

## **Commission Meeting Minutes**

**December 13, 2023**

Chairman Philip Y. Brown called the meeting (held at PERAC Offices, 5 Middlesex Ave., Somerville) to order at 11:05 AM. Chairman Brown acknowledged the other Commissioners participating: Kate Fitzpatrick, Richard MacKinnon, Michael Leung-Tat, Jennifer Sullivan, and James Guido. Chairman Brown, Commissioner Sullivan and Commissioner Guido 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 Kathleen Fallon was not in attendance.

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, Communications Director Natacha Dunker, Fraud Prevention Manager Sandra King and Fiscal Officer II Loretta Lamoureux.

Guests attending in person: Frank Zecha representing the Brookline Retirement System and John Taylor, a member of the general public.

Guests attending remotely: Sean Neilon representing the Teachers' Retirement System, Tim Smyth representing the Boston Retirement System, and an individual who identified only as Katharine.

Commissioner Fitzpatrick made a motion to adopt the November 8, 2023 Commission minutes. Commissioner MacKinnon seconded the motion, and a roll call vote was taken:

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

### **Executive Director Search Committee Update**

Chairman Brown told the Commission that the Executive Director Search Committee met on Thursday, December 7, 2023 to approve its By-Laws, discuss the dissemination and review of candidate submissions, review the Executive Director's employment contract for final approval by the full Commission, discuss questions to ask those candidates who will be interviewed, and discuss whether to conduct interviews in person or remotely. He further explained that PERAC received 33 applications through the Mass Careers website portal by the December 1, 2023 deadline date. He also reported that over half the submissions did not include a cover letter with their application as required in the posting. The Chairman indicated that the Committee will be reviewing the applications and will meet again on Wednesday, December 20, 2023 to discuss possible dates and prepare a list of candidates to interview at the beginning of January 2024.

## **Fraud Prevention Unit Update**

Sandra King provided an update on the Fraud Prevention Unit. She explained that the 2022 91A season is coming to an end and preparation will begin shortly for the 2023 filing in February 2024. Ms. King indicated that for the 2022 91A filings, 122 retirees reported excess earnings. Ms. King said that this is slightly higher than in past years. She also reported that PERAC sent notices to three disability retirees who met the criteria to be modified under PERAC's Modification Policy. She further stated that PERAC mailed affidavits to waive the 91A filing requirements to 210 disability retirees. These members have not had any earnings for 10 years and have been retired for at least 20 years. Lastly, Ms. King reported on the number of open investigation cases performed and cases closed over the past year.

## **Legal Update**

Patrick Charles reported that PERAC has completed the hearing process and comment period on the Proposed Regulations 840 CMR 2.00, 4.00, 8.00, 11.00, 12.00, 15.00 & 25.00. He explained that there were minor changes to the proposed regulations and that they are now ready to forward to the Legislature for its review upon approval by the Commission. He indicated that once the legislative review period ends, PERAC will send it to the Secretary of State for final publication and release.

Commissioner Fitzpatrick made a motion to approve the final Proposed Regulations 840 CMR 2.00, 4.00, 8.00, 11.00, 12.00, 15.00 & 25.00 and submit them to the Legislature for its review. 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, Jennifer Sullivan YES, and Michael Leung-Tat YES and the motion was unanimously adopted.

Felicia McGinniss updated the Commission on the cases of Maryann Heuston v. Somerville Retirement Board & PERAC, CR-20-0381, Richard Willette v. Somerville Retirement Board & PERAC, CR-20-0282, and William White v. Somerville Retirement Board & PERAC, CR-22-95. These cases involved changes to the law brought about by Chapter 176 of the Acts of 2011. In two Decisions dated November 16, 2023, the Contributory Retirement Appeals Board ("CRAB") affirmed the decisions of the Division of Administrative Law Appeals ("DALA") dated May 7, 2021, and September 2, 2022 holding that under the "anti-spiking" rule of G.L. c. 32, § 5 (2)(f), the exception for salary amounts "specified by law" encompasses salary amounts set out in municipal ordinances. Therefore, the Petitioners' Maryann Heuston, Richard Willette, and William White's ("hereinafter Petitioners") retirement allowances were not subject to an "anti-spiking" adjustment. It had been PERAC's position that municipal ordinances were not "laws" for the purposes of Chapter 32. In its Decisions, DALA had determined that PERAC's interpretation was inconsistent with how the term "law" is used throughout Chapter 32 as well as in decisions from the United States Supreme Court. PERAC will not be appealing the CRAB Decisions to Superior Court, therefore, these Decisions are final determinations of CRAB.

Ms. McGinniss also updated the Commission on the case of Revere Retirement Board (James Milinazzo) v. PERAC, CR-21-0159. This case involved changes to the law brought about by Chapter 21 of the Acts of 2009. In its Decision dated November 3, 2023, DALA held that a member retiring under the dual member provision of G.L. c. 32, § 5(2)(e) may choose different retirement options from each system. PERAC had taken the position that a member would need

to select the same option from each retirement system, due to the language of the statute. Section 5 (2)(e) states that the member will be treated as if they were retiring solely from each system, but they are still only retiring once and receiving one retirement benefit. DALA rejected PERAC's interpretation. PERAC has not filed an appeal of the DALA Decision with CRAB so this is now a final determination of CRAB.

### **Legislative Update**

Mr. Keefe reported that Governor Healey filed the HERO Act on November 9, 2023 which included PERAC-sponsored veterans' buyback language. Section 9 of the bill provides veterans working in public service with more time to purchase military service. Section 111 of the bill calls for a one year grace period to all public service veterans who may have missed the initial window to purchase military service. The HERO Act has been sent to the Committee on Veterans and Federal Affairs and hopefully this Committee will report it out favorably so the bill may continue through the legislative process.

Mr. Keefe also reported that the Governor signed the FY23 supplemental budget bill which includes a \$100M transfer to the Commonwealth Pension Liability Fund.

Mr. Keefe further reported that DOR November revenues were \$2.25B, 10.9% or \$274M below benchmark. According to the Comptroller, as of November 21, 2023 the Stabilization Fund stands at \$8.2B.

Lastly, Mr. Keefe reported that PRIM's return for October 2023 was -1.66%. The calendar year to date return through October 31 is 3.2%. The fund balance as of October 31 was \$93.4B.

### **Audit Update**

Caryn Shea reported that since the last Commission meeting, PERAC has released the Brookline and Lawrence Retirement Board Audits and follow-up audits to the Brockton, Framingham, and Winthrop Retirement Boards. Ms. Shea explained the audit findings in these two audits and explained the follow-up letters. She also 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 participating in the next Administrators' training. Some members of the Audit Unit are also preparing for the Annual Statement Training which will be scheduled after the beginning of the new year.

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

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

He then stated that included in the Commission packet is the yearly review of the Medical Testing Fee. He recommends that this remain the same at the rate limit of \$100.00 per case for the 2024 calendar year.

Commissioner MacKinnon made a motion to approve the 2024 Medical Testing fee at the current rate of \$100.00. 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, Jennifer Sullivan YES, and Michael Leung-Tat YES and the motion was unanimously adopted.

Mr. Parsons reported that PERAC staff held a PROSPER Training on December 6, 2023 for newly hired employees at the State Retirement Board.

Mr. Parsons updated the Commission regarding the current parking situation at 5 Middlesex Ave. He indicated that our 17 spaces will be moved into the parking garage once the garage opens, which is expected to happen within the next month. He let them know that parking will be even more scarce once this move takes place and would like the Commission to consider funding 10 additional parking spaces through the end of our lease. He indicated that we are not seeking additional funds to cover this expenditure in the FY24 budget.

Commissioner MacKinnon made a motion to authorize the rental of 10 additional parking spaces so that there will be a total of 27 parking spaces to accommodate staff parking due to the reduction of onsite parking at 5 Middlesex Avenue. 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, Jennifer Sullivan YES, and Michael Leung-Tat YES and the motion was unanimously adopted.

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

At this point, a member of the general public, Mr. John Taylor, asked to be recognized. The Chairman recognized him. Mr. Taylor explained he is a stakeholder in the pension system and interested in the process of selecting PERAC's next Executive Director. He asked if he might submit questions for applicants for consideration by the Executive Director Search Committee. The Chairman told Mr. Taylor he was welcome to submit questions for consideration, and that Mr. Taylor should direct such questions to PERAC's General Counsel, Judith Corrigan.

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 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 December 13, 2023  
Commission Minutes dated November 8, 2023

**Fraud Prevention Update**

Memorandum regarding Fraud Prevention Updates  
Identified Savings from Inception Spreadsheet

**Legal Update**

Maryann Heuston v. Somerville Retirement Board & PERAC, CR-20-0381  
Richard Willette v. Somerville Retirement Board & PERAC, CR-20-0282  
William White v. Somerville Retirement Board & PERAC, CR-22-95  
Revere Retirement Board (James Milinazzo) v. PERAC, CR-21-0159

**Legislative Update**

Memorandum regarding Legislative updates

**Audit Update**

Brookline Retirement Board Audit  
Lawrence Retirement Board Audit  
Brockton Retirement Board Follow-up Audit Letter  
Framingham Retirement Board Follow-up Audit Letter  
Winthrop Retirement Board Follow-up Audit Letter  
Audit Tracking Report

**Executive Director's Report**

Staff Activities Memorandum  
Memorandum RE: Annual Review of Medical Testing Fee – 840 CMR 10:10(3) & 10:15(1)(c)

Approved:



Philip Y. Brown, Chairman  
Public Employee Retirement  
Administration Commission