

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
SPECIAL BOARD MEETING

February 12, 2019

This annual and monthly meeting of the Public Employees Retirement Board was called to order by James Maxon, Chair, at approximately 10:10 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, Vice Chair
Claudia Armijo – State
Tim Eichenberg - *Ex-officio*
Natalie Cordova – State
John Melia - Municipal
Patricia French - Municipal
Dan Mayfield - Retiree
Loretta Naranjo Lopez - Retiree
Maggie Toulouse Oliver - *Ex-officio*
Steve Neel - State
Lawrence Davis - Municipal

Member(s) Absent:

None

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff/General Counsel
Dominic Garcia, Chief Investment Officer
Greg Trujillo, Deputy Executive Director
Karen Risku, Deputy General Counsel
Dana David, Assistant General Counsel
Renada Peery-Galon, ASD Director
LeAnne Larrañaga-Ruffy, Director of Equity
Anna Williams, Chief Financial Officer
Karyn Varela, Deferred Compensation Plan Manager
Joaquin Lujan, Director of Rates and Credit
Isaac Olaoye, Investment Analyst
Trish Winter, Executive Assistant
Christine Ortega, Portfolio Manager
Emily Garcia, Financial Specialist

Others Present:

Harvey Leiderman, Board Fiduciary Counsel
Lenora Chavez, Retiree
Gary Haug
Paul Lium, Nationwide
Tom Toth, Wilshire
Annette Martinez Varela, AODA
Rick Tedrow, District Attorneys Association
Randy Saavadra, Former AODA Director
Richard Flores, DA's Office
Adam Hathaway, Parliamentarian

2. Approval of Agenda

Parliamentarian Adam Hathaway was sitting with the Board at the dais and Ms. Naranjo Lopez said he should not be. She asked who made the decision to hire him and how much is the contract. She said this matter needs to be addressed before taking action on the agenda and this is another issue of management making decisions without Board approval.

Mr. Mayfield introduced the following motion:

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

Mr. Melia seconded and the agenda was approved, with Ms. Naranjo Lopez voting against.

3. Approval of Consent Agenda

Ms. Naranjo Lopez requested the removal of items 1 “Approval of December 11, 2018 and January 8, 2019 Minutes, and 2 “Approval of Revised Board Policies and Procedures Consistent with Prior Board Actions.” She indicated that the minutes failed to attach Ms. Lenora Chavez’ written statement. Item 2 includes procedures that the Board has not yet discussed.

Chair Maxon said he would make sure Ms. Chavez’ comments are attached to the record.

Mr. Melia introduced the following motion:

“RESOLVED, that the PERA Board approve the consent agenda with items 1 and 2 removed.”

Mr. Mayfield seconded and the agenda was approved by unanimous voice vote. Consent agenda item 2 was added to the agenda as item G.

4. Current Business

A. Election of 2019 Board Officers

Chair Maxon reminded the Board that Jackie Kohlasch, Loretta Naranjo Lopez and Natalie

Cordova were nominated for the position of Chair. Ms. Cordova has tendered her resignation from the Board and he invited additional nominations at this time. None were offered.

Ms. French pointed out that the rule indicates the election will occur the first meeting of the new year. That meeting was cancelled, and she asked whether action was taken to waive that rule and hold the election at a special meeting.

General Counsel Pittard noted that on January 8, 2019 the Board adopted a rule to accept nominations for Chair and Vice Chair at the first Board meeting of the calendar year, and to hold elections the first regular meeting of that year. The rule was further expanded to allow nominations from the floor on the day of the election. Because the January 31st meeting was cancelled, the agenda was moved forward to today's special meeting. The Board can postpone action if they so choose until the next regular meeting.

Ms. Armijo noted that the next regular meeting is February 28th, and she suggested holding the elections at that time.

Mr. Davis asked whether technically, since item G, "Approval of Revised Board Policies and Procedures Consistent with Prior Board Action" has not been acted upon, this discussion was moot. Ms. Pittard said it was not necessary to act on the policies and procedures first. She agreed the motion clearly identified the regular meeting, and again advised the Board that they could choose to hold the election in February.

Mr. Melia noted that the entire Board was present today and he supported moving forward with the elections.

Ms. Pittard said that the action the Board took was to hold nominations at a special meeting in January and then at the regular meeting hold the elections. If the Board chose, they could suspend the rule and move forward today.

Ms. Toulouse Oliver introduced the following motion:

"RESOLVED, that the PERA Boards suspend the rule requiring that the Board officers' election be held on the first regular meeting and hold the elections today."

Mr. Eichenberg seconded.

Under discussion, Ms. Naranjo Lopez asked whether the motion on the floor followed the State's Open Meetings Act since the action was not noticed and further, was item G appropriately approved. Harvey Leiderman, Fiduciary Counsel, stated that he consulted with Ms. Pittard on Ms. Toulouse Oliver's motion.

Ms. Toulouse Oliver pointed out that election of Board Officers is on the agenda, and when the consent agenda was approved, those items were appropriately moved to item G. The suspension of a rule does not have to be noticed, and she offered to rescind her motion. Mr. Eichenberg concurred with the movant that notice to suspend a rule is not necessary.

The motion to suspend the rule passed by unanimous voice vote.

Election of Chair: The election was held by a show of hands and Jackie Kohlasch was elected chair by majority vote.

Dr. Kohlasch would assume the Chair following the elections.

Election of Vice Chair: The nominees were Natalie Cordova and Claudia Armijo.

Mr. Mayfield added the nomination of John Melia for the position of Vice Chair.

John Melia was elected Vice Chair by majority voice vote.

Chair Kohlasch thanked the Board for their support and said she would strive to do a good job and bring the Board together to find a path to solvency.

B. Approval of Resolution 19-06 Declaring a State Vacancy on the Public Employees Retirement Board

Ms. Toulouse Oliver introduced the following:

“RESOLVED, that the PERA Board approve Resolution 19-06.”

Mr. Neel seconded and the motion passed without opposition. [See page 5 for reconsideration.]

C. 2019 Legislative Session Update

On behalf of staff, Executive Director Propst congratulated the new Chair and Vice Chair.

Mr. Propst said that, since his Friday electronic update the only addition is that Representative Rehm introduced HB 544 related to PERA’s solvency, which differed from what was originally discussed with the representative. The bill calls for a contribution increase of 3 percent by the employee and employer, suspension of the COLA for one year and removal of the 90 percent cap on final average salaries level.

Mr. Propst said PERA’s bill is stalled and has encountered significant resistance from the retirees and union representatives. He reminded the Board that the passage of SB 27 was not easy. The Board directed him to assist in the passage of HB 338 and that is what he is focused on.

Ms. Naranjo Lopez said she has concern that not all of the PERA related bills have been brought to the Board’s attention, and asked when Mr. Propst was aware of the proposed bills. Mr. Propst said he has reported on every bill that has been proposed and staff has not taken a position on any of them in anticipation of the Board’s direction. SB 235 is very similar to legislation that was introduced last session and endorsed by the Board. SB 446 is a return to work bill and prior to its introduction staff did not discuss it with the sponsor. SB 452 was presented to IPOC in December and Senator Muñoz, through the LCS, reached out to PERA for technical assistance on the drafting of the legislation.

Mr. Eichenberg requested a reconsideration of item B following completion of this item.

For the record, Ms. Armijo said the Executive Director has done an excellent job of informing the Board of legislation as it has come before the various committees. Mr. Davis said he too appreciates the updates and the fiscal impact information.

In response to Mr. Melia's questions, Mr. Propst said many times PERA-related bills are introduced without consultation from the agency.

B. RECONSIDERATION: Approval of Resolution 19-06 Declaring a State Vacancy on the Public Employees Retirement Board

There was no objection to reconsideration of this item.

Mr. Eichenberg noted that the vacant position term has close to three years remaining. He suggested adding the state position to the 2019 election schedule. He noted that, under state law, if there is a vacancy prior to the end of a term an election should occur.

Mr. Eichenberg proposed that the Board suspend its rules and allow the state member to run in September for the remainder of the term.

Ms. Pittard said the PERA Act regarding filling vacancies requires the Board to appoint someone to serve for the remainder of the vacant term. The Board could move forward to change the statute to pursue the point Mr. Eichenberg brings forward.

Mr. Eichenberg suggested that PERA consider introducing legislation to ensure that PERA's election laws conform to the state law.

In the event PERA endorses legislation, Ms. Armijo suggested PERA ask the bill sponsor to add an amendment changing the statutory provision. Ms. Toulouse Oliver said that Thursday is the deadline for bill introduction.

If that's the Board's position, Mr. Propst said he would pursue either developing legislation or asking a bill sponsor to include it as an amendment.

Ms. Pittard said in regard to the current vacancy an appointment is necessary to comply with the statute and administrative rule. The passage of legislation as proposed by Ms. Armijo will not impact the current vacancy. Rulemaking will also be necessary. Further, the nominating petitions for the upcoming election are due in April.

Ms. Toulouse Olive introduced the following motion: That the PERA Board direct staff to work with the Legislative Council in drafting a bill to amend the statute allowing a vacated Board position to be filled at the next Board election. Mr. Eichenberg seconded, adding that the Director is being asked to accomplish this by Thursday, February 14th. [This motion was withdrawn.]

Ms. Pittard said this action was not noticed on the agenda; however, staff is aware of the direction the Board wants staff to take and will try to either develop a standalone bill or ask for an amendment to an existing piece of legislation.

D. 1. SB 235 Investment Performance Based Compensation

Mr. Propst said this bill is similar to a 2018 PERA-endorsed bill. It is meant to give ERB and PERA the authority to set compensation for investment staff. He talked to Senator Muñoz about the

concern Ms. Armijo raised that, the bill requires mandatory consideration by the Board. The sponsor has agreed to replace “shall with “may” to address that concern and to include the investment staff of the state’s Investment Committee to the bill.

Ms. Armijo said she understood that the PERA Board has already approved a new compensation arrangement for investment staff, based on performance. Mr. Propst said that did not happen. There were changes to the Investment Policy but that did not include approval of compensation or changes from classified to exempt.

Ms. Armijo in order to move forward with a performance-based compensation plan for investment staff, SB 235 is needed. She said she was willing to endorse the bill as long as the amendments, as outlined by Mr. Propst, are included.

Mr. Propst said the bill applies to exempt investment staff and that compensation will not count toward PERA retirement.

Ms. French advocated neutrality on this bill, and noted that one of PERA’s Board members is among ERB’s investment staff.

As ERB investment staff, Mr. Neel said he would recuse himself from this matter.

Ms. Naranjo Lopez recommended reviewing the minutes of the last IPOC meeting before action on this bill.

Mr. Mayfield introduced the following motion and Mr. Melia seconded.

“RESOLVED, that the PERA Board support SB 235,”

Ms. Armijo said the endorsement should be contingent on the “shall” changed to “may.” There was no objection and the motion was restated:

“RESOLVED, that the PERA Board support SB 235 contingent on the “shall” changed to “may.”

The motion passed by majority [9-2] with Members Naranjo Lopez and French voting against.

Mr. Propst announced that Deputy Director Trujillo has secured a sponsor for the legislation regarding filling PERA vacancies.

2. SB 466 Public Employee Retirement Changes

Mr. Propst said this return to work bill is being introduced by Senator Griggs. The bill is complicated and repeals the 2010 bill that made most of PERA’s members ineligible to return to work with a PERA affiliate if they were receiving a pension. He discussed the points within the bill adding that it is a fairly significant expansion of return to work. PERA’s actuary has reviewed the bill and because both the employee and employer contributions will be made and the employee will not be receiving additional service credit, the actuary does not believe there would be a negative impact to the fund.

Ms. French said this would reopen the return to work policy and asked the Board whether they want to do that. She noted that previous boards worked hard to close that loophole.

Mr. Melia introduced the following motion:

“RESOLVED, that the PERA Board oppose SB 446.”

Ms. Armijo seconded and the motion passed without opposition.

Mr. Propst thanked that Board for that clear direction.

3. SB 452 Employee Retirement Solvency

Mr. Propst said this bill would give the Board the authority to increase contribution by 2.5 percent on the employee and the employer. The increase could be implemented in .5 percent increments. The bill also allows the Board to set benefit levels but requires that those levels be set to maintain a 25-year amortization period for the unfunded liability.

Ms. Toulouse Oliver said it appears the bill is attempting to shift the responsibilities of contributions and benefits to the Board rather than the legislators.

Mr. Propst said Senator Muñoz believes that, with the Board’s access to information, investment advisors and staff, and as the ultimate fiduciaries, the Board should make the determinations as outlined in the bill.

Mr. Melia and Ms. Armijo concurred with Ms. Toulouse Oliver and said the legislators have a solvency bill proposed by PERA.

Ms. Armijo introduced the following motion:

“RESOLVED, that the PERA Board oppose SB 452.”

Ms. French seconded and the motion passed without opposition.

E. Proposal for Elected District Attorneys to be Eligible for State Police and Adult Correctional Officers Plan 1

Rick Tedrow, San Juan County District Attorney, mentioned that an actuary study on the proposal of having elected and/or appointed district attorneys added to the law enforcement plan occurred. The four-year election cycle for district attorneys does not match up to retirement opportunities. It is especially difficult for district attorneys in rural areas.

Mr. Tedrow said a bill has been drafted which Senator Campos is sponsoring. They have met with the Governor’s Office to discuss the bill. The DAs are requesting PERA’s neutrality on the bill. The actuarial study indicated funds were needed and an appropriation of \$2 million was included in the bill.

As an elected official, Ms. Toulouse Oliver said she was extremely sympathetic to the request. However, without additional time to study the bill she could not support it.

Ms. French said she could support it if the proposal is prefunded and there is no impact on the fund.

Ms. Martinez Varela with the AODA, said there were 14 district attorneys and they would be required to work for 20 years.

Ms. Pittard said under the State Police plan they would be required to complete 20 years and 10 months. She confirmed the \$2 million is part of the actuarial study dated January 30, 2019.

Ms. Armijo said she appreciated that the bill was brought to the Board but more time was needed to study it. She would propose opposing the bill because it is not prefunded and there is a high level of certainty that the \$2 million will be stripped from the bill.

Ms. Armijo introduced a motion to oppose the proposed bill. Mr. Melia seconded and the motion failed by majority [4-7] voice vote.

Ms. Toulouse Oliver moved,

“RESOLVED, that the PERA Board take a neutral position on this bill.”

Mr. Maxon seconded and the motion passed by majority vote with Members Melia and Armijo voting against and Member French abstaining.

Ms. Martinez Varela thanked the Board for this work for PERA.

F. Consideration regarding,

1. The authority of the PERA Executive Director’s actions which resulted in changes in position or compensation and increases, promotions, reclassification, or other position or compensation changes for himself and other PERA staff during the past five calendar years, including a proposal to request the Office of the Attorney General to investigate and provide appropriate legal opinions and recommendations

2. The authority of PERA Board member to disclose to non-board members the January 8, 2019 Executive Session communication, including a proposal to request the Office of the Attorney General to investigate and provide appropriate legal opinions and recommendations

Chair Kohlasch invited Mr. Leiderman to the speaker table.

Ms. French asked the ad hoc committee which was appointed at a previous meeting about the progress of the investigation. She said it appears that this agenda item asked for the same thing from the AG’s office rather than following through with the Board’s unanimous decision to obtain an independent investigation.

Ad hoc committee member Mr. Mayfield said they determined they needed additional guidance as a committee. There are two ongoing investigation in this matter, one by the auditor and the other by the AG. Ms. French said the AG’s review is not a bad idea, but it is not what the Board voted to do. Mr. Leiderman offered that he had no communications with the ad hoc committee.

Anna Williams, Chief Financial Officer, said the OSA is conducting a fact finding procedure, not an investigation.

Mr. Leiderman offered a statement from a Board fiduciary standpoint, followed by recommendations. Over the past year the Board has experienced several issues that have divided them in ways that have not maximized their resources. He observed from his experience working with pension fund boards, that PERA has work to do on their core governance principles. He said PERA owes it to its membership and stakeholders to get it right: to be professional, appropriate and observe both due process and transparency.

Items F. 1 and 2 could have been avoided if PERA's governance principles were clearly stated. The first is the authority of the Executive Director to grant staff promotions and compensation increases. The second item is the confidentiality of closed executive sessions.

On the delegated authority to promote and compensate staff, members of the Board have questioned the authority that they delegated to the executive director. Mr. Leiderman said it was his opinion that the Board is not well suited to evaluate the propriety of its delegation under state law, which is why he previously recommended an independent examination, and why now he is recommending that the matter be sent to the state's highest legal officer, the Attorney General.

On the issue of confidentiality of closed session, Mr. Leiderman said that it appears there is considerable vagueness about the confidentiality of closed sessions, because he has been informed that the governing statute does not specifically state that executive sessions of the PERA Board are to be kept confidential. Further, the Board policy lacks clear definition to treat closed sessions as confidential.

Mr. Leiderman recommended the following specifics:

1. Clarify the question of the Executive Director's authority over staff in regard to promotion and compensation for the past five years. He said the question should be forwarded to the Attorney General to review as the independent investigator, rather than the ad hoc committee whose membership was questioned by the Board, another example of the disputatious conduct of the Board. This includes abandoning the ad hoc committee.

In the interim, until the AG has provided a review and the Board gains more comfort with their authority, he recommended suspending the ultimate decision making delegation that the Executive Director has had up until now, and that any decisions made on promotion and compensation during the interim period come back to the Board.

2. As a governance issue, make the policy clear that there is an expectation of confidentiality of matters discussed in closed session and that the Board pledges, as part of the Board conduct, to maintain confidentiality.

3. The Board needs a Governance Committee to be composed of representative individuals from the Board to take on policy issues, study them and make recommendations to the full Board to tie up the governance issues that have created the discord.

Ms. Naranjo Lopez said she had no confidence in Mr. Leiderman because he recommended the investigation and the Board approved his recommendation. In regards to confidentiality, she said the

Board should have been advised whether the discussion in closed session was confidential. She cited a nonprofit blog that provided additional instructions regarding spelling out the rules of confidentiality.

Ms. Toulouse Oliver asked whether the suspension of the Executive Director's authority regarding promotions and compensation needs to be handled in executive session. Ms. Pittard responded that deliberations should occur in closed session but actions needs to occur in open session.

Ms. Toulouse Oliver introduced the following motion:

“RESOLVED, that the PERA Board forward the question to the Attorney General for an independent investigation of fact and legal findings on the Board’s delegation to the Executive Director over the past five years regarding promotions and compensation.”

Ms. Armijo seconded.

Supporting the motion, Mr. Melia noted there was no cost to the membership.

Ms. Armijo said she supports the motion and does not disregard the concerns raised by Members French and Naranjo Lopez regarding the ad hoc committee. However, this was an opportunity to move forward. The Board needs a legal opinion, and the AG can provide that.

Mr. Leiderman offered to act as liaison and forward the question to the AG's Office.

A discussion ensued as to who should forward the request to the AG's Office.

Following the cancellation of the January 31st Board meeting, Mr. Eichenberg said that, in his capacity as an *ex officio* and the State Treasurer, he sent a letter to the AG's Office requesting an investigation in what he considered illegal actions by the Executive Director.

Ms. Pittard confirmed that the Board can delegate to Mr. Leiderman the authority to send this item to the AG's Office on the Board's behalf.

Ms. Toulouse Oliver clarified her motion, adding that Mr. Leiderman will forward the issue to the AG's Office on the Board's behalf. The motion, as clarified, passed by unanimous voice vote.

Stating that she has absolute confidence that Mr. Propst acted in good faith, Ms. Toulouse Oliver introduced the following motion which Ms. Armijo seconded:

“RESOLVED, that the PERA Board temporarily suspend the Executive Director’s authority regarding promotions and raises from here forward until the investigation is complete, and in the interim these items be forwarded to the Board for deliberation in executive session.”

Ms. Pittard requested clarity on pending job offers and current documentation at SPO. Ms. Toulouse Oliver said she did not want the Board to take on hiring decisions nor setting initial salaries for employees.

Ms. Naranjo Lopez proposed a friendly amendment that the executive director be placed on administrative leave during the investigation. Ms. Toulouse Oliver declined to accept.

Ms. Armijo requested an amendment that the motion applies to exempt status staff currently employed by PERA or who will be offered positions from today's dated forward. Mr. Eichenberg seconded.

Mr. Trujillo noted that the agency has pending transactions at SPO. Also, vacancies are many times filled by internal staff, and that is considered a promotion.

The amendment, underlined above, passed with Mr. Melia voting against.

The amended motion, that the PERA Board temporarily suspend the Executive Director's authority regarding promotions and raises for exempt status staff currently employed by PERA, or who will be offered positions from today's date forward until the investigation is completed, and in the interim these items be forwarded to the Board for deliberation in executive session, passed by [11-1] with Mr. Melia voting against.

Ms. Toulouse Oliver offered a motion regarding confidentiality of executive session discussion and Ms. Pittard said the Board's policies and procedures can be amended to define the trustees' expectation regarding executive session.

Ms. Toulouse Oliver introduced the following motion and Ms. Armijo seconded:

“That the PERA Board affirm the requirement in Robert’s Rule to keep discussions of executive session confidential.”

The motion passed without opposition.

Ms. Toulouse Oliver introduced the following motion with Mr. Leiderman's assistance and Ms. Armijo seconded:

“That a Governance Committee be created and empowered to evaluate and make recommendations to the full Board on revisions to the Board’s policies and procedure that will address not only the current issues, i.e., confidentiality, but also to think ahead and review the current policies and procedures for clarity and assure due process and transparency to the membership.”

The motion passed by unanimous voice vote.

Mr. Melia requested that Mr. Eichenberg share the letter he sent to the AGO with all of the Board members.

G. Items Isolated from the Consent Agenda

1. Approval of Minutes: December 11, 2018 & January 8, 2019

Ms. Naranjo Lopez said Ms. Lenora Chavez' written statement was not included as an exhibit. Also, on page two, it should read “cumulative” rather than accumulative.

Ms. Toulouse Oliver moved to approve the minutes as correct. Her motion was seconded by Mr. Maxon and the motion passed without opposition.

2. Approval of Revised Board Policies and Procedures Consistent with Prior Board Action

Ms. Naranjo Lopez said she did not agree with the three-minute rule regarding debate.

Dana David, Assistant Counsel, said the changes to the policies and procedures basically reflect the substance of a vote that the Board took in January. Part of that vote included the Robert's Rules training. During that training, Parliamentarian Hathaway strongly suggested deviating from Robert's Rule that allotted 10 minutes for an individual to speak and said three was more appropriate. There was also the issue of whether a Board chair can second a motion.

Ms. Naranjo Lopez requested that staff provide the Board packets 10 days before the next meeting.

Questions were asked regarding the cost of the parliamentarian and Renada Peery-Galon, ASD Director, said they have had trouble receiving a second quote and Ms. Pittard said the services contracted are to be under \$5,000.

Ms. French said she appreciated the training but could not support allowing the parliamentarian sitting with the Board. She said she did not approve of the membership incurring this expense.

The three-minute limit did not gain support and the Board appeared to favor Robert's Rule of 10 minutes.

Ms. Armijo said she did not support the chair seconding motions and said it was inappropriate for the parliamentarian to sit with the Board.

Ms. Toulouse Oliver said she supported having the parliamentarian present as did Mr. Melia.

Mr. Davis said the Board lacks decorum and if the parliamentarian can help, then it is \$5,000 well spent. He said he attended the Robert's Rules trainings and had it been effectively incorporated, the meeting would have been over an hour ago. Mr. Neel agreed.

Ms. Naranjo Lopez introduced a motion:

“That the PERA Board approve the changes to the Board Policies and Procedures excluding items F1 and F2.”

Ms. Toulouse Oliver seconded and the motion passed without opposition.

5. Other Business

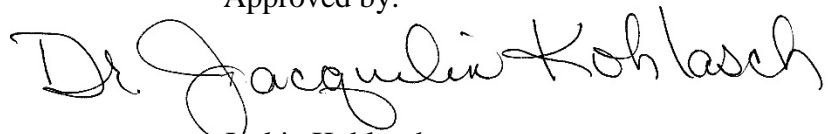
From the speaker's table, Adam Hathaway, Parliamentarian, advised the Board that without direct access to the Chair his usefulness was in question. He would do as the Board wished but it is usual that he sits next to the chair during meetings.

Ms. Armijo said from her research of best practice, board material is provided 10 days in advance of the meeting.

6. Adjournment

With no further business to come before the Board, Chair Kohlasch adjourned this meeting at 1:10 p.m.

Approved by:



Jackie Kohlasch
Chair, PERA Board

ATTEST:



Wayne Propst, Executive Director

Attached Exhibit(s):

Exhibit 1: Consent Agenda