

**Commission Meeting Minutes
January 10, 2018**

Chairman Philip Y. Brown called the meeting (held at the PERAC Office, 5 Middlesex Avenue, Somerville, Massachusetts) to order at 11:25 AM. He then stated that the Commission meeting is being tape recorded and this will be so noted in the minutes.

Chairman Brown acknowledged the other Commissioners present: Commissioners Timothy Dooling, Kathleen Fallon, James Machado, and Robert McCarthy. Commissioner Kate Fitzpatrick and Jennifer Sullivan were not in attendance.

PERAC Staff Present: Executive Director Joseph Connarton, Deputy Executive Director Joseph Martin, General Counsel and Deputy Director John Parsons, Deputy General Counsel and Managing Attorney Judith Corrigan, Director of Strategic Planning Mike DeVito, Compliance Officer Tom O'Donnell, Compliance Counsel Derek Moitoso, Senior Associate General Counsel Ken Hill, Associate General Counsel Patrick Charles, Director of Administrative Services Caroline Carcia, Chief Auditor Caryn Shea, Director of Information Systems Dan Boyle, Communications Director Natacha Dunker, Compliance Analyst Cheryl Johnson, and Senior Executive Assistant Kim Boisvert.

Ms. Boisvert announced the following guests in attendance: Sean Neilon representing the Massachusetts Teachers' Retirement Board, Nick Favorito representing the State Retirement Board, Joseph Siewko, Carolyn Russo, and Brian Monahan representing Chelsea Retirement Board, John Brown representing MACRS and the Middlesex County Retirement Board, Thomas Kelly, Tim Sheehy, and Kristen Wallace representing the Methuen Retirement Board, John Lane representing the Beverly Retirement Board, and Ronald Rauseo-Ricupero Esquire representing the Chelsea Housing Authority.

Commissioner McCarthy made a motion to adopt the December 13, 2017 Commission meeting minutes. Commissioner Dooling seconded the motion and the minutes were adopted.

Chairman Brown stated that items from the agenda will be taken out of order due to some Wi-Fi issues and the number of guests in attendance.

Chelsea Retirement Board Matter - Executive Director Report

Mr. Connarton recapped the matter with the Chelsea Retirement Board over the past few years.

Ms. Corrigan stated that it is not clear what the Chelsea Retirement Board would like to discuss at this meeting today. She reported that the Chelsea Retirement Board asked to address the Commission and the Commission granted their request. Ms. Corrigan stated that we are prepared to discuss either the *Fitzpatrick* or the *McLaughlin* matter. Ms. Corrigan then recapped the apparent misunderstanding in the *Fitzpatrick* matter and the latest letter from the Chelsea Retirement Board regarding the Eighth Amendment.

Mr. Monahan, attorney for the Chelsea Retirement Board, stated that the Chair and the Board suggested coming to the Commission meeting to keep an open dialogue instead of sending letters back and forth. He then explained what actions the Chelsea Retirement Board had taken. He continued that the Board balked at appealing the District Court decision in *Fitzpatrick* because it was unable to identify a substantial error of law, which must be asserted for an appeal to be undertaken under the certiorari statute. He stated the Chelsea Retirement Board is seeking guidance on what an "Excessive Fine" is and commented that this is difficult for 104 systems to oversee.

A full discussion ensued regarding the discretion of the courts to make the final decision regarding the Eighth Amendment. Also discussed were the subjective determinations and standards that one attorney may have versus the assessments and subjective standards of another. The Commission suggested that the board's attorney may want to discuss the matter with the PERAC attorney's on a case-by-case basis regarding whether or not to litigate in the early post *Bettencourt* era.

Further detailed discussion ensued in regard to the Mr. Michael McLaughlin matter. The Chelsea Retirement Board proposes first holding a Section 15 (7) hearing, calculating a proposed benefit amount, and providing the information to the Commission, then to hold a Section 15 (4) hearing. At this point, Ms. Corrigan stated that the Board must bring its Section 15(7) determination to the Commission for its approval.

The timeline of Mr. McLaughlin's filing his application to date was discussed and what his possible benefit might be. Also discussed were the next steps that the Chelsea Retirement Board should take from this point forward.

Mr. Rauseo-Ricupero, attorney for the Chelsea Housing Authority, stated that they continue to disagree with PERAC's decision that the Chelsea Retirement Board first move forward with Section 15 (7) hearing and assert that the Board should hold a Section 15 (3) hearing first. He stated that the Chelsea Housing Authority's intention is to participate fully with any Section 15 hearings and that they fully intend to seek a full restitution in this matter.

Chairman Brown stated that the planned Executive Session will be taken out of order to accommodate guests in attendance.

Educational Credit Issue - Executive Session

At 12:10 PM Chairman Brown stated that the Commission would go into Executive Session to discuss strategy with respect to litigation because discussion in an open meeting may have a detrimental effect on the Commission's litigating position. A roll call vote was taken to go into Executive Session as follows:

Chairman Philip Brown YES, Commissioners Timothy Dooling YES, Kathleen Fallon YES, James Machado YES, and Robert McCarthy YES, and the motion was adopted.

This matter involves whether or not Mr. Kelly has completed the necessary number of educational credits which are required of board members by statute.

Mr. Kelly, Chairman of the Methuen Retirement Board and the subject of the Executive Session, requested that his matter be held in public session. He then reported that he has been the city auditor for 37 years and a board member for 21 years. As the city auditor, he is required to take various courses which he recalls taking in 2015 and 2016. In 2015, there was a change in personnel at the retirement board. He further reported that when he went into PROSPER in 2017 his affidavits were being credited to another board member which has since then been rectified.

Mr. O'Donnell reported that annual letters regarding tallies of educational credits have been distributed to over 522 board members and that such statistics are now available for viewing by retirement board members and administrators 24 hours a day, 7 days week through PROSPER. He then stated that Mr. Kelly did not respond to any of those annual letters until late 2017 when the annual letters indicate that a response to discrepancies in educational credits are due on January 31 annually pursuant to G.L. c. 32, § 20(7).

Mr. Connarton stated that the issue is that in 2015 Mr. Kelly did not earn any credits, and in 2016 Mr. Kelly did not earn any credits. PERAC has filed H. 19 to provide flexibility in the manner of earning credits, however, this bill has not moved out of committee. He stated that Chapter 176 of the Acts of 2011 does not currently provide any flexibility in this matter.

Commissioner McCarthy made a motion for the Commission to accept Mr. Kelly's representation that he did take the respective courses so that he may go forth and continue to serve on the Methuen Retirement Board. There was no second to the motion.

Further discussion ensued regarding over 500 board members who have taken the required courses, and this if this motion is adopted it would be precedent setting going forward. This would create a problem for PERAC ensuring that board members fulfill their Chapter 176 obligation. A suggestion was made that Mr. Kelly provide additional information which may show that he has earned the required credits.

Commissioner McCarthy amended his motion to allow Mr. Kelly an additional month to provide documentation showing that he did take the courses that he stated he took. Commissioner Dooling seconded the motion and it was adopted.

Executive Session

At 1:25 PM Chairman Brown stated that the Commission would go into Executive Session to discuss strategy with respect to litigation because discussion in an open meeting may have a detrimental effect on the Commission's litigating position. A roll call vote was taken to go into Executive Session as follows

Chairman Philip Brown YES, Commissioners Timothy Dooling YES, Kathleen Fallon YES, James Machado YES, and Robert McCarthy YES, and the motion was adopted.

Chairman Brown announced that the Commission will reconvene in open session in about 10 minutes, after the completion of the Executive Session.

A roll call vote was taken in Executive Session to return to open session and to adjourn the Executive Session at 1:50 PM.

Legal Update

Mr. Hill reported on *Moore v. Boston Retirement Board and PERAC*, Suffolk Superior Court C.A. No. 1784CV00244. Mr. Charles reported on *Dell'Isola v. State Board of Retirement and Another*, Massachusetts Appeals Court, No., 16-P-963 (December 15, 2017). Ms. Corrigan reported on *State Board of Retirement v. O'Hare & another*, Massachusetts Appeals Court, No. 16-P-965 (December 15, 2017).

A brief discussion ensued as a follow up to the presentation from the Chelsea Retirement Board, and the current status of Mr. McLaughlin's benefit, including various concerns about the appeal in Fitzpatrick having not been undertaken.

Legislative Update

Mr. DeVito reported that the Public Service Committee would be holding a hearing on January 23, 2018 in Room A-2 at 11:30 AM, the Governor's Budget which must be reported out by January 24, 2018, and the Joint Rule 10 extensions will be reported by February 7, 2018.

Audit Update

Ms. Shea updated the Commission that the auditors are currently auditing the Gardner, Medford, Milford, and Springfield Retirement Systems. The Marlborough Retirement System's audit report was posted on the PERAC Web Page, and the Dedham follow-up report was published since the last Commission meeting. Ms. Shea then reported about the respective findings.

Compliance Update

Mr. O'Donnell reported on the educational graphic showing 1612 courses taken by over 500 board members for 2017. He continued that according to the chart, the Commission can see those other entities that have received pre-approval for courses they have offered and the number of individuals who have attended those courses. Mr. O'Donnell then reported that 115 vendor acknowledgements have been approved from several different asset classes in 2017.

Executive Director's Report

Mr. Connarton made note of staff activities that have occurred since the last Commission meeting.

Mr. Connarton recommended opening the Commission's Executive Session minutes dated September 13, 2017 regarding several board members' removal for not filing their respective

SFIs in a timely manner according to statute; October 11, 2017 regarding the rescission of a member's removal from the board as the member did file his SFI on the date of the September 13, 2017 Commission meeting; and December 13, 2017 regarding the rescission of a member's removal from the board as the member did file his SFI in a timely manner which was mishandled by the US Postal Service. Mr. Connarton recommends making the executive session minutes open as he believes that there is no further reason for these minutes to remain in Executive Session status.

Commissioner McCarthy made a motion to accept the recommendation and open the Executive Session minutes dated September 13, October 11, and December 13, 2017. Commissioner Dooling seconded the motion and the motion was adopted.

Commissioner McCarthy wanted the record to reflect that hearings were held today for Mr. Kelly, Mr. Lane, and Mr. Reilly regarding educational credits. Mr. Reilly did not appear therefore this member will be removed at the end of his term.

Mr. Connarton stated that the Commission can now get a sense of the type of issues of some members and their continued concern with the compliance aspect of Chapter 176 of the Acts of 2011. He stated that it took 5 years for this reform to be inserted into the law, with many concessions, and now 6 years later there remains much rancor.

Commissioner Machado stated that this is not fair to those individuals who are responsible and have complied with the law. He continued that although this seems to be an individual situation this matter is precedent setting.

Mr. Connarton then reported that we have received a draft proposed lease for our office space. We are awaiting the signature from the property owner which will then be forwarded to DCAM and then to the Commission. He reported that we currently pay \$25 per square foot and at the end of the new 5-year lease (2023) our cost would be \$32 per square foot. Mr. Connarton stated that he would hope that the lease would be fully executed within the next month. He then thanked Ms. Carcia for the work she did on this project over the past 18 months.

Mr. Boyle updated the Commission on the PROSPER roll out which is about 75% complete. Currently, the focus is on the Wage Match application. Most of the issues in PROSPER including the medical panel requests, disability transmittals, CME, invoicing, mailings, and Lawyer have been resolved. There is a sizable back log in the Compliance application. However, the consultants continue to work on these matters pretty quickly.

Mr. Connarton stated that there are some complex applications, but overall he believes that the retirement systems are happy with PROSPER.

Other Business

Chairman Brown stated that the next Commission meeting will be held on February 14, 2018 at 11:00 AM.

Commissioner McCarthy made a motion to adjourn the meeting. Commissioner Dooling seconded the motion and the motion was adopted. The meeting adjourned at 2:40 PM.

Commission Meeting Documents

Commission Agenda for the meeting of January 10, 2018

Commission Minutes from December 13, 2017

Legal Update

Legal cases include:

Moore v. Boston Retirement Board and PERAC, Suffolk Superior Court C.A. No. 1784CV00244

Dell'Isola v. State Board of Retirement and another, Massachusetts Appeals Court, No., 16-P-963

State Board of Retirement v. O'Hare & another, Massachusetts Appeals Court, No. 16-P-965

Legislative Update

Monthly Legislative Agenda and bullet points outlining legislation

Audit Update

Recent PERAC audits and six-month follow-up audits

Compliance Update

2017 Education Course Completion Chart

PERAC investment acknowledgement report

Executive Director's Report

Updated Staff Activities Memo

2017 Executive Session Minutes report

Correspondence to and from the Chelsea Retirement System

Approved:



Philip Y. Brown, Chairman
Public Employee Retirement
Administration Commission