

## Commission Meeting Minutes

January 8, 2025

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 present at the PERAC offices: James Guido and Michael Leung-Tat. Commissioner Kathy Fallon participated remotely. Therefore, the Chairman explained, all motions made at this meeting will be voted on by roll call vote. Commissioners Kate Fitzpatrick, Richard MacKinnon and Jennifer Sullivan were not in attendance. The Chairman also announced the meeting was being recorded.

PERAC Staff in attendance at the PERAC offices: Executive Director Bill Keefe, Deputy Executive Director Kenneth Hill, Assistant Deputy Director Patrick Charles, General Counsel Judith Corrigan, Director of Audits Caryn Shea, Actuary John Boorack, Compliance Manager John Galvin, Associate General Counsel Christopher Windle, and Project Manager Anthony Tse.

PERAC Staff attending remotely: First Deputy Executive Director Caroline Carcia, Communications Director Natacha Dunker, Senior Associate General Counsel Felicia McGinniss, and Fraud Prevention Manager Sandra King.

Guests in attendance at the PERAC offices: None

Guests attending remotely: Patrick Brock, Linda Champion and Francesco Daniele.

Commissioner Guido made a motion to adopt the minutes of the Commission meeting of December 18, 2024. Commissioner Leung-Tat seconded the motion, and a roll call vote was taken:

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

### Legal Update

Ken Hill provided the update on the case of *Mercadante v. State Board of Retirement and PERAC*, CR-17-887 (12/17/24). He explained this involved Katherine Mercadante (“Ms. Mercadante,”) a Trial Court Officer who claimed to have injured her hip/back in June 2014 while opening a door. She was examined by three Medical Panel doctors, two of whom answered no to causation. Since a condition precedent to the award of a disability retirement is a positive certification by a majority of the Medical Panel, she was thus not eligible for accidental disability retirement. She complained about one of the doctors, Dr. Ritter, saying, among other things, he had treated her unfairly. PERAC reviewed the matter and determined that there was no reason to replace Dr. Ritter, who had denied Ms. Mercadante’s allegations. Ms. Mercadante appealed her denial of accidental disability. The Division of Administrative Law Appeals (“DALA”) affirmed the denial, finding that Ms. Mercadante had failed to meet her burden to establish that she had sustained a personal injury while in the performance of her duties that resulted in her claimed. The Contributory Retirement Appeal Board (“CRAB”) has now issued a decision affirming DALA. Ms. Mercadante has 30 days from the date of her receipt of the CRAB decision to file an appeal in the Superior Court. Chairman Brown asked if we had ever dealt with a complaint against a doctor we had contracted with before. Mr. Hill said that very rarely complaints about doctors are made, and when that happens PERAC has a protocol for investigating the claims.

Judith Corrigan then reported on a consolidated decision of CRAB issued on December 23, 2024 in five different cases involving G.L. c. 32, Section 3(8)(c):

*MTRS v. Blue Hills Regional School Board*, CR-19-226

*MTRS v. Andover Contributory Retirement Board*, CR-19-227

*MTRS v. Needham Retirement System*, CR-19-266

*MTRS v. Stoneham Retirement Board*, CR-19-281

*MTRS v. Plymouth County Retirement Board*, CR-10-566

Section 3(8)(c) of Chapter 32 of the Massachusetts General Laws requires that retirement systems share pension liability in those cases where a person has been a member of more than one system throughout his or her career. That same section of the statute tasks PERAC with assigning each system's liability at the end of a member's career. These cases arose because the Massachusetts Teachers' Retirement System ("MTRS") had delayed – in some cases by decades – requests for Section 3(8)(c) reimbursement from other systems. The question addressed by these five cases, and by other cases which have been decided by CRAB prior to this, is whether there is any limitation on when one system can ask another for payment. Unequivocally, CRAB has determined that there is not.

CRAB has now remanded these cases back to DALA instructing that DALA ascertain "whether PERAC has established any rules that may apply to Section 3(8)(c) requests and provide the parties an opportunity to address all factual and legal arguments relating to them." PERAC has indeed established a policy and provided guidance to the retirement boards regarding late requests for Section 3(8)(c) reimbursements, in PERAC Memoranda 15 and 16 of 2010, 37 of 2017, and PERAC Calculation Policy 15-001. Thus, the PERAC Memoranda and the PERAC Calculation Policy would appear to be the next issues which DALA and CRAB will consider in regard to this important but complicated area of the law.

Ms. Corrigan then reported on the *Covino v. Massport Employees' Retirement System*, CR-23-0496 (DALA) (12/20/24). This case involves the application of the dual member provision of Chapter 32, contained in Section 5(2)(e). Inserted by Chapter 21 of the Acts of 2009 in response to a high-profile case, Section 5(2)(e)'s purpose was to eliminate the ability to legally manipulate the public pension system and end up with a larger pension by combining regular compensation from two different systems at the end of a career.

Problems arose with implementing some aspects of this section, and in 2014 corrective legislation was undertaken. Among other things, the 2014 amendments made clear that Section 5(2)(e) would only apply in circumstances where the dual service had occurred in the last five years before retirement. "This paragraph shall only apply to the 5 years of creditable service immediately preceding a member's superannuation retirement..."

In this case, Petitioner Richard Covino ("Mr. Covino") had had dual service with various systems, including Boston and Massport, but since 2012 had worked exclusively for Massport until his 2023 retirement. Despite this, ignoring the 2014 amendments to Section 5(2)(e), Mr. Covino insisted that he was eligible for a retirement allowance from both Boston and Massport. DALA has concluded that he is not, based on the plain reading of the statute. Mr. Covino has appealed this decision to CRAB.

### **Legislative Update**

Patrick Charles provided the Legislative Update. He reported that the 2023-2024 ended with a large number of bills being passed in the final days. He discussed the retirement related bills. He explained that the new legislative session began on January 1, 2025. He noted that with the new legislature will come new Committee assignments. Chairman Brown asked if we have any idea who the Chairs of the Public Service Committee ("PSC") will be. We don't know at this time. When those committees chairs are assigned, we will be reaching out to the PSC. The bill filing date for legislators is January 17, 2025.

Mr. Charles told the Commission that President Biden signed HR 82, the bill repealing the Windfall Elimination Provision ("WEP") and the Governmental Pension Offset ("GPO"), two provisions of the Social Security law which have adversely affected Massachusetts public employees and beneficiaries for decades. Although PERAC has no role to play in this Social Security-related matter, Mr. Charles explained we have issued PERAC Memorandum No. 2 of 2025, advising the retirement boards of the WEP/GPO repeal and providing contact information for the Social Security Administration.

Mr. Keefe interjected that in regard to the WEP/GPO, many people and organizations worked hard, and they should be given credit. He noted that the WEP/GPO was instituted when Ronald Reagan was president, and people have been working for the repeal of these sections ever since. He singled out the hard work of the Mass. Retirees Association, firefighters', teachers' and police unions, NAGE, AFSCME and other unions and groups who fought for so long and so hard for this day.

Mr. Charles noted that the Massachusetts Department of Revenue ("DOR") December Revenue figures are in. Preliminary revenue collections for December totaled \$4.345 billion, \$573 million or 15.2% more than actual collections in December 2023, and \$267 million or 6.5% above benchmark. FY2025 year-to-date collections totaled approximately \$19.260 billion, which is \$1.394 billion or 7.8% more than actual collections in the same period of FY2024, and \$159 million or 0.8% above the year-to-date benchmark.

### **Compliance Update**

John Galvin reported that, going forward, PRIM will be reporting their performance NET of fees. So, fees and expenses have already been deducted from the following: PRIM's return for November was + 2.51%. The calendar year to date return through November 30 is +10.84%. The fund balance as of November 30 was \$111.5 billion.

Mr. Galvin then reported on board member education. In 2024 board members completed over 1,700 courses. The most popularly attended courses were the HERO Act, the Legal Panel held at MACRS and the webinar on Disability Basics.

He informed the Commission that the Annual Vendor Disclosures have been sent to vendors for submission. Vendors that provide investment services to retirement boards must file their Annual Vendor Disclosures with PERAC by March 1. Further, the Statement of Financial Interests has been distributed, and the Certificate of Eligibility has been sent out to board members as well.

### **Audit Update**

Caryn Shea reported that since the last Commission meeting, PERAC has released the Arlington, Franklin Regional, and Pittsfield Audits. All three of these were limited scope audits. Ms. Shea explained that both the Franklin Regional and Pittsfield Retirement Board Audits had no findings. The findings for the Arlington Retirement Board related to new retiree calculations. One finding involved the failure of the Board to recalculate allowances after the Supreme Judicial Court case on vacation buybacks. The other finding involved allowances calculated with more than three years' worth of stipends included in their final three-year average. Ms. Shea explained that the Arlington Retirement Board has corrected these findings. Ms. Shea further discussed the status of other board audits as outlined in the Audit Tracking Log.

Chairman Brown asked when we could expect to have the 2020 Audits completed. Currently, there are 9 of these still pending. Ms. Shea explained that we are still in the field with two of them (MTRS and Blue Hills) and the others are in the review stage and should be completely shortly. The Chairman then asked about staffing. Ms. Shea told him, unfortunately, that one of the auditors resigned at the end of 2024 to take a position with the Federal government in Louisiana. We will have to post for that job soon. Mr. Keefe noted that we had hoped to hire two full time auditors and two part time retiree auditors the last go around with hiring. We hired two full-time auditors. We have hired one part time retiree auditor but have not found a second person in that category. Therefore, we might be rethinking whether or not we want to try to hire two full-time auditors instead.

Ms. Shea also reported that the Deputy Chief Auditor, Scott Henderson, will be giving a presentation on January 22, 2025 entitled "How to Prepare an Annual Statement."

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

Mr. Keefe began his report by noting the passing of two Brockton Firefighters in December of 2024: Steve Monteiro (Cancer Presumption) and Jeff Albanese (Heart Law). He further noted that Firefighter Sullivan of Rutland had lost his wife and newborn twins. He asked that a moment of silence be observed. The group obliged.

He went over the minimal staff activities that have occurred since the last Commission meeting on December 18, 2024. He noted the first meeting of the new COLA Commission which took place on December 19, 2024. Although there had been an error about posting notice of the meeting and the meeting will have to be done over, it was definitely the will of the group that Mr. Keefe be appointed Chairman of the COLA Commission.

Mr. Keefe then briefly gave an update on PERAC's new office space at 10 Cabot Road. He said construction is coming along nicely, and the drywall is up. We expect furniture to be delivered to that office on February 1<sup>st</sup>.

He noted that the PERAC staff contributed 60 gifts for needy children to "Christmas in the City." He further noted that Felicia McGinniss is getting married this week, and everyone at PERAC wishes Felicia and her fiancé Frederick all the best.

Lastly, Mr. Keefe noted that also included in the Commission packet is the most recent Mandatory Retirement Board Member Training memo for the first quarter in 2025, PERAC Memorandum No. 33 of 2024.

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

Chairman Philip Brown YES, Commissioners Kathleen Fallon YES, James Guido YES and Michael Leung-Tat YES, and the motion was adopted. The meeting was adjourned at 11:47 AM

### **Commission Meeting Documents**

Commission Agenda for the meeting of January 8, 2025

Commission Minutes dated December 18, 2024

### **Legal Update**

*Mercadante v. State Board of Retirement and PERAC*, CR-17-887 (CRAB) (12/17/25)

The consolidated cases regarding Chapter 32, Section 3(8)(c), decided by CRAB on December 23, 2024:

*MTRS v. Blue Hills Regional School Board*, CR-19-226

*MTRS v. Andover Contributory Retirement Board*, CR-19-227

*MTRS v. Needham Retirement System*, CR-19-266

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*MTRS v. Plymouth County Retirement Board*, CR-10-566

*Covino v. Massport Employees' Retirement System*, CR-23-0496 (DALA) (12/20/24)

### **Legislative Update**

Memorandum regarding Legislative updates

### **Compliance Update**

Memorandum regarding Compliance updates

*Prit Fund Performance Summary*, November 30, 2024

### **Audit Update**

Arlington Retirement Board Audit

Franklin Regional Retirement Board Audit

Pittsfield Retirement Board Audit

Audit Tracking Report

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

Staff Activities Memorandum

PERAC MEMO #33/2024 – Mandatory Retirement Board Member Training – 1<sup>st</sup> Quarter, 2025

Approved:



Philip Y. Brown, Chairman

Public Employee Retirement  
Administration Commission