

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
RULES & ADMINISTRATION COMMITTEE

August 13, 2019

This meeting of the Public Employees Retirement Board Rules & Administration Committee was called to order by Lawrence Davis, Chair, at approximately 9:15 a.m. on the above-cited date at the PERA Building, Seminar Room, 33 Plaza la Prensa, Santa Fe, New Mexico.

1. Roll Call

Following the Pledge of Allegiance, roll call indicated the presence of a quorum with the following members present:

Members Present:

Lawrence Davis, Chair
John Melia
Jackie Kohlasch [Appointed]

Member(s) Absent:

Maggie Toulouse Oliver [excused]
Claudia Armijo
Shirley Ragin

Other Board Members Present:

None

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff/General Counsel
Misty Schoeppner, Deputy General Counsel
Greg Trujillo, Deputy Director
Renada Peery-Galon, ASD Director
Trish Winter, Executive Assistant
LeAnne Larrañaga-Ruffy, Director of Equity

Others Present:

Harvey Leiderman, Board Fiduciary Counsel

2. Approval of Agenda

Mr. Melia moved to approve the agenda as published. Dr. Kohlasch seconded and the motion passed without opposition.

3. Approval of Consent Agenda

Mr. Melia moved to approve the consent agenda and Dr. Kohlasch seconded. The motion passed.

4. Current Business

A. Executive Director Resolution

Chair Davis questioned the need for the resolution and Harvey Leiderman, Board Fiduciary Counsel, said as a standalone resolution, the Board has the ability to easily make amendments to it rather than revise the policies and procedures. He recommended referencing the resolution within the policies and procedures.

Chair Davis expressed concern that there may be a lag period when the resolution expires and the Executive Director (ED) is without authority. He recommended embedding the ED's authority within the policies and procedures. The policies should be reviewed annually and if necessary, revised.

Chair Davis said he favored the Colorado model that clearly and completely identifies the ED's responsibilities. The subsections as developed in the Colorado example clearly identify the delegations of authority.

Ms. Pittard noted that the Board annually passes resolutions that identify business transactions for the investment division and the ED resolution was bundled within that group.

It was observed that the Board memories appear sketchy at times and people forget that they approved and endorsed certain delegations of authority. Annually requiring approval of the documents providing authorizations to the ED and CIO will serve to remind the Board and eliminate confusion. An annual resolution to re-endorse policies and procedures would serve the same purpose.

Although it has not occurred in the past, Ms. Pittard said it is incumbent on the Board to review their policies and procedures annually. Mr. Leiderman advocated abiding by that discipline. He added that most systems review policies and procedures every three years but if the delegations are included, he recommended annual review.

With the current board environment and quorum issues, Chair Davis expressed concern that the ED could lose critical authority leaving the membership in a precarious position.

B. Discussion on Board Policies and Procedures

Chair Davis said the number one issue is the ED's responsibility and he cited the Colorado charter that clearly identifies the ED's responsibilities, as neither too broad nor too detailed. It basically states the responsibilities are those delegated by the board. The board has the full authority to delegate.

Mr. Leiderman referred to the policies and procedures as a "policy manual." While a line-by-line comparison of the Colorado version was not accomplished, a review of a dozen charters and policies of other states were reviewed while creating the current draft.

The key issues for discussion were identified as follows:

- Structurally, reformatting the manual for ease of navigation - use a decimal system for reference ease
- Sections regarding delegations should be coalesced in terms of recommendations for the full board

- Most of the delegations are day-to-day operations and not controversial but there are issues that require attention, e.g., hiring, firing, promotion and evaluations of personnel
- Clarify positions on pending or proposed legislative matters that impact the operations and policies of PERA
- Identify the ED's authority in terms of scale for 3rd party contracts/vendors and consultants
- How and who evaluates and determines compensation for the ED

A discussion regarding the awarding of operational contracts and the procurement requirements occurred. As a practical issue the ED has the authority to enter into those contracts.

Renada Peery-Galon, ASD Director, identified RFPs for the maintenance of RIO, fiduciary counsel, and actuaries as operational. Anything over \$50,000 requires an RFP. RIO maintenance was mentioned as the largest contract at \$1 million a year for a four-year term. Per Investment Procurement Policy, the Board will approve the investment consultants and the third-party administrator for the deferred compensation program.

There was committee consensus that the ED should have the authority to enter into operational contracts. For a \$15 billion fund, the Board should not be involved in \$1 million contracts.

Mr. Peery-Galon said PERA annually has about \$3 million in operational contracts. She said the state procurement code is very extensive about fairness and equity. PERA has three certified procurement officers within the agency.

Mr. Leiderman noted that the Board exercises final authority over the annual budget and expenses are within that budget which appears to be sufficient Board oversight.

Once the budget process is completed the authority should be delegated to the ED to obtain the services and products necessary to run the operations.

There was committee consensus that all day-to-day administration of PERA be delegated to the ED.

The following points were noted:

- In executive session and following the ED's evaluation, the Board will discuss compensation and vote on the issue in open session
- The State Auditor cited that the Board lacked a process for ED compensation. The process is simple and should be followed annually
- The manual will be edited to ensure gender neutrality
- The section regarding the Board's authority regarding compensation was modified as follows: "The authority is reserved exclusively to the Board ...and the annual compensation shall be set by Board action on a majority vote taken in open session following the annual performance evaluation"
- The Board reserves the authority to, at any time, modify the ED's compensation

If the governor provided raises to all state employees, the ED could be included in that following the Board's budget approval. Does the Board have the authority to remove a governor enacted across-the-board raise? Ms. Pittard noted a compensation committee could create a framework for career paths and

incentive pay; however, the Board cannot withhold or grant raises without a rational basis.

An across-the-board state employee raise is conducted through the General Appropriation Act through the compensation section. Referred to as a compensation salary increase, Deputy General Counsel Misty Schoeppner said the raise is not mandatory.

In regard to furloughs and lay-offs/reductions when the economy is tanking, the question of whether PERA is obligated to furlough the ED or would the decision be a fiduciary decision of the Board to determine what's in the best interest of the system. The question is who has the authority on the downside? Dr. Kohlasch said PERA shouldn't have it both ways: taking the raise and ignoring the furlough.

A discussion on the budget schedule and how it interfaces with the evaluation/ compensation occurred. The raise would be effective depending on DFA and they could say no. Mr. Propst commented that any raise over 10 percent requires the DFA secretary to sign off on and he noted that DFA sat on a raise he submitted for over a year; in fact, DFA could postpone signing off on any raise.

Should the evaluation be in sync with the budget process so it is within the budget? The current policy includes a timetable which makes the evaluation coincide with the budget process and starts in January. According to Ms. Peery-Galon it is best to include the merit/performance raises within the appropriation request in September.

The compensation process should be included within the policy as a directive to the Board. The process may be better addressed at the closing of the fiscal year but before September. Summer vacations could be problematic in the evaluation process. If all the Board members attended the retreat the evaluation could be handled then.

Ms. Pittard suggested including within the policy that any deviation from the schedule requires a majority vote.

Noting that usually the entire Board attends the retreat, the retreat was selected as the preferred time to conduct the evaluation.

For transparency purposes, the open session discussion on compensation should occur in a regular meeting in Santa Fe. Ms. Winter pointed out that the Board meeting held at the retreat is not webcast. ED compensation would be agendaized for the next Board meeting following the retreat.

There was consensus to set the last week of July as the permanent date for the retreat.

Staff noted that June is a very demanding month for the agency. Consensus was to have the written evaluation materials completed for the July retreat when a full performance evaluation discussion will occur.

The alignment that the State Auditor brought up was to establish a process for compensating the ED to align with the statute and the administrative code; that has been addressed throughout the draft.

In regards to compensation, Mr. Melia said he has no concept what an ED running a \$15 billion fund earns. Ms. Pittard noted that the national comparison is relevant even though PERA is unable to pay

that amount. However, it's important to see what the universe pays. Opinions have been aired that it was inappropriate for cabinet secretaries to earn less than the ED. PERA's ED is responsible for a monthly \$1.6 million payroll.

Mr. Leiderman said he and the General Counsel will provide the necessary materials for the Board to make an educated decision – it is part of the Board's fiduciary responsibility to make an informed decision. Data will be provided and typically the head of HR will gather the necessary comparables etc. A consulting firm can be hired to provide a compensation study. Also, HR will provide a history of the ED's compensation. Ms. Peery-Galon said there are comparables with SIC and ERB and the State Treasurer. There is a comparison survey from NASRA.

Dr. Kohlasch recommended that the responsibilities of the Board be fully reviewed within the policies and procedures.

The following points were noted:

- The Board's accomplishments have benefitted the pension plan and unfortunately overshadowed by its contentiousness
- Strengthening language regarding reprimands, sanctions, and disciplines was recommended
- The City of Albuquerque's enforcement of order at a meeting was discussed
- Adhering to Robert's Rules to maintain order was recommended
- The state has a removal sanction granting the board the ability to expel a board member
- Linking disruptive behavior at meetings to removal of a board member should be investigated

A discussion regarding missing four consecutive unexcused Board meetings occurred and it was determined that rather than consecutive it should be unexcused meetings in a year.

The ED's authority to express positions on pending or potential legislation absent Board authority was discussed as follows:

- If the Board hasn't taken action on an issue and it is not an emergency, what authority is the ED granted to speak on behalf of the organization?
- Currently the language authorizes the ED to appear before legislative committees and advise only on positions taken by the Board
- The language does not extend to taking a position on proposed laws or other issues that the Board has not acted upon

There was Committee consensus that:

- The ED must have the authority to provide facts/information but not opinions to the legislature
- It is not in the Association's best interest for the ED's authority to be limited. The ED needs to be able to talk to the legislators in real time as real decisions are being made, otherwise PERA is not at the table
- Based on the ED's institutional knowledge, experience with the Board, the ED may express views and provide information on legislative matters in the best interest of the system, thus providing broad latitude to exercise judgment and knowledge and make that available within the process
- The ED needs a seat at the table and must be able to speak for the best interest of the plan
- The institutional level of intelligence and knowledge resides with the ED and losing the opportunity to provide that to the legislature is a real disservice to the membership

Recognizing the legislature can affect PERA operationally (budget) and plan designs, the question

arose of whether the ED should be granted authorization to discuss anything that impacts the operations of PERA. Mr. Propst offered a third issue: governance. Last session the notion of additional Board representation for retirees came forward and lacking direction from the Board, he was unable to engage in that conversation.

Regarding hiring, there was consensus that:

- The ED has full authority to hire who he/she thinks best can accomplish the job
- Board oversight should be limited to review of the candidates' credentials to meet qualifications
- The section requires modification to meet timing circumstances
- The ED when hiring will fully disclose the individual's qualifications
- The section has a cart-before-the-horse issue
- The ED be allowed to make an unconditional offer and report to the Board within the ED report at the next regular meeting
- The hire remains valid so long as the individual meets the minimum qualifications for the position
- If the ED hired inappropriately, the Board can fire the ED
- In the event the candidate fabricates credentials and the ED hires that individual without verifying the credentials, the Board should express their concerns
- The Board only has discretion over the ED
- The statutory authority delegation will be cited within the policy

Regarding the insertion of the CIO within the draft policy reporting to the Board, Ms. Pittard offered to check the Investment Policy (IP) and correct this policy to reflect that. Mr. Leiderman said the CIO was incorrectly inserted throughout the document regarding direct reporting and it is not under the Board's purview to manage the CIO, although not engaging in outside employment or having conflicts of interest for the CIO should be in the IP.

A new section on risk management and data recovery was added that recognizes risk management both on the investment and operational side. This is a fairly new recognized risk and from a governance standpoint it is important to focus attention on it.

The charters will be attached and linked to the policy.

The ED's charter will be presented in final format for approval to ensure authorization is granted.

Next steps: Chair Davis, Ms. Pittard and Mr. Leiderman will work on the revisions and present the entire Policies & Procedures to the Rules & Administration for approval at the next meeting. Executive Assistant Winter said she expected most of the Board members to be present at the September 10th committee meetings.

5. Other Business

None was presented.

6. Adjournment

Having completed the agenda, Chair Davis declared this meeting adjourned at 12:10 p.m.

Approved by:



Lawrence Davis, Chair
PERA Rules & Administration Committee

ATTEST:



Wayne Propst, Executive Director