

**MINUTES OF THE NEW MEXICO  
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION  
RULES & ADMINISTRATION COMMITTEE MEETING**

**May 10, 2016**

This meeting of the Public Employees Retirement Board Rules & Administration Committee was called to order by Committee Chair Paula Fisher at approximately 11:15 a.m. on the above-cited date in the PERA Building, Senator Fabian Chavez, Jr. Board Room, 33 Plaza La Prensa, Santa Fe, New Mexico.

Roll was called by Executive Director Wayne Propst and a quorum was established as follows:

**Members Present:**

Paula Fisher, Chair  
Dan Esquibel, Vice Chair  
Jackie Kohlasch  
Patricia French  
John Melia

**Member(s) Excused:**

Cathy Townes

**Other Member(s) Present:**

John Reynolds  
James Maxon  
Dan Mayfield  
Loretta Naranjo Lopez  
Brad Winter

**Staff Members Present:**

Wayne Propst, Executive Director  
Susan Pittard, Chief of Staff/General Counsel  
Jon Grabel, Chief Investment Officer  
Greg Trujillo, Deputy Director  
Karen Risku, Deputy General Counsel  
Renada Peery-Galon, ASD Director  
Natalie Cordova, Chief Financial Officer  
Dana David, Assistant General Counsel  
Misty Braswell, Assistant General Counsel  
Jude Perez, Deputy CIO  
LeAnne Larrañaga-Ruffy, Portfolio Manager  
Kristin Varela, Portfolio Manager

Emily Lopez, Financial Specialist  
Karyn Lujan, Deferred Compensation Plan Manager  
Christine Ortega, Portfolio Manager  
Lalleh Dayeny, Investment Division

**2. APPROVAL OF AGENDA**

Ms. French moved to approve the agenda as presented. Mr. Esquibel seconded and the motion passed by unanimous voice vote.

**3. APPROVAL OF CONSENT AGENDA**

Chair Fisher said she reviewed the minutes and found them to be accurate. .

Ms. French moved to approve the consent agenda. Mr. Esquibel seconded and the motion passed by [5-0] voice vote.

**4. CURRENT BUSINESS**

**A. Review of Post-retirement Employment for PERA Retirees**

Greg Trujillo, Deputy Director, provided an overview of post-retirement employment options.

Susan Pittard, Chief of Staff/General Counsel, emphasized the importance of PERA's tax qualification status in relation to any post-retirement employment or contractual work with a PERA affiliate. PERA is a tax qualified plan under the Internal Revenue Code. That provides the trust fund and members with favorable tax consequences. PERA is required to comply with its plan document – PERA's statutes. There are requirements within the Administrative Code that PERA follows. Maintaining the plan's tax qualified status is "imperative," stated Ms. Pittard. As a qualified plan, PERA gets preferable investment opportunities in its private investments.

Ms. Pittard said staff monitors the tax qualification when issuing 1099s, paying benefits, accepting contributions, etc.

As it related to returning to work, the Internal Revenue Code requires that there be a bona fide separation for service. When return to work was permitted within PERA there was a sit-out period which was to comply with that Code requirement. Partial refunds are not allowable under PERA's tax qualification status.

Mr. Trujillo said PERA retirees have returned to work since the 1960s. In 2003 a 90-day sit-out period was implemented and the number of retirees returning to work grew. In 2010 the return to work retiree with a PERA affiliate suspended the benefits. There are a few statutory exceptions to that rule. Those working for an affiliate before

2010 were considered grandfathered in.

Mr. Trujillo said a retiree can continue to collect benefits and return to work for entities not affiliated with PERA or as an independent contractor for a PERA affiliate. A retiree can work for ERB with certain restrictions.

Ms. Pittard said a retiree can work for a PERA affiliate under an independent contract. The burden is on the employee, not the employer in this case. The retiree must submit the contract to PERA 15 day prior to commencement of the contract for legal review to determine whether it is a authentic independent contractor relationship versus an employee relationship. The pension can be suspended if it is an employer-employee relationship. In order to make its determination, PERA applies the common law control test set forth in the Social Security Handbook.

Ms. Pittard said according to PERA's tax qualified status they cannot pay a pension to a member who is actually an employee. She reviewed the factual considerations that are made in making the independent contractor determination. There is a requirement that any state agency that enters into a contract with a PERA retiree has to provide to the DFA Contracts Review Bureau a letter from PERA which specifically states that the contract has been reviewed and it is in compliance with PERA rules. PERA also receives contracts from municipalities and counties. Last year PERA approved 160 independent contracts.

In response to Mr. Esquibel's question whether or not PERA receives contracts 15 days before employment, Ms. Pittard said it varies. Most retirees are very concerned about the continuity of their pension payment.

Ms. French asked whether PERA could request the State Auditor conduct an audit on the municipalities and counties that are not forwarding contracts to PERA. Ms. Pittard said it may be the Attorney General who conducts that review.

According to the PERA Act, Ms. Pittard said membership is defined as the employee of a public affiliated employer. The employer definition does include privatized/independent contractors.

Mr. Trujillo said the grandfathered in return to work retirees will phase out. There are currently 665 grandfathered in employees, a reduction from 1,481 when the program stopped in 2010. He explained how PERA will stop pension payments and recoup benefits from ineligible return to work employees. The agency is currently providing outreach to employers on this issue.

Mr. Esquibel said he wanted to review the independent contracts and suggested these contracts come before the Rule & Administration Committee as part of an approval process. Mr. Trujillo said at the municipal and county level PERA relies on the employer to forward the contracts to PERA.

Ms. Kohlasch said most retirees don't want to return as independent contractors

because it entails paying their own taxes.

Ms. Pittard said each municipality is different. The rules regarding temp agencies are different than a temporary employee for PERA's purposes. She said staff does an excellent job of reviewing contracts that are provided. Staff is working to improve upon communication areas with the employers to ensure all contracts are received. Staff receives phone calls from employees advising PERA that a retiree has returned to work and staff will review that information on a case-by-case basis.

Recognizing that all contracts with the government are disclosable, Mr. Esquibel recommended that PERA post the contracts on the website for review. That would improve the method of checks and balances and it may improve the morale with the active members.

Ms. Pittard said employers should have transparency portals and she questioned whether it was a good idea to have independent contracts on line.

Chair Fisher requested this item be carried over for the next agenda allowing staff additional time to review the notion of PERA or the employer posting independent contracts online.

## **B Overview of PERA Employer Affiliation Process**

Ms. French said she requested this item on the agenda because she was unsure of the process required for an employer to become a PERA affiliate. Mr. Trujillo said there are a number of requirements the entity must meet proving themselves as a "public employer." The Internal Revenue Code also has requirements for all public employers affiliated with PERA.

Mr. Trujillo said the organization's governing body must pass a resolution to join PERA. He noted the employer's portion is expensive and irrevocable and they must be confident they will have adequate funding to participate.

Mr. Trujillo said any new PERA affiliates join with a 2 percent multiplier. The 3 percent plans are closed. Municipal police and fire can join the public safety plans at a 3 percent or 3.5 percent multiplier.

Ms. French said it is Rio Rancho employees who have asked her how to get in a plan with a higher multiplier and Mr. Trujillo said their employer would need to make that change or they can change employers.

## **C Discussion of Rules Review**

Ms. French said she has not made any appointments to the subcommittee to work on the rules and she will contact the appointees following discussion with Chair

Fisher. She said staff will email the rules and policies for review.  
Mr. Esquibel requested the rules and policies in PDF.

**5. OTHER BUSINESS**

Mr. Trujillo said he was reviewing the documentation regarding the board portal. He hoped to present a webinar of the board portal at the next meeting.

6. **ADJOURNMENT**

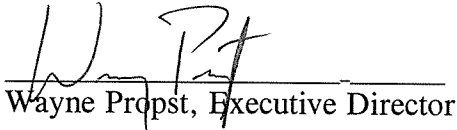
Having completed the agenda and with no further business to come before the Committee, Chair Fisher adjourned this meeting at approximately 12:15 p.m.

Approved by:



Raula Fisher, Chair  
Rules & Administration Committee

ATTEST:

  
Wayne Propst, Executive Director