

**MINUTES OF THE NEW MEXICO
PUBLIC EMPLOYEES RETIREMENT ASSOCIATION
RULES & ADMINISTRATION COMMITTEE MEETING
September 13, 2016**

This meeting of the Public Employees Retirement Board Rules & Administration Committee was called to order by Committee Chair Paula Fisher at approximately 10:45 a.m. on the above-cited date in the PERA Building, Senator Fabian Chavez, Jr. Board Room, 33 Plaza La Prensa, Santa Fe, New Mexico.

Roll was called by Executive Director Wayne Propst and a quorum was established as follows:

Members Present:

Paula Fisher, Chair
Dan Esquibel, Vice Chair
Patricia French
Jackie Kohlasch
John Melia
Cathy Townes

Member(s) Excused:

None

Other Member(s) Present:

James Maxon
Loretta Naranjo Lopez
John Reynolds
Dan Mayfield

Staff Members Present:

Wayne Propst, Executive Director
Susan Pittard, Chief of Staff-General Counsel
Greg Trujillo, Deputy Director/Chief Information Officer
Trish Winter, Executive Assistant
Karen Risku, Deputy General Counsel
Dana David, Assistant General Counsel
Renada Peery-Galon, ASD Director
Jude Perez, Deputy CIO
LeAnne Larrañaga-Ruffy, Director of Equity
Natalie Cordova, Chief Financial Officer
Kristin Varela, Portfolio Manager

Emily Lopez, Financial Specialist
Christine Ortega, Portfolio Manager
Lalleh Dayeny, Investments Division

2. APPROVAL OF AGENDA

Ms. French moved to approve the agenda as presented. Mr. Esquibel seconded and the motion passed by [6-0] voice vote.

3. APPROVAL OF CONSENT AGENDA

Chair Fisher said she neither received nor reviewed the minutes and moved on to current business.

4. CURRENT BUSINESS

A. Discussion and Action on an Attorney to represent the Board

Ms. Naranjo Lopez, chair of the subcommittee that discussed this issue, said they met September 12th at 4 p.m. in the Downtown Albuquerque Main Library. The discussion included the scope of work and cost for an attorney to represent the Board.

Chair Fisher said under the scope of work it was determined it may include advice and consultation including conflicts of interest, board governance and fiduciary matters and other any necessary advice. The subcommittee also discussed utilizing professional services for an amount under \$60,000, thus eliminating the need for a contract.

Chair Fisher identified that PERA legal staff was present at the subcommittee meeting and it was mentioned that the Board would need to develop its expectations of the Board attorney who would report directly to the Board and be separate from PERA's legal department.

Present at the meeting were Ms. Naranjo Lopez, Ms. Fisher and Ms. French along with PERA legal counsel Risku and David.

Ms. French said the Board attorney would be used on an as-needed basis and was in no way intended to be looking over anyone's shoulder. She thanked counsel for attending.

Ms. Kohlasch asked what fiduciary questions the Board may have for the proposed attorney. She said without supporting material she was not prepared to act on this item and introduced a motion to table. Mr. Melia seconded stating he too did not have enough information regarding the scope. The motion failed by majority [2-4] voice vote.

Ms. Naranjo Lopez read the scope of work for fiduciary counsel as follows:

“Contractor shall provide external fiduciary legal counsel services related to governance of public pension plan as requested by the PERA Board. Such legal services shall be limited to matters limited to fiduciary and governance advice and recommendation including but not limited to the application of Article 20, Section 22 of the NM Constitution Trust Law Principles Generally, the Public Employees Retirement Act, the Government Conduct Act and NM law applicable to the PERA Retirement System.

“Legal opinion requests from the PERA Board may include advice and consultation including conflicts of interest and consultation regarding necessary related statutory rule or Board policy amendments related to Board governance and fiduciary matters.

“In addition, the contractor shall keep the PERA Board up to date on legal developments regarding fiduciary duties, advice and consult on fiduciary liability and insurance and assist with other fiduciary matters as requested.”

Ms. Naranjo Lopez said the subcommittee discussed keeping the amount under \$60,000 and other parameters would be discussed with the selected attorney.

Ms. French pointed out that Ms. Risku and Mr. David were instrumentally in writing up the scope of services and the subcommittee is using their advice in this matter. She lauded the attorneys for their excellent guidance.

She asked that information be forwarded to all the Board members on this item before the Board acts on this.

Ms. French moved to accept the subcommittee’s recommendation and forward this matter to the Board. Mr. Esquibel seconded.

Mr. Melia praised the subcommittee for their work yesterday. The scope of services as recited by Ms. Naranjo Lopez was too much to absorb without supporting material. Additionally, the memorandum on the BoardEffect Portal raises many questions and concerns that he wanted addressed before voting on this issue. To make an educated vote, more details were required, stated Mr. Melia.

Ms. French said items in the memo were discussed at the subcommittee meeting and she added the meeting was properly noticed.

Mr. Esquibel said this is a preliminary juncture that provides an avenue for the committee to develop material for the Board to deliberate on. He said there was no

reason to hold up moving this item forward.

Mr. Maxon cautioned the Committee to avoid organizational conflict between the PERA attorneys and the Board attorney.

Chair Fisher said PERA legal staff is in support of this concept.

Mr. Melia expressed concern that this may be a duplication of services and a misuse of the fund money.

Mr. David clarified that certain circumstances could arise where legal counsel would not be able to advise the Board due to attorney-client privilege. The idea of separate fund counsel and/or criminal counsel would be for specific factual circumstance where there would be a legal conflict that the staff legal counsel is unable to advise the Board. Generally speaking that would be a rare case. Fiduciary counsel could be in place in the rare occasion that the Board would need separate advice on fiduciary counsel.

Ms. Risku agreed with Mr. Melia's comment that the "devil is in the details" and there are many administrative issues that are not yet resolved, i.e., DFA, how the contract attorney would report to the Board and Open Meetings Act concerns.

Ms. Kohlasch said she was not prepared to move forward with this item until the Committee has written information to review. She noted PERA already has contract lawyers and those duties should be reviewed. What about the AG's Office? Can PERA utilize someone from that office? asked Ms. Kohlasch.

Ms. Risku said the AG would need to be contacted about that.

Ms. Naranjo Lopez said she attended a Latino Conference where it was recommended that pension plan boards have their own attorneys. The duties of the proposed counsel are available on the BoardEffect Portal. She requested that staff make the necessary revisions and post the updated material on the BoardEffect Portal.

Mr. Propst said the details are very important. Fiduciary counsel and governance counsel is a good practice for pension boards. If the Board supports the concept, staff stands ready to draft the contract and look for guidance to other boards that use these types of services, ERB included. The procurement policy will need to clearly set out the objectives and limitations.

The motion to accept the subcommittee's recommendation and forward this matter to the Board passed by majority [4-2] voice vote. Ms. Kohlasch and Mr. Melia voted against.

Mr. Esquibel asked that the Board packet include ERB information. He also

recommended ERB provide a presentation to the PERA Board regarding their board attorney.

Chair Fisher asked that staff contact the AG before the next meeting on this matter and determine any issues regarding the Open Meetings Act.

Mr. Melia said under the right circumstances he agrees with the notion of Board counsel; however, he can't help but ask what are those specific factual circumstances that require separate legal counsel. In today's climate of budget shortfall he asked if it was prudent to spend membership funds on this.

5. OTHER BUSINESS

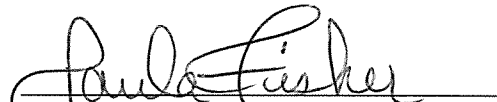
Mr. Maxon mentioned the session on leadership that occurred at the retreat and asked that a follow-up session be scheduled soon. Ms. French said she would meet with staff and schedule a time for that.

Ms. French requested staff develop material on Board travel especially for the new Board members. Renada Peery-Galon, ASD Director, said the Board orientation packet has been updated to include more travel information.

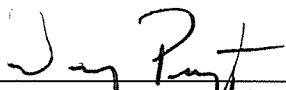
6. ADJOURNMENT

Having completed the agenda and with no further business to come before the Committee, Chair Fisher adjourned this meeting at approximately 11:15 a.m.

Approved by:


Paula Fisher, Chair
Rules & Administration Committee

ATTEST:


Wayne Propst, Executive Director