement earnings for certain Group 4 members who are disabled as a result of "violent act injury". In addition, a bill was heard to authorize the Town of Nantucket to issue pension obligation bonds. Hull and Plymouth County also have such bills pending this session.

He also explained that the FY23 year-end supplemental budget is still pending with the 2023 Legislative session ending on November 15. Included in the supplemental budget is a \$100 million pension payment. The Legislature will be back in formal session on January 2, 2024.

Lastly, Mr. Keefe reported that DOR revenues were \$186 million below for October and \$355 million below for FY 24 to date.

Audit Update

Caryn Shea reported that since the last Commission meeting, PERAC has released the Natick Retirement Board Audit and a follow-up to the Montague Retirement Board Audit. Ms. Shea explained the one finding issued in the Natick Audit Report. Ms. Shea explained 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 presenting at the Administrator's Training in Danvers.

Compliance Update

John Galvin reported that PRIM's return for September was -2.52%. The calendar year to date return through September 30 is 4.95%. The fund balance as of September 30 was \$95 billion.

He also reported that PRIM held its annual Client Conference at Babson College with guest speakers from BlackRock and ORAM Cybersecurity Advisors.

Lastly, Mr. Galvin reported that the unit is reviewing all retirement board contracts on file to ensure they do not exceed the maximum years allowed in the statute of seven years.

Executive Director's Report

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

He then noted that included in the Commission packet is a link to the 2022 Annual Report on PERAC's website and indicated that the report has been issued and disseminated to all interested groups.

He further noted that included in the Commission packet is the 2024 Commission meeting schedule that requires a vote of the Commission.

Commissioner Guido made a motion to accept the 2024 Commission meeting schedule as proposed. Commissioner MacKinnon seconded the motion and a roll call vote was taken:

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

Mr. Parsons also indicated that included in the Commission packets are Memorandums #24a and #25, along with the Fiscal Year 2023 reporting requirements of PERAC's annual expenditures in accordance with Policy 99-001. Memorandum #24a outlines the Outsourced Chief Investment Officer (OCIO) Policy and Memorandum #25 provides an opportunity for retirement boards to participate in Cybersecurity Training offered by the Executive Office of Technology Services and Security (EOTSS).

Mr. Parsons informed the Commission that during a recent audit of the Brookline Retirement Board for the period January 1, 2016 to December 1, 2019, staff reviewed the employment contract of former Town Administrator Melvin Kleckner ("Mr. Kleckner") and found that a certain payment was not considered regular compensation. Therefore, PERAC directed the Brookline Retirement Board to re-calculate Mr. Kleckner's pension. Mr. Parsons referred the details of the matter to Patrick Charles, Deputy General Counsel who issued a detailed memorandum in regard to this matter to the Commission which is included in the packet.

Mr. Charles explained that included in the employment contract since Mr. Kleckner's employment as Town Administrator until his retirement date of September 2022, was a provision that the Town shall continue to make monthly payments in the amount of \$850 either: On behalf of the Town Administrator to any deferred compensation program for which payroll deductions are authorized; or at the option of the Town Administrator, directly to him as regular compensation subject to withholdings for taxation and for other requirements applicable to regular compensation. Mr. Kleckner chose to elect to have this payment sent into the deferred compensation program for many years until August 2018. In August 2018, he elected to have the payment made directly to himself instead. For the next four years retirement deductions were taken until his retirement in September 2022, and thus payment was included in his retirement calculation. Mr. Charles indicated that whether or not regular compensation should be included is outlined by Chapter 32, § 1 and 840 CMR 15.03(3). The payment must be predictable, pre-determined, non-discretionary, and guaranteed. The present contract clearly states that the member has an option to choose

whether to receive a direct payment. Therefore, the payments cannot be predetermined, non-discretionary, and guaranteed.

Mr. Kleckner thanked the Commission members for allowing him to address the Commission regarding this finding impacting his retirement benefit. He has been working as a town manager/town administrator in Massachusetts for over 40 years. He has taken his responsibilities seriously and has always been ethical. He disagrees with the finding and would like the Commission to reconsider the audit finding which would require the Retirement Board re-calculate his monthly pension payment.

Frank Zecha, Brookline Retirement Board's Executive Director provided the Commission with a timeline of Mr. Kleckner's employment at Brookline. He indicated that town employees entering an employment contract generally seek assistance from the retirement board to ensure this monthly payment is considered regular compensation, which the board strongly believes this payment to be. Mr. Zecha indicated that the audit has not been finalized and asks the Commission to reconsider this finding.

Several Commissioners inquired about appeal rights when the audit is published and whether Mr. Kleckner sought advice from the Board regarding such payments being included in his retirement calculation at the time of retirement.

Chairman Brown then announced that the next Commission meeting will be held on Wednesday, December 13, 2023 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, Commissioner James Guido YES, Commissioner Richard MacKinnon YES, Commissioner Kathleen Fallon YES Commissioner Kate Fitzpatrick YES, Commissioner Jennifer Sullivan YES and Michael Leung-Tat YES. Thus, the motion was unanimously adopted. The meeting was adjourned at 12:20 PM.

Commission Meeting Documents

Commission Agenda for the meeting of November 8, 2023

Commission Minutes dated October 11, 2023

Audit/Fraud Prevention Sub-Committee Minutes dated October 11, 2023

Administrative Sub-Committee Minutes dated October 30, 2023

Administrative Sub-Committee Update

Revised Executive Director Advertisement

List of Advertising Publications/Websites

Salary Compensation Survey

Actuarial Update

Draft Massachusetts Teachers' Retirement System Valuation as of 1/1/23

Legal Update

Marc Exarhopoulos v. Middlesex County Ret. Sys. & PERAC, CR-21-0211

Jason Galofaro v. Middlesex County Ret. Sys. & PERAC, CR-21-0207

Barnstable County Ret. Bd. & Daniel Parkka v. PERAC, CR-17-394 & 21-0155

Legislative Update

Memorandum regarding Legislative updates

Audit Update

Natick Retirement Board Audit

Montague Retirement Board Follow-up Audit Letter

Audit Tracking Report

Compliance Update

Memorandum regarding Compliance Update

Executive Director's Report

Staff Activities Memorandum

2022 PERAC Annual Report Cover with link to full report.

2024 Commission Schedule

PERAC Memorandum #24a/2023

PERAC Memorandum #25/2023

Letters regarding PERAC Policy 99-001

Memorandum regarding Draft Brookline Audit Findings

Communication from Melvin Kleckner's attorney, Timothy J. Smyth regarding Brookline Audit Finding.

Approved:



Philip Y. Brown, Chairman
Public Employee Retirement
Administration Commission