

NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
SPECIAL BOARD MEETING

May 7, 2019

This annual and monthly meeting of the Public Employees Retirement Board was called to order by Jackie Kohlasch, Chair, at approximately 9:10 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 preceded the Pledge of Allegiance which indicated a quorum with the following members present:

Members Present:

Jackie Kohlasch - State, Chair
John Melia - Municipal
Claudia Armijo - State
Tim Eichenberg - *Ex-officio*
Dan Mayfield - Retiree
Loretta Naranjo Lopez - Retiree
Steve Neel - State
David Roybal - State
Maggie Toulouse Oliver - *Ex-officio*
Patty French - Municipal

Member(s) Absent:

James Maxon – County
Lawrence Davis - Municipal

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff/General Counsel
Dominic Garcia, Chief Investment Officer
Greg Trujillo, Deputy Executive Director
Misty Schoeppner, Deputy General Counsel
Renada Peery-Galon, ASD Director
Anna Williams, Chief Financial Officer
Trish Winter, Executive Assistant

Others Present:

Adam Hathaway, Parliamentarian	Nora A. Anaya, LULAC
Lenora Chavez, Retiree	Jake Salazar
Sylviana Diaz-d’Ouille, AFSCME Retiree	Joan Marantes, Retiree
Lee Caruana, Retiree	John Doran
D. Martinez, Retiree	Frank Ortega, Member

Others Present (cont.):

Victor P. Baca, Retiree	Cip Roy
John E. Rivers, ROE	Joe Quintana
Dan McKay, <i>Albuquerque Journal</i>	Donny Mata, Retiree

Anna Caruana, Retiree
Ricky Anaya, LULAC

Don Wencewicz, Retiree
Morgan Lee, Associated Press

2. Approval of Agenda

Mr. Melia moved to approve the agenda. Mr. Neel seconded. The motion passed by majority [7-2] voice vote with Ms. Armijo and Ms. Naranjo Lopez voting against. [Ms. French was not present for this action and arrived shortly thereafter.]

Explaining her vote, Ms. Armijo stated that in her opinion item 3.B, “Approval of FY20 Operating Budget,” is improper. The discussion regarding exempt staff salary increases should take place in executive session.

3. Current Business

A. Approval of Investment Procurement Policy

Mr. Melia, Chair of the Investments Committee, moved to approve the policy. Mr. Mayfield seconded.

Ms. Naranjo Lopez said that her recommendations for changes to the policy were sent to staff and the Board. Some of her recommendations are as follows:

- Section 2, add: “Including periodically, every four months, Board monitoring to verify whether investment staff are qualified to procure investment managers, and whether investment staff are fulfilling their fiduciary and statutory duty to invest under the circumstances of a funding gap, if applicable.”
- Section 5, add to definitions of Board Investment Strategic Consultant, CIO Investment Consultant, SmartSave investment consultant; Investment Manager: “That [Board Strategic Consultant, etc.] shall at all times be registered under federal and state law either as a broker/dealer or an investment manager to help ensure compliance with the fiduciary laws and to help improve investment performance.”
- Section 5, rename ‘External Legal Counsel’ and add that, “Nothing in this policy shall limit PERA Board member access to the external legal counsel for the general counsel and CIO as part of the PERA Board’s fiduciary and statutory duty to periodically monitor staff or other PERA-related duties ...”
- Section 5: add a new External Legal Counsel definition; add new term, Fraudulent Practice; add Board Member Consultant;
- Section 6: Add language to the introductory sentence to identify when the FRP or RFI process is not necessary
- Section 7: Redefine the CIO’s role as “recommender” rather than “selector”
- Add provision requiring fees and total cost to be taken into account
- Add further reporting duties to the Board by the Deputy CIO

Ms. Toulouse Oliver characterized Ms. Naranjo Lopez’ recommendations as substantive.

Ms. Naranjo Lopez advised the Board that her recommendations were sent to all of the Board members. Chair Kohlasch said she received her copy late last night after 10 p.m.

Ms. Naranjo Lopez moved to accept the amendments and Ms. Armijo seconded. [This motion was later withdrawn]

Without adequate time to review the proposed amendments, Ms. Toulouse Oliver said she could not support the amendment.

Ms. Naranjo Lopez withdrew her amendment so that the policy and her recommendations can be reviewed at the May 30th meeting. There were no objections to the withdrawal.

Ms. Armijo moved to amend the main motion and defer the action to the May 30th meeting, thus providing additional time to review Ms. Naranjo Lopez's recommendations. Ms. Naranjo Lopez seconded.

Mr. Melia expressed concerns with the proposal to postpone and asked that CIO Domenic Garcia speak to it.

CIO Garcia said he received the amendments this morning. The policy before the Board is a procedures document which synch/operate in unison with the Investment Policy. The amendments offered by Ms. Naranjo Lopez are more suited to the Investment Policy than this procedures document.

Appreciating staff's position, Ms. Toulouse Oliver suggested approving the procurement policy today and amending it in the future.

Mr. Neel asked whether not having the procurement policy in place would open PERA to an audit finding. Mr. Garcia said the auditor will look to make sure the documents are in synch and it is possible that it could be a finding.

Ms. Naranjo Lopez withdrew her amendment.

Anna Williams, Chief Financial Officer, advised the Board that, depending on what the auditors review, not having a policy and procedures will potentially cause an audit finding. She said it was prudent to have a policy.

Ms. Naranjo Lopez said she disagreed with staff. Not including the amendments prevents the Board from meeting its fiduciary responsibilities.

Mr. Garcia confirmed that PERA has a procurement policy in place.

Ms. French said it would benefit the Board to wait until the May 30th meeting.

Mr. Garcia repeated that the amendments proposed by Ms. Naranjo Lopez are not applicable to the Investment Procurement Policy but are applicable to the Investment Policy document.

Mr. Neel said the current in-place procurement policy is dated and not in conformance with the Investment Policy. The policy before the Board is how the investment division carries out asset allocation. The Board authorized investment staff to execute the asset allocation and the policy before the Board is the tool to do so. Without approving it, staff has one hand tied behind its back.

Mr. Neel said he appreciates the amendments that were proposed; however, he did not appreciate receiving them at 10 p.m. last night.

Ms. Naranjo Lopez said she has stated, over and over, that “I have no confidence in staff, in our legal counsel” as well as that “we’re not meeting our fiduciary responsibility.” She reminded the Board of PERA’s \$6 billion unfunded liability.

Ms. Armijo said she appreciated staff’s frustration; however, she too has lost confidence in staff and will be voting to postpone the policy to provide additional review time.

Mr. Mayfield called for the question and Ms. Toulouse Oliver seconded, adding that she would support the postponement in good faith that the policy will be voted on May 30th. The motion to call for the question passed.

Chair Kohlasch repeated the motion on the floor: **To postpone the Investment Procurement Policy until the May 30th meeting. The motion passed by majority hand vote.**

Mr. Roybal understood the policy needs to be in place and said he voted to postpone because he needed time to review the amendments.

Ms. Naranjo Lopez said “as Board members, we are not here to be rubber stamps for staff.”

Mr. Melia moved to take a quick recess. Mr. Roybal seconded and the motion passed.

[The Board recessed from 9:50 to 10:00 a.m.]

B. Approval of FY20 Operating Budget

[Exhibit 1: Office of the State Auditor letter, re: PERA Raises, dated May 7, 2019]

Mr. Melia moved to approve the FY20 Operating Budget. Mr. Mayfield seconded.

Ms. Armijo said the Board passed a resolution on February 12, 2019, mandating that all future salary increases for exempt staff come before the Board in executive session. She asked which staff member approved the agenda which includes raises that are in the FY20 operating budget, rather than having the mandated executive session.

Executive Director Wayne Propst responded that the agenda was approved by the Board’s Chair and Vice Chair.

Other than the signatories on the attestation page, Ms. Armijo asked which other staff reviewed the 2020 operating budget for accuracy. Mr. Propst said he, Deputy Director Trujillo, and CFO Williams reviewed it.

Renada Peery-Galon, ASD Director, pointed out that this operating budget is based on the budget request the Board approved in August 2018.

Ms. Armijo said she reviewed the projected salaries included in the budget and found, based on 2,080 hours, discrepancies. In fact, it appeared the increases for some were not the 4 percent the budget states, but instead just under 5 percent.

Ms. Armijo said that she disputes, as does the Secretary of DFA, that these raises are mandated by HB 2. Further, any Board member can ask PERA counsel for a legal opinion interpreting the law, and she requested that of General Counsel Pittard regarding HB 2.

Ms. Armijo said she developed a spreadsheet and checked the salary of every single PERA employee and found that this budget awarded each employee just under 5 percent increase under the guise that the 4 percent authorized increase was being issued. She asked who reviewed the math and how the discrepancy can be explained.

Ms. Peery-Galon said 2,080 hours is based on 26 weeks and in FY2020 the count is 26 weeks and 2 days (26.2) so salaries are factored on 2,096 hours for this budget as directed by DFA.

Ms. Armijo said she spoke to an HR person who advised her that it was 2,080 hours. Further, if the 2,096 hours, as staff purports, is correct, staff should have explained that to the Board.

Ms. French said she too reviewed the spreadsheet and found that the 4 percent increase of the hourly rates did not agree. She said the Board should have been advised of the 2,096 hours.

Ms. Peery-Galon said the hourly rate is based on the 4 percent. She explained that 2020 is a leap year and the fiscal year ends on a Tuesday. Every fiscal year accounts for different pay periods.

As a budget director for a state agency, Mr. Roybal confirmed Ms. Peery-Galon's statement that there are odd years. Typically, it is 2080 but with extra carry-over days or a leap year the number changes.

Ms. Armijo said that this issue amplifies what she said during the discussion of the procurement policy, which is, she has no confidence that staff is providing the Board with accurate information. She said she could not approve this budget with 4 percent raises for exempt staff when these same staff received huge raises in 2018. The executive director is projected to make \$174,000. There are people working for PERA making \$30,000. She reminded the Board that this money does not come out of the general fund, but instead the trust fund and the Board, as trustees, are the gatekeepers.

Ms. Naranjo Lopez referred to an April 29th memo signed by Chair Kohlasch advising that the FY2020 PERA budget will not be submitted by the deadline. She asked why staff was ready to self-report the matter to the Office of the State Auditor but choose "never to report the unauthorized FY19 budget submission to the legislators at the beginning of the legislative session."

Continuing, Ms. Naranjo Lopez said staff has not been able to show when the Board approved the budget. The budget, she stated, went to the legislature without Board approval. She said there was unanimous Board action to refer staff pay raises above the statutory 10 percent maximum per year to the state for investigation and possible prosecution and claw back. She said that salary increases should be removed from the budget until the investigation is completed. Further, the audit should include details of recent manager selections and procurement as well as a forensic audit to verify that investment staff has not accepted bribes or kickbacks.

Mr. Propst confirmed that following the August approval of the FY19 appropriation by the Audit & Budget Committee, staff neglected to place it on the Board's consent agenda. Mr. Propst accepted responsibility for that. That error was self-reported by the agency to the LFC, the Board's external auditor and the Board's internal auditor. The FY19 appropriation request was placed on the Board's March consent agenda and approved at that time.

Mr. Melia read the State Auditor's letter addressed to the PERA Board of Trustees into the record [*See Exhibit 1 for entire recital*]. The Office of the State Auditor (OSA) acknowledged receiving complaints that contained allegations of fraud and misconduct, with regard to pay increases of PERA executive staff and its Executive Director. The OSA said what was identified is an actual conflict between the applicable statutes, administrative code rules, and policies and procedures of the PERA Board of Trustees. It was noted that OSA's review of available evidence suggests that the Executive Director acted reasonably and within his authority in meeting with and obtaining Board approval for the proposed raises. The OSA said the Board should take immediate steps to resolve the conflict between applicable law, administrative rules, and Board policies and procedures to prevent these issues from recurring. The OSA mentioned that the timing and nature of the dispute, as it relates to public trust and confidence, is problematic. Within the letter it was noted that the Board has the authority to appoint the Executive Director and set salary.

Further, the OSA acknowledged receiving a letter from Board Chair Kohlasch regarding the late submittal of the FY20 budget and he stressed the importance of the Board acting as a whole to satisfy its duties and fiduciary responsibilities. The OSA stated that the Board's failure to approve and submit PERA's Operating Budget for FY20 by the statutory deadline of May 1, 2019 "was reckless or negligent, or both, and coupled with the Board's lack of focus on its fiduciary responsibilities puts our retirees and future generations of retirees at risk. The Board's behavior is unacceptable and harms the fund's membership..."

In response to Mr. Eichenberg's question, Ms. Peery-Galon said the hourly rate is not fluctuating rather it is the number of hours in a fiscal year vary.

Regarding the FY19 budget incident that was self-reported, Mr. Eichenberg asked whether it appeared within the audit. Mr. Propst said it did not because the auditors determined it was not a sufficient incident to warrant a finding. He added that the Board subsequently approved the FY19 appropriation request.

Mr. Eichenberg said he has reviewed Mr. Propst's responses that have appeared in the press regarding the allegations in which Mr. Propst defended by past practices. Mr. Eichenberg understood those practices occurred in 2004. He said it was wrong and he hoped to move past these problems and work in the best interest of the trust.

Mr. Propst said he too looks forward to moving on. The State Auditor's conclusions were not a surprise and he agreed that it should have been cleared up six months ago. For two years, staff has tried unsuccessfully to assist the Board in revising its policies and procedures. The Board is the only entity who can set its policies and procedures. "This could have and should have been dealt with, not through the media, not through calls for investigations, not through misinformation but through a review of the facts and a constructive dialogue...to ensure the Board's decisions are carried out..." On behalf of PERA staff, Mr. Propst assured the Board that they were ready to work with them.

Referring to a document from the State Auditor, Ms. French said it appears from that opinion that all pay raises for Mr. Propst need to come through this Board and be voted on in open session.

Ms. Armijo declared Ms. French's statement as being exactly right. She said the legislature mandated in Section 10-11-131 that the Board has the authority to set the executive director's salary and perhaps that of other exempt employees.

Ms. Armijo said she appreciates many of the comments of the State Auditor and that she had

brought many of these issues before the board chair and vice chair last year. Additionally, when she was reviewing the state sunshine portal, she realized that PERA executive staff had received a number of high raises. She said she contacted Mr. Propst to obtain documentation regarding the raises, i.e., delegation of the authority for the Board chair to approve raises. Mr. Propst informed her that there was no resolution and that the approval was a past practice. Section 10-11-131 states the Board “shall” set the wages and that needs to be accomplished in an open meeting by the entire board. She requested that general counsel provide a legal opinion on 10-11-131.

Ms. Armijo said although the State Auditor’s letter has very useful information it is not a legal opinion. The Board requested a legal investigation of the practices and a legal opinion from the Attorney General.

Ms. Naranjo Lopez requested that Ms. Peery-Galon provide a history of Mr. Propst’s salary increases as well as all exempt staff. She said it was insulting that the executive director was providing raises while arguing to take 2 percent from the retirees.

For context, Ms. Peery-Galon said PERA’s operating budget for FY19 is 24 percent of 1 percent to the PERA fund; salaries and benefits, 5 percent of 1 percent to the fund. She noted that between fiscal year 2009 and fiscal year 2019, state employees received two raises.

Mr. Melia said that PERA has lost investment staff to higher wages. He recalled that Mr. Eichenberg provided large raises to retain and recruit valuable staff at the Treasurer’s Office. PERA has to have the best and the brightest people. For a \$16 billion fund, the executive director’s wage is miniscule.

Mr. Neel said the State Auditor spoke clearly and Mr. Propst is owed an apology. He asked Mr. Propst whether removing his ability to hire exempt positions has harmed the agency. Mr. Propst responded that there are currently two unfilled exempt positions and in the beginning of FY20 there will be three more. Not filling those positions could impact the agency particularly in the investment arena.

Mr. Neel said as fiduciaries, the Board needs to hire, retain and compensate great people to work for PERA. He urged the Board to look to the future versus looking to the past.

Ms. Toulouse Oliver said the Board needs to figure out the path forward to sustain the fund, provide a quality of life for the current retirees and preserve the fund for the active employees. Investments no longer provide the returns they had in the past. The Board continues to devolve into personal disagreements thwarting progress. With the Governor’s task force to investigate the questions around PERA, Ms. Toulouse Oliver said there may be legislation that severely constrains the Board’s authority. She urged the Board to work together and introduced the following motion:

Remove the 4 percent increase for exempt staff for future discussion. Mr. Eichenberg seconded.

Stating she agreed with the Secretary, Ms. Armijo said it was unfortunate this was being conducted in a public meeting. She said this is not personal but about the law. The Board previously voted to discuss this matter in executive session and it was the Chair’s approval of this agenda item that precluded the Board in doing so.

The motion passed by majority [7-3] voice vote. [Ms. Toulouse Oliver excused herself from the remainder of the meeting.]

Ms. French said she sympathizes with the rank and file employee. It appears exempt employees of PERA have received numerous large raises. Ms. Peery-Galon noted that many investment staff was moved from classified to exempt and there were pay band adjustments. Mr. Propst identified the exempt staff that has received performance increases during his seven-year tenure.

Ms. French stated that when Mr. Propst received a raise she was the PERA chair and she was the one owed an apology because staff never informed her that the Board needed to take action in open session. She assumed it would have been approved.

Ms. Armijo said the Board also violated the Open Meetings Act. Taking action in executive session invalidates that action and Mr. Propst's raise, at a minimum, is invalid. Further, she said the governor has no power to determine what Mr. Propst and staff are paid.

Ms. Armijo asked Mr. Propst if he would leave his administrative position if the 4 percent raise is not approved. Before receiving an answer, she pointed out that PERA has 87 FTEs compared to most other cabinet secretaries who manage upwards of 2,000 FTEs and are paid less than \$130,000. She assured the Board that there would be a line of qualified administrators desiring the job if Mr. Propst left the position.

Regarding the three expansion positions, Ms. Peery-Galon said they have not yet been created because it requires approval of the budget. She explained that a position is created at the mid-point salary and can be hired with a salary within the band.

Mr. Eichenberg said Mr. Propst's raise, which was deliberated in executive session, should have been voted on in public. He and Mr. Propst disagree on the interpretation of the statute and he doubted they would ever agree on it.

Referring to Jennifer Lehman's April 30, 2019 email [*Exhibit 2*], Ms. Naranjo Lopez said Ms. Lehman is more qualified than PERA's CIO. The member cited a *La Voz* article that she found misleading and asked why PERA could not match market returns.

Ms. Naranjo Lopez pointed out that the State of Nevada has one staff person taking care of their investments and they are doing much better than New Mexico. She repeated that she wants a forensic audit on PERA's investments.

Chair Kohlasch repeated the motion on the floor:

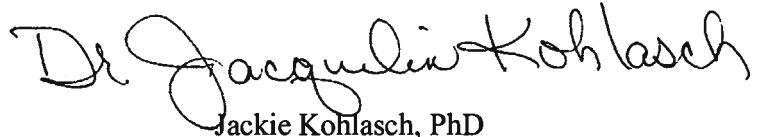
Approve the FY2020 Operating Budget with the removal of the 4 percent raise for exempt employees. The motion passed by unanimous voice vote.

A member texted Ms. French during the meeting and asked how much the parliamentarian is paid and how long will PERA retain him. Ms. Peery-Galon said there were two purchase orders with Mr. Hathaway. One to train the Board on Robert's Rules and the other to provide assistance conducting the meetings. She recalled the second PO was \$2,500 and offered to provide Ms. French additional information.

5. Adjournment

Having completed the agenda, and upon motion by Mr. Melia and second by Mr. Roybal, Chair Kohlasch declared this adjourned at meeting 11:30 a.m.

Approved by:



Jackie Kohlasch, PhD
Chair, PERA Board

ATTEST:



Wayne Propst, Executive Director

Attached Exhibit(s):

Exhibit 1: Memo from the Office of the State Auditor, re: PERA Raises dated 5/7/19

Exhibit 2: Email from Jennifer Lehman, dated 4/30/19