

**NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

**RULES & ADMINISTRATION
COMMITTEE MEETING**

PERA RULEMAKING HEARING

June 26, 2014

This meeting of the Public Employees Retirement Board Rules & Administration Committee was called to order by Chair Paula Fisher at 9:00 a.m. on the above-cited date in the PERA Building, Fabian Chavez Board Room, 33 Plaza La Prensa, Santa Fe, New Mexico.

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

Members Present:

Paula Fisher, Chair
Dan Esquibel, Vice Chair
Dan Mayfield
Loretta Naranjo-Lopez
John Reynolds

Member(s) Excused:

Patty French (arrived at
approximately 9:30 a.m.)

Other Member(s) Present:

Roman Jimenez
Jackie Kohlasch
Louis Martinez
James Lewis

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, General Counsel
Greg Trujillo, Deputy Director
Sylvia Barela, ASD Director
Karen Risku, Deputy General Counsel
Jonathan Grabel, Chief Investment Officer
Judy Olson, Executive Assistant
Julian Baca, Deputy CIO
LeAnne Larrañaga-Ruffy, Portfolio Manager
Christina Keyes, Portfolio Manager
Joaquin Lujan, Portfolio Manager
JoAnn Garcia, Deferred Compensation Program Manager

Mark Montoya, Financial Specialist
Vince Jaramillo, IT

[*Exhibit 1: Sign-in Sheet*]

Others Present:

Jamie Feidler, Cliffwater
Jeffrey Braemer, TimesSquare Capital Management
Kenneth Tyszko, RBC
Bridget Tompkins, RBC
Taham Mahimwalla, RBC
Tom Toth, Wilshire

2. APPROVAL OF AGENDA

Mr. Reynolds moved to approve the agenda as presented. His motion was seconded by Mr. Esquibel and passed by unanimous [4-0] voice vote. [Mr. Mayfield was not present for this action.]

3. APPROVAL OF CONSENT AGENDA

Chair Fisher indicated that she reviewed the minutes and found them to be in order.

Mr. Reynolds moved to approve the Consent Agenda. Mr. Esquibel seconded and the motion passed by unanimous [4-0] voice vote. [Mr. Mayfield was not present for this action and arrived shortly thereafter.]

4. CURRENT BUSINESS

**A. PERA RULE 2.80.600 NMAC
Service Credit and Purchase of Service Credit
[*Exhibit 2: Exhibits A through L*]**

Chair Fisher requested that those in attendance for this item sign in [*Exhibit 1*].

Karen Risku, Deputy General Counsel, moved for the admission of Rulemaking Exhibits A through L into the record:

Exhibit A: Website Notice: PERA Board to Consider Part-Time Service Credit Rule

Exhibit B: Public Meeting Notice: PERA Board and Committee Meetings - May, 2014

Exhibit C: PERA Board Monthly Meeting Agenda - May 29, 2014

Exhibit D: Order of the Board Adopting Emergency Rule Suspension

Exhibit E: NMAC Transmittal Form, emergency amendment and integrated rule

Exhibit F: Notice of Adoption of Emergency Rule/Notice of PERA Rulemaking

Exhibit G: Website Notice Update: PERA Board to Consider Part-Time Service Credit Rule

Exhibit H: Proposed amendment to 2.80.600.10 NMAC

Exhibit I: Public Meeting Notice: PERA Board and Committee Meetings - June 2014
Exhibit J: PERA Service Credit Rule 600 presentation
Exhibit K: Part-Time Service Credit Rulemaking: Questions and Answers
Exhibit L: Written Comments on proposed amendment to 2.80.600 NMAC

Ms. Fisher asked that the record reflect the acceptance of Exhibits A through L into the record.

Mr. Propst provided a history of this rulemaking and the changes that the Board will consider today. He hoped the presentation would clear up misperceptions regarding the rulemaking. Service credit was offered to part-time employees in 1981. Pension reform discussions that began in 2009 included discussions about changing the part-time rule. He recalled that then PERA executive director Slattery was directed by the legislature to explore all options within the Board's regulatory authority that would improve the actuarial soundness of the fund and promote the principle of shared sacrifice among all PERA members.

In July 2011, the Investment and Pensions Oversight Committee (IPOC), encouraged PERA to investigate its options under regulatory authority while the legislature was considering statutory changes to that affect. AFSCME testified before IPOC with a recommendation that the plans not provide full-time service credit to part-time workers.

One of the provisions that requires correcting, stated Mr. Propst is that someone can work part time for 22 years, work full-time for their last three years and retire with a full pension: a practice known as pension spiking. If widely used it would be detrimental to the fund. The Board identified three regulatory changes: modifying the air-time purchase calculation, reducing the interest rate paid on member accounts and modifying the part-time service credit rule.

Mr. Propst said there are 393 part-time employees with five years or more of service credit and 269 part-time employees with less than five years. The average service credit for the 662 part-time employees is approximately 7.76 years with an average salary of \$21,506/per year. Two provisions in SB 27 protect employees earning less than \$20,000 annually.

General Counsel Susan Pittard said staff's due diligence included an informal survey of other state retirement systems on how service credit is earned. The majority of states prorate service credit for members working less than full time. She mentioned that full time has different definitions in different states. The PERA Act requires that service credit be posted in monthly increments. The Board does not have the authority to prorate service credit. She noted that the benefits offered by different states vary widely. Two other states were identified as providing full-time credit for part-time work -- Idaho and Oregon; however, the benefits provided are much less generous than those of PERA. There are also different vesting rights for part-time employees. PERA is an outlier in providing full-time service credit for its part-time workers without reduction.

Ms Pittard said the change being considered by the Board is reasonable as a measured approach to addressing the issue of part-time service credit and the concerns that have been raised by the oversight agencies and members of the Board. It is within the discretion of the Board and in keeping with their fiduciary responsibility.

Ms. Risku reviewed the current PERA Rule 600 noting that a part-time employee earns one month of service credit every month he or she works 20 or more hours per week or 40 or more hours in an 80 hour pay period.

The proposed rule, which was posted on the website, was drafted to address the concerns of the Board, the agency and the legislature, seeks to change the part-time service credit rule. Under the proposed rule, members who are vested on June 30, 2014 will be grandfathered in under the current rules.

Ms. Risku said the term "vested" is not defined in New Mexico law and "applicable minimum number of years of service credit required for normal retirement" means the same as vested and is what was used in SB 27.

Non-vested, part-time employees will be subject to a higher threshold of hours worked, 30 hours, to receive one month of service credit. This is a change from the initial threshold of 32 hours in the original rule approved by the Board in November 2013 which would have become effective on July 1, 2014 had the Board not suspended it. Non-vested part-time employees who do not meet the 30 hours per week threshold will receive one month of service credit after two or more consecutive months, stated Ms. Risku.

Other than the points above, there are no changes to the current rules. Employment status will be determined by employers subject to PERA audit. PERA will add a field to employer reporting to capture whether a member is employed part time or full time. Employment status is based on normal work hours not isolated variations of schedule. Employees will either fall under the part-time or full-time category.

Ms. Risku said the proposed rule will not change the age and service credit requirements for retirement eligibility which are statutory and set by the legislature.

Mr. Propst said even though pension spiking is anecdotal he has heard many stories about recipients working the last three years full-time. AFSCME, the legislature and this Board were concerned about this. He repeated that very few states offer full-time service credit to part-time employment. The Board needs to address that issue in this rulemaking.

Mr. Propst said he discussed with PERA's actuaries if making these changes would have a significant impact on the fund and it is his understanding that anything that affects 269 members out of the total 55,000 active members is unlikely to have a significant impact on the fund. However, throughout pension reform this Board and the

legislature made several changes not because they had significant impacts on the fund, but because the Board and the legislature thought they were the fair things to do.

Mr. Propst assured the Committee that the PERA Board complied with all due process and notice requirements as required by state law in passing the original rule change in November 2013. He acknowledged that the agency can always do a better job in communicating with its members; however, the Board fully complied with all notice and due process requirements. The Board heard from its membership, listened, and after the emergency rule suspension is proposing a new rule.

Chair Fisher said the proposed rules were equitable and fair for the membership.

Mr. Esquibel said he has talked to union and non-union employees. He understood after six years of retirement the benefit is totally reliant on the fund and the return on that investment that the fund is earning. After that depletion, where is the part-time employee's subsidy derived from? Ms. Pittard said the benefits are derived from the investment earnings on the trust fund.

Commenting on what is fair and equitable, Ms. Naranjo-Lopez asked the Board to consider the 53 percent funding for Judicial and Magistrate funds and the fact they are allowed to name a child as a beneficiary. She also noted the Judicial and Magistrate funds have a 3.75 percent multiplier with a higher salary and yet are not fully funded. Speaking as a Board member, Ms. Naranjo-Lopez said she has not received enough information and would have preferred an actuarial report on this matter. In fact, the decisions regarding this rule were made without discussion from the Rule & Administration Committee members and there were no negotiations as there were with the AOC.

Ms. Kohlasch asked if there was a reason the non-vested part-time employees were not grandfathered in with the existing rules. She remarked that SB 27 did not distinguish between vested or non-vested. Mr. Propst said the proposed rule was drafted to obtain the majority of the Board's support. The Board discussions demonstrated a lack of unanimity on a single solution.

Ms. Pittard said to receive a full benefit a part-time non-vested employee would have to work 60 years. However, they could receive a partial benefit after they fully vest and wait for age and service.

Public Comments

Chair Fisher invited those interested in speaking on the non-vested issue to address the Committee first.

Non-vested part-time employee of the Department of Health Survey Unit, Becky Hooper, said pension spiking is a concern and she asked how the agency knows vested part-time employees are less likely to spike than non-vested. She said the rule does not take into account the kind of work the 269 non-vested employees do for the public. She

described the evening and weekend hours she works and pointed out that inclement weather days do not apply to her. In fact, her opportunities for full-time employment are limited because the job is defined as 20-hour job. She collects the data from which public policy is made.

Ms. Hooper said she works part time because her husband is 100 percent disabled and medical treatment he requires occurs during the normal work hours – that's why she works part-time. It is likely a great many of the 269 non-vested part-time employees have similar stories. Why penalize us? She asked.

Jean Smith, non-vested part-time employee, DOH Survey Unit, said she is grateful for the staff presentation but there were no statements on how it will improve solvency in the PERA fund. In fact, Mr. Propst said it doesn't affect the fund. Ms. Smith said full-time as well as part-time employees have already made sacrifices when SB 27 went into effect and according to PERA's report to IPOC, those efforts are paying off with the plan in a better position than a year ago.

Ms. Smith said the rule is unfair and discriminates against some of the part-time employees who have relied on the benefits offered when they accepted employment. She said all part-time employees should be grandfathered in and those newly hired starting in July 2014 could fall under the new rule. Part-time employees should fall under the same tier-plan as full-time employees. She said the new rule requires some part-time employees to work 16 years to achieve vesting.

Ms. Smith said her work place would suffer greatly if the non-vested part-time employees quit and found other employment.

Ms. Smith said the proposed rule change appears to be discriminatory action against workers who cannot work full time and took jobs in which they were offered retirement benefits.

If the concern is wage spiking then, stated Ms. Smith, resolve that. She requested numbers on the cost to PERA regarding the non-vested employees to justify a legitimate concern. Closing her comments, Ms. Smith said if she aged one month for every two lived the proposed rule would be acceptable; however, that is not the case.

Norma Perez, an air quality specialist with New Mexico Environment Department has been a PERA member since 2000 yet is not vested. She said she is one of the most productive employees in her department and part of her dedication to the department has to do with her dedication as a parent of two sets of twins. Since 2000 she had taken time off to tend to her children's health needs.

If the problem is wage spiking she too suggested resolving that issue but not penalizing the part-time worker who has chosen those hours to tend to special circumstances in their lives. Ms. Perez became emotional about her special circumstances and increased workload.

Changing this rule makes it harder for New Mexicans to take care of children, the frail, and elderly.

Donald Alire, president of CWA Local 7076, said he has been impressed with the communication opportunities the PERA Board has afforded its membership regarding this issue. He appreciated the rule suspension. He understood the rule change would not make everyone happy but asked action on the rule change be postponed pending more membership involvement.

Mr. Alire closed with a citation from the PERA Board mission to preserve and protect the trust for current and future obligations. Protecting the members now so they can build and plan to have a retirement later can't be taken away. He said this rule takes that retirement planning away from members.

Chair Fisher opened the comments to vested employees.

Annette Montoya thanked the Board for their attention to this matter. She supported the rule change.

Yolanda Lucero, 20-year employee of the City of Albuquerque, part-time driver for senior affairs thanked the Board for their consideration to this matter. She described her work hours and how she cared for her ailing sister. Ms. Lucero pointed out that Albuquerque considered her a "critical employee" checking on seniors whenever there is bad weather or emergencies.

Kim Ritchey, AFSCME Local 624, spoke on behalf of a part-time employee who works for Senior Affairs, an agency that does not offer a 40-hour work week. This individual has been with the City for 15 years and she thanks the Board for their consideration. She understood that no rule would make everyone happy and she and the person she was speaking for feel this is a good, fair compromise.

Terry Walden, vested employee with New Mexico ED Air Quality Bureau, thanked the Committee for the opportunity to speak. Ms. Walden said she stands in support of the non-vested part-time employees. She said she worked part-time when her daughter was ill. She urged the Committee to listen to their membership and protect the non-vested part-time employee.

Kristine Elkin Feldbusch, a vested employee, said she started full time and now is part time to care for her two young children. She urged the Committee to consider the non-vested part-time employee.

Debbie Marcus, Taxation and Revenue, started as a full time employee and went part time to meet family obligations. If pension spiking is an issue, then that should be addressed not the non-vested part-time employees.

Ms. Marcus pointed out to the Committee that as a part-time employee she pays

the same percentage to PERA as a full-time employee.

Vested, part-time employee, Rosalina Swint, said she started her career with the courts as a full-time employee but with young children she now works part time. Ms. Swint said the non-vested should fall under the same rules as the vested.

Philip Romero, member of the 13th Judicial Court and supervisor of Ms. Swint and Ms. Feldbusch said both started as full-time employees and now work part-time. He said he supported them and the proposed change is weighing heavy on their hearts. He said the pension spikers should be targeted, not the non-vested employees. Changes should be made to the new hires not existing employees.

Diane McCoy, 11th District Court, Aztec, said she's been with the state for 16 years and plans to retire at 60 with 20 years of service credit. She said she went part-time four years ago and her employer is now unable to offer her full-time.

Speaking for the non-vested, Ms. McCoy said those people accepted employment with a benefit package that the proposed rule will take away from them. She said that was unfair.

Elizabeth Davidson Arellano said she's been vested for seven years and the proposed rule change benefits her. However, she respectfully requested that the Committee reconsider their position regarding non-vested part-time employees.

Ms. Davidson Arellano said everyone supports the fund's solvency.

With no further input from the public, that portion of the hearing was closed.

Mr. Reynolds asked whether the service credit earned by non-vested employees would remain. Chair Fisher confirmed the rule would only affect future service credit of non-vested employees.

Ms. Naranjo-Lopez said more information was needed on this matter before action can be taken. She asked what was fair and equitable when the Judicial and Magistrate funds have 53 percent funding and have a 3.75 percent multiplier. "We let them take the bank," and there was no discussion. She said these part-time employees are making an average of \$20,000 and the Board is taking benefits from them.

Ms. Naranjo-Lopez said with more information the Board will make a more just decision. She advocated waiting.

Chair Fisher said this was not an actuary issue but instead a legislative benefit issue.

Mr. Esquibel said he feels for those affected by this and he himself would feel "horrible" if he were being affected by the change. Mr. Esquibel said there has been a lot

of dialogue on this issue which is not about ethics but the fund and retirement. The rule before the Committee for action is reasonable and addresses a balance between the full-time and part-time employees.

Mr. Esquibel moved to recommend to the PERA Board to accept PERA Rule 2.80.600 NMAC, Service Credit and Purchase of Service Credit, as presented by staff. Mr. Mayfield seconded.

In view of the fact that the actuary said this change regarding the non-vested was immaterial Ms. Kohlasch recommended that all part-time employees be grandfathered in up to June 30, 2014 whether vested or not.

Chair Fisher requested that Ms. Kohlasch retain that comment for the Board discussion.

Ms. Naranjo-Lopez reminded the Committee that Judicial and Magistrate Judges did not get their pension reform through SB 27 and were given additional time to develop their pension reforms. She repeated there was not enough information to make a decision at this time.

The motion passed by majority [4-1] voice vote with Ms. Naranjo-Lopez casting the sole nay vote.

Explaining her nay vote, Ms. Naranjo-Lopez said PERA should retain the service credit rule that applies for the part-time employees because the Board lacks sufficient information to make this decision.

Ms. Pittard reminded the Committee that this item will be heard by the Board and at that time further discussion can occur.

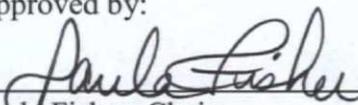
5. Other Business

None was presented.

6. Adjournment

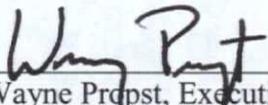
Having completed the agenda and with no further business to come before the Committee, Chair Fisher declared the meeting adjourned at approximately 10:50 a.m.

Approved by:



Paula Fisher, Chair
Rules & Administration Committee

ATTEST:



Wayne Probst, Executive Director

Attached Exhibits

Exhibit 1: Sign-in Sheet

Exhibit 2: Exhibits A through L