

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
SPECIAL BOARD MEETING

April 17, 2018

This monthly meeting of the Public Employees Retirement Board was called to order by James Maxon, Chair, at approximately 10:05 a.m. on the above-cited date at the PERA Building, 33 Plaza la Prensa, Senator Fabian Chavez, Jr. Board Room, Santa Fe, New Mexico.

1. Roll Call

Roll call indicated a quorum with the following members present:

Members Present:

James Maxon, County, Chair
Jackie Kohlasch - State
Claudia Armijo - State
Natalie Cordova – State
Tim Eichenberg - *Ex-officio*
Dan Esquibel - Municipal
Patricia French - Municipal
Dan Mayfield - Retiree
John Melia - Municipal
Loretta Naranjo Lopez - Retiree
Maggie Toulouse Oliver - *Ex-officio*

Member(s) Absent:

Cathy Townes - State [excused]

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff/General Counsel
Karen Risku, Deputy General Counsel
Renada Peery-Galon, ASD Director
Dana David, Assistant General Counsel
Trish Winter, Executive Assistant

Others Present:

Harvey Leiderman, PERA Board Fiduciary Counsel [telephonically]
Don Wencewicz, AFSCME Retiree
Lenora Chavez, Retiree
Angela D. Vigil, Retiree
Eva Lujan, Retiree
Jack Broders, AFSCME Retiree
A. Roybal, Retiree
John Rivers, RPENM, Chapter 5
John Doran, AFSCME Retiree

2. Approval of Agenda

Mr. Melia introduced the following motion:

“RESOLVED, that the PERA Board approve the agenda.”

Mr. Mayfield seconded and the motion passed by majority [10-1] voice vote. Ms. Naranjo Lopez voted in the negative.

3. Current Business

A. Resolution of Reprimand and Censure for Loretta Naranjo Lopez

[Exhibit 1: Written response of Member Loretta Naranjo Lopez]

CHAIR MAXON: Okay, our current business today is a resolution of reprimand and censure for Loretta Naranjo Lopez, and I'd like to just state how we're going to proceed today. First, I will introduce the proposed resolution and read it into the record. Then I will entertain a motion and a second, followed by a reasonable time for discussion. Member Naranjo Lopez will be provided time for her comments. I ask that all discussion go through the Chair and there will be time for all Board members who request to speak to be heard.

Oh, I skipped that part. The Pledge of Allegiance, and Member Esquibel will lead us.
[The Pledge of Allegiance was recited.]

WAYNE PROBST (Executive Director): Mr. Chair, members of the Board, good morning. Just so everybody knows, Board Fiduciary Counsel Harvey Leiderman is on conference call. He should be able to hear us and hopefully be heard at the appropriate time. Thank you.

CHAIR MAXON: And I apologize; we're starting late today. There was a motor vehicle accident, rollover at the bottom of La Bajada Hill and the majority of us out of Albuquerque area got caught in that for the longest time. Okay, so a resolution of reprimand –

MEMBER NARANJO LOPEZ: I have a comment.

CHAIR MAXON: Okay.

MEMBER NARANJO LOPEZ: Before we make any kind of a motion I would prefer that we have the Board speak and my presentation on the record.

CHAIR MAXON: Okay. Well, since I'm the Chair I'm going to go ahead and do what I've already laid out to do.

Resolution of Reprimand and Censure: Whereas, the members of the New Mexico Public Employees Retirement Board serve as the trustees of the Public Employees Retirement Association, PERA; and,

Whereas, the legislature created the Board pursuant to the Public Employees Retirement Act and provided powers to the Board at Section 10-11-130 (A) which states: The Board has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts;” and,

Whereas, under its statutory authority, in March 2001, the Board adopted Policies and Procedures, “Board Policies”. The Board Policies, as amended, are in effect now and were in effect at all times pertinent to the provisions of this Resolution; and,

Whereas, the Board Policies at Section I (A) provide, in pertinent part:

As Trustees, Board Members are fiduciaries to the various PERA funds and must prudently administer these retirement systems for the sole and exclusive benefit of PERA members, retirees and beneficiaries. In order to maintain the respect, trust and confidence of its members and retirees, all Board Members must use the powers and resources of their

office only to advance the interests of PERA members, retirees and beneficiaries and not to obtain personal benefits or pursue private advantage incompatible with these interests. Board Members shall conduct themselves in a manner that justifies the confidence placed in them by discharging their responsibilities ethically in the course of their association with the PERA; and

Whereas, the Board Policies at Section I (E) (5) further provide, in pertinent part: The Board shall establish and communicate Board policies and priorities and then monitor performance. The Board recognizes that the achievement of its goals requires self-discipline by the Board as a whole and by individual Board members to abide by the policies articulated herein and to govern in a manner consistent with the Board's value statement. The Board is responsible for creating and maintaining an atmosphere that encourages frank and collegial discussions both at the Board and Committee levels and between the Board and PERA management.

Whereas, pursuant to statute at NMSA Section 10-16-11, the Board adopted a Code of Conduct prescribing standards of conduct for Board Members, and which, if violated, constitutes cause for sanctions or discipline, including suspension or dismissal of an offending Board Member; and

Whereas, Board Policies at Section VI. (A) creates a duty for the Board to act as follows: Any breach of fiduciary duty, violation of this policy or other conduct that falls below the high ethical standard this Board expects of itself, shall be looked into by the Board; and,

Whereas, the Board Policies at Section VI (C) (2) further mandate that: Violation of the Governmental Conduct Act or this policy is grounds for discipline; and,

Whereas, the Board Policies in Section VI provide for "Sanctions and Enforcement" of those policies and include the Board's authority to impose disciplinary measures ranging from removal of a Board member to the following:

1. Formal reprimand and censure by the Board, which shall be permanently recorded in the Board minutes.
2. Suspension from participation on the Board or a particular Board activity for a specified period of time not to exceed one year; and,

Whereas, the Board Policies at Sections I (D) (5) and VI (A) provide that, among their duties: Board Members and the Executive Director have a duty to use reasonable care to prevent co-trustees from committing a breach and c. Board Members and the Executive Director have a duty to compel performance or redress a breach; and,

Whereas, Board Member Loretta Naranjo Lopez, "Member Naranjo Lopez," is currently serving on the Board for a second consecutive four-year term that commenced January, 2016; and,

Whereas, upon information and belief the Board has determined that during the course of her terms Member Naranjo Lopez has repeatedly violated Board Policies and Code of Conduct by engaging in conduct that is detrimental to the Board and PERA and falls below the high ethical standards the Board expects of its members, including:

- A. Knowingly submitting improper requests for reimbursement from the trust funds for which she is a fiduciary for travel expenses incurred not for Board business but for her husband – personal interests and, despite knowing such expenses were not eligible for reimbursement, demanding that PERA staff take actions in violation of state statutes and regulations to facilitate her reimbursement for those ineligible expenses. Such ineligible expense requests include:
1. Reimbursement for mileage expenses incurred by Member Naranjo Lopez' spouse in July, 2014; and,
 2. Reimbursement for a parking violation she received in Taos, NM, in August, 2017; and,
 3. In furtherance of her requests for reimbursement for ineligible expenses she behaved in a manner that violates the Board Policies' requirement to maintain a collegial atmosphere in discussions in committees or with staff. Member Naranjo Lopez subjected PERA staff to undue pressure and criticism by expressing dissatisfaction with their refusal to improperly process the ineligible reimbursement requests.
- B. Repeatedly disrupting Board business, jeopardizing the Board's ability to fulfill its duties and thereby exposing the Board to potential liability by making unfounded and inaccurate grievances against PERA's Executive Director, General Counsel, PERA staff, and fellow Board members, including:
1. Recklessly and repeatedly alleging publicly that fellow Board members have undisclosed conflicts of interest which preclude them from exercising their voting rights in representation of PERA members or retirees, yet failing to provide any evidence to support the allegations; and,
 2. In or about September 2013, violating the Board Policies requiring that the Board speak in a unified voice, by identifying herself as a Board member in correspondence in which she unilaterally and without knowledge of the full Board sent to the Retired Public Employees of New Mexico, RPENM, Board containing criticism of PERA's administration and personnel matters, and providing no evidentiary support; such correspondence presenting the appearance that the correspondence could reflect the opinion and voice of the Board; and,
 3. Harassing PERA staff by repeatedly submitting public records requests and then falsely and publicly claiming that the records requests were not properly handled or were ignored; and,
 4. In or about June, 2015, violating the Board Policies at Section I (A) and (C), by failing to act with integrity by submitting a frivolous and false complaint to the Office of the Attorney General, alleging that PERA failed to timely respond to her public records requests in violation of the Inspection of Public Records Act, thereby causing PERA to expend valuable staff hours and resources to vigorously defend against the false complaint so as to avoid exposing the Association to a fine of up to \$100 a day; which complaint was summarily dismissed in February, 2016, when the Attorney General's Office determined that there was "no evidence to support finding that PERA failed to comply with IPRA as alleged"; and,

5. In or about September, 2014, violating the Board Policies at Section II (C) (6) by engaging in inappropriate *ex parte* communications regarding an administrative appeal; and,
6. In or about March, 2017, violating the Board Policies by again harassing PERA staff by falsely accusing a PERA staff member of criminal battery over Board seating arrangements and filing a complaint with the Human Rights Commission for harassment, which complaint was summarily dismissed for lack of jurisdiction; and,
7. In or about September, 2017, violating the Board Policies at Section I (A) and (C) by commencing a lawsuit against the Executive Director and the former Board Chair, without good cause, which lawsuit was summarily dismissed by the Court as an unwarranted cost of time and expense to the trust fund; and,
8. On or about October 5, 2017, violating the Board Policies by further harassing PERA staff by filing a Disciplinary Complaint with the State of New Mexico Disciplinary Board against the PERA General Counsel, without good cause, which complaint the Disciplinary Board found was unsubstantiated and was summarily dismissed; and,
9. In or about -- 2018, violating the Board Policies at Section I and Section II (D) by failing to accept new Board seating arrangements established by, and within the power of, the Board Chair, and then instead of engaging the Chair in a collegial discussion regarding seating, harassing the Chair by filing a complaint against the him with the City of Santa Fe Police Department in which she accused him of felony assault and battery, which complaint was closed without action by the City of Santa Fe Police Department.

Whereas, the then-Board Chair, then-Vice-Chair and then-State Treasurer counseled Member Naranjo Lopez regarding her inappropriate 2013 letter to RPENM and the Board officially sanctioned Member Naranjo Lopez regarding her 2014 inappropriate *ex parte* conduct; and,

Whereas, the Board now determines that the foregoing actions illustrate a pattern of violations of Board Policies and Code of Conduct, and those violations are escalating rather than diminishing and the violations establish a pattern and practice of behavior that falls below the highest ethical standards required of a fiduciary, that the violations have adversely affected the mission and duties of the Board, the administration of PERA and consequently the interests of the members, retirees and beneficiaries of the retirement systems for which the Board members are trustees, and in light of the fact that the Board has counseled and sanctioned Member Naranjo Lopez with no apparent positive impact to her understanding and willingness to act in a manner consistent with the Board Policies and Code of Conduct, as illustrated by her continued and escalated inappropriate conduct, it is incumbent upon this Board to publicly reprimand and sanction Member Naranjo Lopez for these violations; and,

Whereas, the Board Policies authorize the Board to sanction a Board member under the circumstances presented in this Resolution by suspending the Board member's participation in certain Board activities for a specified period of time not to exceed one year.

Now therefore, be it resolved that pursuant to the Board's authority under applicable law and policy, the Board takes the following actions:

- A. Member Loretta Naranjo Lopez is hereby publicly reprimanded and censured for her conduct in violation of the Board Policies and Code of Conduct.
- B. Member Naranjo Lopez is hereby suspended and removed from serving in any capacity on the Board's SmartSave Committee, Investment Committee, Legislative Committee, and all other committees of the Board, for a period of one year, commencing on the effective date of this Resolution. Member Naranjo Lopez shall not receive statutory per diem or be reimbursed for any expenses if she attends committee meetings during the one-year suspension period.
- C. Member Naranjo Lopez is hereby suspended from any Board-authorized out-of-state education and travel activities, and shall not be reimbursed for any Board-related expenses, for a period of one year, commencing on the effective date of this Resolution. This suspension does not relate to entitlement to statutory per diem and approved expenses directly connected with attendance at official Board meetings and in-state Board education sessions and retreats in compliance with Board member educational requirements under NMSA 1978, §10-11-133 (F) and 2.80.200.21 NMAC.
- D. Further violations of the law, Board Policies, Code of Conduct or fiduciary duty may lead to further sanctions and dismissal of Member Naranjo Lopez from the Board.

I make a motion to adopt the resolution of reprimand and censure for Member Naranjo Lopez, and I'll stand for a second.

MEMBER MELIA: Second.

CHAIR MAXON: Okay, we have a first and second and we have discussion. Mr. Treasurer.

TREASURER EICHENBERG: [inaudible] It's on page 4, and it's the second whereas on page 4, and we talk about the Board has counseled and sanctioned Member Naranjo. When did we do that? I am assuming that we have sanctioned her previously.

MEMBER DR. KOHLASCH: Ah, yes. She was sanctioned on the previous administration when Patricia French was the Chair.

MEMBER FRENCH: I was never administration.

MEMBER DR. KOHLASCH: Well, not administration, under the Board. Well, I meant the Board. I meant the PERA Board when Patricia French was Chair.

TREASURER EICHENBERG: Do you know the date of that sanction?

MEMBER DR. KOHLASCH: Not off the top of my head, I don't.

CHAIR MAXON: Member Armijo.

MEMBER ARMIJO: Thank you, Mr. Chair. Mr. Treasurer, I don't know the date, but I know if you look in the packet that General Counsel provided for the Board in one of the attachments it explains all the previous history of any sanctions.

TREASURER EICHENBERG: So that was September 9, 2014?

CHAIR MAXON: Does that answer your question?

TREASURER EICHENBERG: That does ask a question, but then we have in here another whereas on page 2, it's the bottom one where we have a reimbursement for July of 2014. So if you – if you reprimanded her in September of 14, why are we going back prior to, or including stuff that was included in her last reprimand? I mean, under – it just seems like we're reaching for something that we've already penalized her for, and we're going back now to find out.

CHAIR MAXON: Okay.

TREASURER EICHENBERG: Those are just questions and observations just from what I've read here.

CHAIR MAXON: Chief Legal Counsel will answer your question, Mr. Treasurer.

MS. PITTARD: Mr. Chair and Mr. Treasurer, if you look under B. 5, the date of the prior censure was September 9, 2014, and that was specific to an administrative appeal and *ex parte* communications. That did not include anything with regard to the reimbursements.

CHAIR MAXON: Madam Secretary.

SECRETARY TOULOUSE OLIVER: I just have a quick question and I know Member Naranjo Lopez is going to speak to the resolution and I'm hoping in the course of that, I would appreciate, since I wasn't present for the meeting when the police report – when the alleged assault happened and the police report was filed and I'm hoping that when Member Naranjo Lopez makes her presentation that she can explain that.

CHAIR MAXON: Okay.

SECRETARY TOULOUSE OLIVER: And anybody else who was present and observed it. I'd appreciate that. Thank you.

CHAIR MAXON: Thank you.

MEMBER NARANJO LOPEZ: I would like – I passed out to the Board members my response to the draft resolution, and it's dated March 30th, and I will be asking that this be included with the minutes. So I have a copy for you, and let me get it.

So executive summary, and this was dated March 30th. The draft resolution to reprimand and censure a PERA Board member is a diversion. PERA has a five billion funding gap and PERA staff are not committed to closing this gap. Diversions and undue influence draw the PERA Board's attention away from its fiduciary duties to invest trust assets under the circumstances of a five billion funding gap.

The allegations in the draft resolution are baseless. All allegations in the draft resolution relate to good faith efforts to fulfill duties. None of the pages of the exhibits are relevant. This

response takes the draft resolution as an opportunity for the PERA Board to monitor staff. Issues raised in this response are covered by fiduciary duties and whistleblower protection.

Good faith review: A detailed good faith analysis of the draft resolution reveals more than 100 opportunities to improve PERA Board policies, procedures and operations. None of these opportunities pertain to investment functions which should be a top Board priority to close the five billion funding gap. The matter first appeared before the PERA Board as a foregone conclusion. The PERA Board did not authorize the draft resolution. PERA staff exceeded authority when drafting the resolution, and compiling 130 pages of attachments without prior PERA Board authorization.

PERA staff omitted context and relevant authority. PERA staff expressed bias and PERA staff's lack of accountability and diversions indicate undue influence over the PERA Board. None of the allegations, evidence or facts indicate misconduct by Board – by myself, Board Member Naranjo Lopez, and allegations pertaining to the cost of attending PERA Board retreat A, mileage compensation, the regulations in statute provide different standards, and PERA staff cite one standard and apply the other. Good faith application of the standards cited by PERA staff would have made the PERA Board member whole. There was a cost, not a personal benefit to the PERA Board member.

Parking ticket: The statute permits reimbursement of parking fees for the retreat, and the statute does not define the term “parking fee.” PERA staff resolved the matter by stating the expense was not permitted under the law without citing the law. The matter was resolved with two brief emails.

B. Allegations pertaining to Board activities/conflicts of interest: Four PERA Board members, a PERA Board member candidate, an attorney and a subject matter expert in fiduciary duties have in good faith identified conflicts of interest. An appropriate response would be to hire a contract attorney to investigate and provide training. Failing to investigate and address conflicts of interest could undermine the public trust and the Board.

September 2013 newsletter advanced PERA's interest in good faith with representatives of the largest group of PERA members, the retirees. Newsletter was not an opinion or official act of the PERA Board member.

Public records request: Relatively few and infrequent – 11 over the five calendar year period covered by the draft resolution, or about two per year. Good faith effort to periodically monitor PERA staff and fulfill fiduciary duties.

June 2015, compliant to Attorney General's Office about PERA staff handling of four information requests. Good faith effort to monitor PERA staff's apparent misconduct and undue influence in the PERA Board elections.

September 2014 referral of PERA retiree to PERA staff to correct years of service calculation in the retiree benefits – PERA success story. No evidence of interference or involvement in PERA staff's review or determination.

September 2017 lawsuit. Improper conduct by PERA staff and PERA Board in elections, meetings, and investigations. Good faith fulfillment of fiduciary duties by two PERA Board

members. Lower court issued an order compelling PERA to comply with the law. The status of the matter is ongoing.

October 2017 disciplinary complaint against the PERA general counsel for letter to PERA Board member Patricia French exercises a reasonable care when holding PERA staff accountable in the context of a captive Board.

March 2017, improper conduct by PERA staff at a PERA Board meeting. Policy violations by PERA staff. Also, failure to supervise. Precedent for the next item.

February 2018 police report at segregated PERA Board meeting, acting in an official capacity. PERA Board Chair violated federal and state anti-segregation and anti-discrimination laws by requiring white Board members to sit in one section, and minority Board members to sit in another. PERA staff defended the effort. Police report filed in good faith and supported by evidence.

The draft resolution is retaliatory. All nine allegations above retaliate against a Board member acting in good faith to fulfill her fiduciary duties and assert her constitutional rights. Regardless of the outcome, the biggest issue before the PERA Board is a five billion funding gap.

Proposed actions: Under the New Mexico State Act Section 10-11-132, the PERA Board shall invest and reinvest PERA funds in accordance with the Uniform Prudent Investor Act, NMSA 45-7-601 through 45-7-612, 1978. Under NMSA Section 45-7-610 the PERA Board as trustee may delegate investment and management functions. Delegation may be withdrawn in whole or in part for any or no reason in the Board's sole discretion. If the Board elects to delegate it must delegate prudently under the circumstances, and use reasonable care in periodically monitoring performance.

PERA has five billion funding gap. PERA has liable for 20 billion and only has 15 billion in assets. The circumstances of any allegations by the PERA Board include 25 percent underfunding, and I probably stand corrected; I think it went down a billion, so we're at, I think 14 point-something billion at this present time.

No allegations or -- their 130 pages of attachments mention the current five billion funding gap. Proposed PERA Board actions include the following: Establish a plan with milestones and timeframes to close the five billion funding gap; establish effective controls to periodically monitor investment functions; measure staff for investment functions versus observing or allocating; review staff plans and actions, if any, designed to close the current funding gap; establish minimum qualifications for senior staff to execute investment functions; establish Board procedures for evaluating and if necessary, replacing senior staff; establish a plan to review and strengthen PERA Board policies and procedures; conflicts of interest, including controls to require use of contract attorneys and to prevent undue influence and abuse of office in public service by PERA staff; out of state Board member education; internal audit function to respond to Board member requests for information and Board elections; establish an independent task force or hire a contract attorney with experience in fiduciary duties to review allegations against Board members.

And I passed out this -- and again, I'm asking that this be included in the minutes for the record.

CHAIR MAXON: Okay. All right, Ms. Naranjo Lopez, do you have any other comments or anything else that you'd like to say? Okay, are there any other Board members that would like to have discussion on this? Member French.

MEMBER FRENCH: I have a question. I don't know if this is the mic working or not. Several of these whereas, or let me see – accusations, occurred when I was the Chair and we addressed them at that time. I don't believe – I do believe that Member Naranjo Lopez has gone through a new election since that time. I don't know how we're going to go back and try to reprimand her or use something against her that happened in a prior term, not even in her current term as currently. And I don't know when her term ends but I do believe she's been re-elected since that happened.

The other issues that I have is that it says in here that the police report and the other incident never occurred. It is my understanding that there weren't any witnesses during the first one, and that Ms. Risku talked to both people and said that their – it was one word against the other. That was my understanding. I may be wrong on that. On the second one that they're talking about that happened with Chair Maxon, I wasn't here. I can't say whether it happened or not, but I did talk to Member Naranjo Lopez about it when she told me about it and I asked her, I said, I'm going to ask you what I ask all my – because I'm a union president, I'm going to ask you what I ask all of them. Are you willing to take a polygraph? Because I don't know who's right and who's wrong. And she said I'm more than willing to take a polygraph.

So, you know, that right there kind of swayed me. I don't know what happened that day, but she told me she was willing to take a polygraph, because I tried not to take sides and I want to know who's telling the truth. So with that being said, like I said, I don't know and I'm not going to form a judgment either way, so – but I don't think anybody else on this Board was here either. So for them to say that it never happened, I think it is going a bit too far on that one, on either one of them, because I wasn't here for either one of them.

Like I said, she's already been sanctioned for several of these things in here. Why they're all in here again, it seems like to me are we getting a second bite at the apple of things that have already been corrected, things that happened when I was chair? We addressed it. Her talking to this member of record or something about his retirement, you know, that's already been addressed. About the mileage – that was addressed. I mean I don't understand why all of this is back in here when it was addressed when I was the chair; is this double jeopardy? Are we going back again? Are we stacking the deck? I don't understand why all of this was put in there. If we're going to address what has occurred during this term, during what happened recently, I can understand that. Let's talk about it. But all this other – I mean, going back to 1989? If this was so – if this information was relevant, why weren't we told about this in new employee orientation? I don't understand why all this information is here. Let's talk about current issues.

CHAIR MAXON: Okay. Thank you. Member Esquibel.

MEMBER ESQUIBEL: I do have just a few questions. Who – did you write this? Did our attorney write this?

CHAIR MAXON: The resolution was written – and I'm glad you asked because in conjunction with your comment I do want our attorney, Mr. Leiderman, to talk about the resolution here. He's on the phone with us.

MEMBER ESQUIBEL: Okay, I do have some questions, probably, for Mr. Ladderman.

CHAIR MAXON: Leiderman.

MEMBER ESQUIBEL: Mr. Leiderman. One of the questions that comes to mind – and I'm not going to refer to some of the other comments that were made. I also had the same comments on whether or not – how many times we can actually punish somebody for something that they've already been punished for but haven't actually done that same issue again. I'm not quite sure how we can do that. I don't necessarily know if I can support that either.

I do have questions on what is and what isn't fiduciary responsibility, going to items B.1. When I think about a fiduciary responsibility, and I look back at my CAPP training, I think about what they addressed and whether or not as a Board that polices themselves, if they say nothing at all but believe something to be true, and they vote on it, and later on they find out that it is true, is that a violation of your fiduciary responsibility as opposed to bringing it up and allowing the Board to discuss it? When I look back at a couple of these issues and I remember the discussions moving forward, I remember one of our Board members recusing herself. I didn't think she had to. I think anybody who is a member of PERA has the right to be a Board member. I think if there's any issues relative to any investigations within her department that would be up to her supervisors to make sure that she's clear of that information, and I think that that person would and I think given the integrity of what she did at that meeting by recusing herself she would too.

So I don't find any conflict of interest at that point, but at the same time, it's not about whether there was or there wasn't. It's about whether or not a Board member should bring up an issue if they believe it to be true, in order for the balance of the members to actually discuss it and come to a resolution about it. We're not – we don't use Robert's Rules here, so I don't know how that would have come to be other than the fact that there was a recusal.

In any event, I have questions on number one. I think number 3 was addressed. We've already sanctioned her for that; I have no idea why that's on here. And 4 or 5, *ex parte* communication, I don't think she's had any *ex parte* communication under her present term; I'm not sure why that's in here. As far as public records are concerned, I think everybody has the right to file a public records request and whether or not that person believes that the information that is being presented to them is what they asked for or not, they have a right to go to the Attorney General's Office and have them investigated, unless that right is given up by being a Board member. Maybe that's a legal question for our attorney. I don't know the answer to that.

With regard to the police reports and the assaults, that's kind of disturbing in that I didn't find enough information in here to know what happened. I mean I see a summary report. That doesn't really tell you much. I'd like to know from all parties what happened. There's two parties to every situation, and I want to know – my understanding is there was a witness in the audience to one of those. I want to know if that person is here and if we can ask questions. Without that, I'm not

sure I can support anything on resolution B. There's just not enough information to me to make a finding.

I mean I have to think about how many people elected this individual. And when you look at the number of retirees compared to the people that are working, and you divide each category up from Municipal to State to County, there are actually more retirees out there than there are for each one of our sectors that elected us into office. Now, they elected her for whatever reason, but they already knew that she was somewhat obstreperous and they liked it. Why did they like that? Well, because she is a voice for that sector of the population. They are a fixed income. We take away their benefits? What happens to them? Some of them can't go back to work. Some of them are in their 70s, their 80s. That's a big deal to them.

On the other hand, they have to understand that at some point in time we're going to have more retirees out there than we have people working, putting money into the fund. That's a serious problem. Because at some point in time, those benefits have to be looked at. Something has to change. Otherwise, you're going to tap into the core and at some point in time, will we be able to pay the bill? You have to realize, you can't cut your nose off to spite your face. Those are real issues. Those are hardcore issues and while you have an advocate here, it's a real problem.

There are some issues that I have to ask questions to and I don't understand why, Loretta, you are looking at those. So I can't support anything on anything in B. I just don't think that there's enough information for me to actually make a finding on that.

I'm not going to address the lawsuits. I don't know enough about them to actually understand what happened there. But I do have concern with wanting to be paid for a road trip when you yourself road with somebody else. They burdened the cost. Now, whether your husband went or a friend went or anybody else went in their own vehicle. That person's not a Board member. That person is not entitled to per diem. How is it that you believe that you're entitled to that per diem?

MEMBER FRENCH: Mileage.

MEMBER ESQUIBEL: That mileage. Number two, if I get a ticket anywhere, that means I parked illegally. How is that the responsibility of the Board to pay that traffic ticket? I don't understand where that comes from. And I don't understand how you're reading the rules – and I haven't seen the rules to actually identify whether or not there is or isn't any kind of leniency that says, yes, she can be paid, or no, she can't be paid. I don't know that. That gives me pause again for that section. So I think in terms of how many people support her and what kind of hole that leaves for that voice, I'm having a hard time with the lack of information that I have here.

When we get a packet, we've got to go back to executive session, and it's for disability, there are inches thick of documentation that we have to go through in order to make that decision. When we're investing \$400 million to an investment manager, there's packets of information. What I got here are a few minutes that I went through, 245-page documentation that tells me I have the right to sanction her under conditions that aren't really even here. So I'm confused. I can't support this resolution at this point. Now, I'm just one vote; I'm only one voice. But I have more questions than I have answers. And that's about all I have to say.

CHAIR MAXON: Thank you. I think this would be a good time – I'll take your question next, Member Melia – to have our Board legal counsel, Mr. Leiderman – can you hear us, Mr. Leiderman?

MR. LEIDERMAN [telephonically]: Yes, Mr. Chair, I can hear you. Can you hear me?

CHAIR MAXON: We can hear you fine. If you would, just talk about the drafting of the resolution and any comments that you have on the current matter.

MR. LEIDERMAN: Thank you, Mr. Chair, members of the Board. Harvey Leiderman, Reed Smith, Fiduciary Counsel. Thank you for letting me join you by phone this morning. I have a feeling it was easier for me to get to the meeting than for you to get to the meeting.

Let me, if I may, put some context around this to directly respond to Member Esquibel's question. I did participate in the preparation with the Chairman of this resolution. I did not, however, as you can understand, I did not supply the underlying factual statements, but I did participate in the organization of those statements and the presentation and the citation to the various Board policies and procedures and the law, and was assisted in that regard by PERA staff. And so this was with my participation.

As your fiduciary counsel, let me make a couple of comments about the context in which this arises. As you know, and as I think I've had the opportunity to discuss with you, the Board has – every Board member has a fundamental fiduciary responsibility to the members of this system and to the system in that the primary duty of loyalty requires at times subordinating your personal interest to those of the system and the membership.

It also requires prudent administration and due care and prudent administration of the governance of the system. The legislature created the PERA Board as a collective to be able to take actions on behalf of the people. You're delegated certain responsibilities but you're delegated those responsibilities collectively, not individually, and you must – in that delegation it's incumbent upon you to promote the effective use of the resources of the system and to incur only reasonable expenses of administration.

And any behavior that is contrary to the fundamental fiduciary principles really has a very corrosive effect on the trust and the word trust is extremely important. The people in trust in this Board, the conduct of their business, the members are entitled to your primary loyalty. It is a matter of a sacred trust and one that should be dealt with on the principles that not only the people are entitled to trust you but you need to be able to trust your colleagues to be able to make collective judgments on behalf of the people. The people look to the state agencies to self-police their activities. They delegate to you the authority to conduct the people's business and they do that, I'll say, with an expectation that you will be business-like in the conduct of this organization.

Quite frankly, the business of the Board cannot be accomplished in an atmosphere of antagonism, a lack of cooperation, personal self-dealing or self-promotion, repeated violations of policies and protocols, and unreasonable and costly expectations placed on staff. Those are activities that are anathema to the effective governance of the people's business by this Board. I

think it's incumbent on any public board, especially one that operates a trust, to rein in behavior that detracts from the mission that the people delegated to you. The stakeholders – all stakeholders, not just the members to whom you owe a primary responsibility, but the state, the taxpayers, all stakeholders in this system who are concerned with the funding of the system and the governance of the system expect that this Board will conduct itself accordingly and self-correct when necessary.

I'm aware of Member Esquibel's comment that the public – that the retired members of the system may have chosen to endorse someone whose behavior is – I think the word was obstreperous. I understand that, but the fiduciary standard is the highest standard of conduct that the law places on anybody. Behavior that is maybe obstreperous might be excused in the rough and tumble of other places like labor negotiations, the legislature, Congress, the White House, even within our own families. Behavior that we tolerate in those contexts are simply inexcusable in the context of fiduciary responsibilities in a trust position that we hold on this Board and the trust of the people.

So I think it is extremely appropriate for the Board to consider a reprimand and censure sanction to address a pattern and practice of inappropriate conduct. There have been questions by Board members raised as to why does the resolution go backwards in time to things that may have been addressed or came up previously or in another term. I believe that the purpose of including those things is to demonstrate a continuous pattern and practice of a failure of the member to appropriately change behavior, even after having been sanctioned in the past, and that the purpose of including those – historical information is there to show that the pattern continues. A continuing pattern, in the Board's judgment may be more egregious than one that is suddenly just sprung up. The Board might excuse a momentary lapse by a Board member. We're all not perfect, obviously, but when you have a continuous pattern and practice as outlined in this resolution that goes back for several years, it makes more recent event, such as the filing of what appears to be a false police report, or at least has been dismissed by the police department as having no merit after having been investigated, it makes activities like that in context appear more egregious because they demonstrate a callous lack of attention to the fiduciary responsibilities and the collegiality that this Board needs to have in order to be able to proceed and conduct the people's business.

So in my opinion, and based upon my review of the facts and the data, the documents that have been provided to the Board as backup for this agenda item, I believe that there's a sufficient basis here in fact on which the Board could take the recommended actions that are now in the motion before you. I'm happy to address any other questions that you may have regarding fiduciary responsibilities or any other questions that I can address. I will tell you that in nearly 30 years of serving public boards in various locations and at various levels of government I have unfortunately from time to time had to participate in sanction motions, reprimands, censures, of other board members and it's an unfortunate situation. But we need to understand that certain behaviors have a truly corrosive effect on the ability of the Board to address even the funding issues that Member Naranjo Lopez points to as critical before the Board.

If the Board is going to participate and be able to collectively address the funding challenges that this state and other states and localities have in meeting their promises to their membership, now and in the future, they cannot be distracted by the kind of behavior that is outlined before you in this resolution. It is absolutely counterproductive and the people know it and the people understand that it's your job to get your act together – pardon the vernacular – and move on with the business that was delegated to you by the people of New Mexico.

Mr. Chairman, I'm happy to address any questions. I would simply ask, because I'm on the telephone, that it's very difficult for me to hear unless the speakers speak directly into their microphones. Thank you and let me know if there's anything I can address.

CHAIR MAXON: Okay. Did you have something specifically about what he just talked about?

MEMBER NARANJO LOPEZ: Yes. I would just like to object to your statement, your complete statement on record. I want to object and request that there be an investigation prior to any decision on this, that there be an investigation of staff and myself, because there has not been an investigation. And I'm requesting that there be an investigation. If they're going to investigate me, I want staff investigated, and I object to your statement.

CHAIR MAXON: Okay. Thank you. Member Melia.

MEMBER MELIA: I was just going to request that we call the question to vote.

MEMBER FRENCH: I have a question for the attorney before we do that.

CHAIR MAXON: Okay. Member French.

MEMBER FRENCH: Mr. Leiderman.

MR. LEIDERMAN: Yes, I can hear you. Thank you.

MEMBER FRENCH: Okay. I have a question for you. You said that it's – she demonstrated corrosive behavior, and you said the police report was dismissed with no merit. I only had the initial report. I don't know if it was dismissed with no merit. I'll have to talk to the Chair about that because I just received the initial one and it was incomplete because they had not talked to the Chair, or about the incident. They had only talked to Loretta. But my second question is, you talked about all the things that have occurred. You said you talked to staff. You said you talked to the Chair. You represent the entire Board. Did you talk to Loretta? Because you know, there's always that side of the story. And since this resolution and everything here pertains to her and her behavior, did you get her side of the story, or is this a one-sided decision?

MR. LEIDERMAN: I was not charged with fact gathering and so, no. It was not within my assignment or position with the Board to determine the truth of any of the facts as outlined.

MEMBER FRENCH: So you just heard the allegation. You based – what you said to us was based on what you were told and what you read with the –

MR. LEIDERMAN: Yes. Mostly. Thank you.

MEMBER FRENCH: The exhibits, etc., etc.

MR. LEIDERMAN: I'm sorry. Is this Member French?

MEMBER FRENCH: Yes. Yes.

MR. LEIDERMAN: Thank you. I couldn't tell.

MEMBER FRENCH: I'm sorry. I should have said who I was.

MR. LEIDERMAN: Mr. Chair and Member French, the facts were as referenced in this resolution were not explored by me. I took them on their face value. It was not my responsibility to investigate or determine the truth of any of the facts stated here. That was something for the Board to do at the Board's discretion. There is documented – documentary backup to support the facts, but it was not my responsibility to weigh the facts or conduct an investigation into those facts.

MEMBER FRENCH: I understand. You went with the –

MR. LEIDERMAN: Right. So I did not do that. That's correct.

MEMBER FRENCH: Okay. Thank you.

CHAIR MAXON: Thank you. So we're going to go ahead and call for a vote at this time on this. Member Cordova, go ahead.

MEMBER CORDOVA: I just want to reach out to my fellow trustees. I think it's really, really easy to get in the weeds with what's presented here. I think that I – my feelings on the matter, as our Board attorney just mentioned, we're held to a very high standard. I think it is incumbent upon all of us as trustees of this fund to uphold proper behavior. Very simply, I don't believe this can be tolerated.

CHAIR MAXON: Okay. Thank you. I'm going to go ahead and call for a vote. We have a first and second.

BOARD RECORDER: Please, could this be by roll call?

CHAIR MAXON: Absolutely. We'll go ahead and call for a roll call vote.

Dan Mayfield	Yes
Loretta Naranjo Lopez	No
John Melia	Yes
Dan Esquibel	No
Patty French	No
Natalie Cordova	Yes
Claudia Armijo	Yes
Cathy Townes	Absent
Tim Eichenberg	No
Maggie Toulouse Oliver	Pass and then votes Yes
Jackie Kohlasch	Yes
James Maxon	Yes

BOARD RECORDER: The motion passes 6-4 with one abstention.

SECRETARY TOULOUSE OLIVER: I didn't abstain; I just passed. So I'll go ahead and vote yes. I just passed so then it comes back to me.

BOARD RECORDER: The vote is 7-4.

CHAIR MAXON: Okay, this resolution will be designated as 18-06 which is our next resolution number in sequence for 2018.

5. Other Business

CHAIR MAXON: Is there any other business that needs to come before the Board today? Member Melia.

MEMBER MELIA: I just wanted to say one thing, because I do see that we have some members out here in the audience and I saw them shaking their heads when the discussion was brought up about Loretta representing them as the retirees. And I just wanted to say and give them some reassurance that although different classifications of PERA members voted us into the seats that we are in today, the moment that we take the seat we are no longer part of an allegiance to any particular entity of the membership. I was voted in by the municipal members but any decision that I make has to represent all PERA members, not just municipal members. It has to represent and be in the best interests of the fund and every single member. So I don't want any of the retirees to feel that their voices are not heard. If any of you ever have any questions, concerns, my email address is on the website, as well as my phone number and I'm here to serve you all equally. And anything besides that is – would be a breach of fiduciary duties. So if you ever have any questions please feel free to contact me or any of the Board members by email or phone as well. So thank you.

CHAIR MAXON: Vice Chair Kohlasch.

MEMBER DR. KOHLASCH: Chair, I like to thank everyone for coming. Quite a few of you I already know. And trust me, it's not to stop anyone's voice, because she will have a voice on the Board. She is still on the Board. She will still be able to speak, so that's not to stifle anybody's voice. It's just to deal with the issues so that we can get along with doing business. Because we need to move forward as a Board, not just sit here and bicker back and forth. And the Board is here for everyone, not just a few. I know I'm a state employee, but I'm also going to be a retiree in another couple of years. The Board is here for everybody. And we all have to learn to respect each other and respect each other's opinion. And that does not entitle us, just because you don't like something, to create chaos. Thank you.

CHAIR MAXON: Madam Secretary.

SECRETARY TOULOUSE OLIVER: Mr. Chair, I just – forgive me for speaking out of order, I just wanted to explain my vote and my reason for passing and coming back. I have a lot of, like Member Esquibel, expressed a lot of questions about some of the content of the resolution, but ultimately, where my decision came in and why I did not want to be the deciding

vote, but where it came in was in regard to the police report that alleged assault. As a victim of assault, as a survivor of assault, I take the use of filing assault charges very seriously, and unfortunately, my questions were not answered about why assault charges were filed against staff and members of this Board. And in Member Naranjo Lopez' response, which I read through and listened diligently as she read through them, her explanation was that she opposed the seating arrangement, and she may very well have had grounds to challenge that on a discriminatory basis and I would not – you know, I'm not the person to make that decision. Somebody else could have made that decision but calling a police officer and alleging felony assault because you disagree with the decision of the Chair is incredibly inappropriate and offensive to me personally. And that is why I ultimately decided to vote the way that I did. So thank you Mr. Chair and members.

CHAIR MAXON: Thank you. Member Naranjo Lopez.

MEMBER NARANJO LOPEZ: I object to your statement.

SECRETARY TOULOUSE OLIVER: [Speaking away from microphone] Object all day long.

6. Adjournment

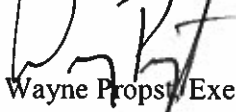
Having completed the agenda and upon motion by Dr. Kohlasch and second by Secretary Toulouse Oliver, Chair Maxon declared this meeting adjourned at 11:10 a.m.

Approved by:



James Maxon
Chair, PERA Board

ATTEST:



Wayne Propst, Executive Director

Attached Exhibits:

Exhibit 1: Written response of Member Loretta Naranjo Lopez



RESPONSE TO DRAFT RESOLUTION

From: PERA Board Member Loretta Lopez, Retiree Representative
To: PERA Board
Date: March 30, 2018

Executive Summary

The draft resolution to reprimand and censure a PERA board member is a diversion.

PERA has a \$5 billion funding gap. PERA staff are not committed to closing this gap. Diversions and undue influence draw the PERA board's attention away from its fiduciary duties to invest trust assets under the circumstances of a \$5 billion funding gap.

The allegations in the draft resolution are baseless. All allegations in the draft resolution relate to good faith efforts to fulfill duties. None of the 64 pages of exhibits are relevant.

This response takes the draft resolution as an opportunity for the PERA board to monitor staff. Issues raised in this response are covered by fiduciary duties and whistleblower protections.

Good Faith Review

A detailed, good faith analysis of the draft resolution reveals more than 100 opportunities to improve PERA board policies, procedures and operations. None of these opportunities pertain to investment functions, which should be a top board priority to close the \$5 billion funding gap.

The matter first appeared before the PERA board as a foregone conclusion. The PERA board did not authorize the draft resolution. PERA staff exceeded authority when drafting the resolution and compiling 130+ pages of attachments without prior PERA board authorization.

PERA staff omitted context and relevant authority. PERA staff expressed bias. PERA staff's lack of accountability and diversions indicate undue influence over the PERA board.

None of the allegations, evidence or facts indicate misconduct by board member Lopez.

A. Allegations pertaining to the costs of attending PERA board retreats

1. Mileage compensation – the regulations and statute provide different standards. PERA staff cite one standard and apply the other. Good faith application of the standard cited by PERA staff would have made the PERA board member whole. There was a cost, not a personal benefit to the PERA board member.
2. Parking ticket – the statute permits reimbursement of parking fees for the retreat. The statute does not define the term parking fee. PERA staff resolved the matter by stating the expense was not permitted under the law without citing the law. The matter was resolved with two brief emails.

B. Allegations pertaining to board activities

1. Conflicts of interest – Four PERA board members, a PERA board member candidate, an attorney and a subject-matter-expert in fiduciary duties have in good faith identified conflicts of interests. An appropriate response would be to hire a contract attorney to investigate and provide training. Failing to investigate and address conflicts of interest could undermine the public trust and the board.
2. September 2013 newsletter – Advanced PERA’s interests in good faith with representatives of the largest group of PERA members, the retirees. Newsletter was not an opinion or official act of the PERA board member.
3. Public records requests – Relatively few and infrequent (eleven over the five calendar-year period covered by the draft resolution or about two per year). Good faith effort to periodically monitor PERA staff and fulfill fiduciary duties.
4. June 2015 Compliant to Attorney General’s Office about PERA staff handling of four information requests - Good faith effort to monitor PERA staff’s apparent misconduct and undue influence in PERA board elections.
5. September 2014 referral of PERA retiree to PERA staff to correct years-of-service calculation in the retiree’s benefits – PERA success story. No evidence of interference or involvement in PERA staff’s review or determination.
6. September 2017 lawsuit - Improper conduct by PERA staff and PERA board in elections, meetings and an investigation – Good faith fulfillment of fiduciary duties by two PERA board members. Lower court issued an order compelling PERA to comply with the law. The status of the matter is ongoing.
7. October 2017 Disciplinary Complaint against the PERA General Counsel for letter to PERA board member Patricia French – Exercise of reasonable care when holding PERA staff accountable in the context of a captive board.
8. March 2017 improper conduct by PERA staff at a PERA board meeting – Policy violations by PERA staff. Also failure to supervise. Precedent for the next item.
9. February 2018 police report at segregated PERA board meeting – Acting in an official capacity, PERA board chair violated Federal and State anti-segregation and anti-discrimination laws by requiring white board members to sit in one section and minority board members to sit in another. PERA staff defended the effort. Police report filed in good faith and supported by evidence.

The draft resolution is retaliatory. All nine allegations above retaliate against a board member acting in good faith to fulfill her fiduciary duties (and assert her Constitutional rights).

Regardless of outcome, the biggest issue before the PERA board is the \$5 billion funding gap.



Proposed Actions

Under NMSA section, 10-11-132, the PERA board shall invest and reinvest PERA funds in accordance with the Uniform Prudent Investor Act [NMSA 45-7-601 through 45-7-612 1978].

Under NMSA section 45-7-610 the PERA board, as trustee, may delegate investment and management functions. Delegation may be withdrawn in whole or in part for any or no reason in the board's sole discretion. If the board elects to delegate, it must delegate prudently "under the circumstances" and use reasonable care in "periodically monitoring" performance.

PERA has a \$5 billion funding gap. PERA is liable for \$20 billion and only has \$15 billion in assets. The circumstances of any delegation by the PERA board include 25% under-funding.

No allegations or their 130+ pages of attachments mention the current \$5 billion funding gap.

Proposed PERA board actions include the following:

1. Establish a plan with milestones and time frames to close the \$5 billion funding gap
2. Establish effective controls to periodically monitor investment functions
 - a. Measure staff time for investment functions (versus observing or allocating)
 - b. Review staff plans and actions, if any, designed to close the current funding gap
 - c. Establish minimum qualifications for senior staff to execute investment functions
 - d. Establish board procedures for evaluating and if necessary, replacing senior staff
3. Establish a plan to review and strengthen PERA board policies and procedures
 - a. Conflicts of interest including controls to require use of contract attorneys and to prevent undue influence and abuse of office in public service by PERA staff
 - b. Out-of-state board member education
 - c. Internal audit function to respond to board member requests for information
 - d. Board elections
4. Establish an independent task force or hire a contract attorney with experience in fiduciary duties to review allegations against board members