

**NEW MEXICO**  
**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**  
**SPECIAL BOARD MEETING**

**May 12, 2015**

This special meeting of the Public Employees Retirement Board was called to order by Patricia French, Chair, at approximately 9:30 a.m. on the above-cited date at the PERA Building, Fabian Chavez Jr. Board Room, 33 Plaza La Prensa, Santa Fe, New Mexico.

**2. ROLL CALL**

Following the Pledge of Allegiance, roll was called by Executive Director Wayne Propst and a quorum was established with the following members present:

**Members Present:**

Patricia French, Chair - Municipal  
Stewart Logan, Vice Chair - County  
Paula Fisher - State  
Roman Jimenez - State  
Jackie Kohlasch - State  
Louis Martinez – Municipal  
Dan Mayfield - Retiree  
Loretta Naranjo Lopez - Retiree  
John Reynolds - State

**Member(s) Absent:**

Dianna Duran - *Ex-officio*  
Tim Eichenberg - *Ex-officio*, excused  
Dan Esquibel – Municipal, excused

**Staff Members Present:**

Wayne Propst, Executive Director  
Susan Pittard, Chief of Staff/General Counsel  
Jonathan Gabel, Chief Investment Officer  
Sylvia Barela, ASD Director  
Greg Trujillo, Deputy Director  
Julian Baca, Deputy CIO  
Judy Olson, Executive Assistant  
Karen Risku, Deputy General Counsel  
Roderick Ventura, Assistant General Counsel  
Claudia Armijo, Assistant General Counsel

**Others Present:**

Avelino Gutierrez, Election Committee Chair  
Vince Lithgow, Election Committee Vice Chair  
James Maxon, Sandoval County

3. **APPROVAL OF AGENDA**

Mr. Reynolds introduced the following motion:

**“RESOLVED, that the PERA Board approve the agenda as published.”**

Mr. Mayfield seconded and the motion passed by unanimous [8-0] voice vote. [Ms. Kohlasch was not present for this action.]

4. **CURRENT BUSINESS**

A. **Election Committee Report – Nominating Petitions**

*[Exhibit 1: PERA Election Committee Meeting Minutes, PERA 2015 Election Timeline, letter from Stewart Logan, letter from Post Person and date stamped envelope]*

Avelino Gutierrez, Election Committee Chair and Vince Lithgow, Election Committee Vice Chair appeared before the Board to present the results of the Election Committee meeting that occurred Friday, April 24, 2015.

Mr. Gutierrez said the Election Committee was especially grateful to have Chris Bulman, ERB’s General Counsel, and retired Judge Art Encinias serve on the committee along with Jane Tabor, Erlinda Roybal, Eugene Bohl, Lawrence Davis, Donna Encinias, Mary Frederick, Michael Clendenin and Isabel Clendenin. He noted there was a quorum and PERA staff members Judy Olson, Karen Risku and Sheila Martinez were present to assist the committee.

Mr. Gutierrez said the committee nominated and voted on the chair and vice chair positions. Following that, the committee counted the nominating petition signatures for the retiree, state and county candidates. He cited the PERA Rules that establish that the retiree position was required to have 50 valid signatures and the state and county candidates were required to have 150 valid signatures. According to the PERA Board Election Timeline the original nominating petitions were required to be at PERA before 5 p.m. on Monday, April 13, 2015.

Mr. Gutierrez provided the dates PERA received each of the eight candidates’ petitions noting six individuals submitted nominating petitions before the deadline. Two individuals submitted nominating petitions after the deadline: Mr. Arturo Sais for the retiree position and Mr. Stewart Logan for the county position.

Mr. Gutierrez said that PERA staff was contacted by Mr. Logan who requested that the Election Committee accept the nominating petitions that were received by PERA via US Mail on April 15<sup>th</sup>. Mr. Logan’s letter stated “as a reasonable person would expect no more than a three-day delivery time between Aztec and Santa Fe and my envelope is postmarked Wednesday, April 8<sup>th</sup>, I feel that my petitions should be accepted as being on time.”

Mr. Gutierrez said the committee members verified signatures on the nominating petitions using RIO. He said each individual who requested nominating petitions was informed of the timeline for petition submittals. All nominating petition signatures received after the deadline were therefore disallowed.

Mr. Gutierrez provided total signatures and dates those signatures were received for each of the eight candidates. He indicated that retiree candidate Arturo Sais failed to meet the petition deadline. County candidate Stewart Logan did not have sufficient signatures by the deadline to qualify.

Following the count, a motion was made for each candidate affirming the total valid signatures accepted. The following are the results of that process and the candidates for the PERA 2015 Board Elections should appear on the ballot in this order:

Retiree Position: Gerald Chavez  
Loretta Naranjo Lopez  
Albino Martinez

State Position: Jacquelin Kohlasch  
Henrich Edimo

County Position: The Election Committee determined that James Maxon had more than the minimum number (150) of valid nominations necessary to be an eligible candidate for the PERA Board county position. There were no other candidates for the PERA Board county position who met the requirement to have a minimum of 150 valid nominations.

Mr. Gutierrez reiterated that the Election Committee did not accept signatures received after the deadlines.

1. **Action Item: Approval of Nominating Petition Counts and Candidates for Retiree and State Positions**

Mr. Reynolds introduced the following motion:

**“RESOLVED, that the PERA Board approve the nominating petition counts and candidates for the retiree and state positions.”**

Mr. Jimenez seconded and the motion carried by unanimous [9-0] voice vote.

2. **Action Item: Approval of Nominating Petition Counts for County Position, Cancellation of Election and Declaration of Winner pursuant to 2.80.2000.20 (A)(6) NMAC**

Mr. Logan requested that the Board postpone action on this item based on the fact that the Board-approved resolution called for the petitions on Tuesday, April 14<sup>th</sup> and did not specify they were original petitions. He said he scanned 19 pages of petitions on Tuesday, April 14<sup>th</sup> and asserted that he had his petitions in on time. He added that the time it took for the US Postal Service to deliver to PERA was striking.

Mr. Logan said if the Board takes action it would impede his due process of appeal.

Mr. Propst clarified that there was a typographical error in the Board-adopted resolution in January that stated April 14<sup>th</sup> rather than the 13<sup>th</sup>. However, the timeline was correct and included as an attachment to the resolution when the Board considered it in January. The notice of elections posted to the website always had the April 13<sup>th</sup> date.

Ms. Fisher said she believed there was no rush and that Mr. Logan deserved his due process. She indicated she was prepared to postpone action until that process occurs.

At this point Mr. Logan offered to recuse himself and Chair French said that was unnecessary.

Mr. Jimenez said the issue is the deadline for the petitions and as verified by the independent Election Committee, Mr. Logan's petitions failed to make that deadline. In fact, the petitions were not received until the 15<sup>th</sup>.

Ms. Kohlasch said the uncertainty of the mail delivery system is a known fact and she said the tone of the letter from the US Postal Service representative was not appreciated. She noted there was a Board meeting on April 14<sup>th</sup> and if the problem was the wrong date the candidate would have probably presented them that day. She urged the Board to follow the established guidelines and not show favoritism.

Ms. Naranjo Lopez commented that all of the successful candidates provided their petitions on time. All the information she received from the agency denoted Monday, April 13<sup>th</sup> as the deadline.

Mr. Reynolds said the Election Committee did its work and he was prepared to vote on the agenda item.

Mr. Martinez commented that he preferred competition and wanted the signatories on any candidate's petition to have the opportunity to vote for their candidate. Not granting them that would in essence disenfranchise them. Continuing, he said Mr. Logan did not do anything wrong and the form and substance in the law will see that distinction. He also noted that he was unaware of any rule prohibiting scanned or faxed signatures.

Chair French said she would rely on PERA's counsel's advice. Susan Pittard, Chief of Staff/General Counsel, said the Election Committee provides an independent report to the Board with no appearance of impropriety of sitting Board members and thus protects the Board. They were provided all relevant information and Mr. Logan's packet arguing the deadline. The

Election Committee's report is a correct reading of the regulations. In order for Mr. Logan to pursue his due process rights a decision needs to be made by the Board. The Board has no powers of equity: a court of law has powers of equity.

Ms. Pittard pointed out that there was another candidate who failed to meet the deadline and he failed to meet the valid signatures necessary to secure a position on the ballot. Ms. Pittard said all information provided to the candidates specified close of business Monday, April 13<sup>th</sup>. The timeline attached to the Board minutes shows April 13<sup>th</sup>. She said at this point she would suggest that Mr. Logan has not demonstrated reliance on an April 14<sup>th</sup> date.

Karen Risku, Deputy General Counsel, said she conducted research on case law regarding nominating petitions in preparation for today's meeting specifically when a candidate mails nominating petitions before a deadline yet they are not received in the mail until after the deadline. New Mexico does not have a case on this issue; however, the New Mexico Supreme Court has stated that when deciding election challenges, "We will not construe election law so liberally so as to allow a candidate to receive a ballot position to which he is not entitled." The Supreme Court considered how it would affect the voters if strict deadlines are followed; would it disenfranchise the voter? The court said no, it would not. A voter does not vote until a candidate is legally and validly on a ballot.

Ms. Risku reviewed other case law and said as a rule deadlines for the time of filing nominating petitions are mandatory and petitions filed after the deadline have been held void or ineffectual. Some courts found that depositing the nominating documents in the mail does not constitute filing and ruled that they were not filed on time and the candidate(s) were not entitled to a place on the ballot.

Ms. Risku said it has been a practice and requirement of PERA that in order to ensure the integrity and accountability of the election process original signatures are required.

As a final note, Ms. Risku said the law on errors or insignificant departures in procedure in an election is that they do not have an effect or will not invalidate an election unless the error is proven to have substantially affected the results.

Responding to the Chair, Ms. Risku said the due process from a person in Mr. Logan's position is being fulfilled at this point in time by its notice on the agenda, with the Board discussing the item and all of the documentation presented as part of the Election Committee's exhibit. She said a final action on this item is necessary and there are remedies stemming from that final action to Mr. Logan and Mr. Sais.

Chair French asked Election Committee Chair Gutierrez whether they reviewed all the information regarding the deadline and Mr. Logan's concerns. Mr. Gutierrez confirmed that Ms. Risku addressed the information and the committee received and reviewed all information provided by Mr. Logan regarding his petitions.

Mr. Logan said it was after the Election Committee meeting that he became aware of the deadline date discrepancies.

Mr. Jimenez expressed his respect for Mr. Logan's participation on the PERA Board. He recognized that this was not an easy situation and he thanked the Election Committee for their professionalism. He introduced the following motion:

**“RESOLVED that the PERA Board approve the nominating petition counts for county position, cancellation of election and declaration of winner pursuant to 2.80.200.70 (A)(6) NMAC.”**

Mr. Reynolds seconded.

Under discussion, Mr. Mayfield asked if Mr. Logan or Mr. Sais were to prevail in an appeal would that nullify the Board's action. Ms. Risku said the Election Committee did not review the late petitions for valid signatures and the court would likely remand the matter to the Board.

Ms. Naranjo Lopez said it appears clear that Mr. Logan's original concern regarding the mail service has been addressed through Ms. Risku's research. The other concern of April 14<sup>th</sup> is moot since the petitions were not received until April 15<sup>th</sup>.

Ms. Kohlasch stressed the importance of the Board following its rules.

The Board thanked the Election Committee for their service.

The motion passed by majority vote with seven affirmative votes. Mr. Logan and Mr. Martinez abstained.

**6. OTHER BUSINESS**

None was presented.

**7. ADJOURNMENT**

Having completed the agenda and with no further business to come before the Board, Chair French declared this meeting adjourned at 10:25 a.m.

Approved by:

  
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Patricia French  
Chair, PERA Board

ATTEST:

  
\_\_\_\_\_  
Wayne Propst, Executive Director

Attached Exhibit:

*Exhibit 1: PERA Election Committee Meeting Minutes, PERA 2015 Election Timeline, letter from Stewart Logan, letter from US Post person and date stamped envelope*