



Public Employee Retirement System of Idaho

PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
607 North 8th Street
BOISE, IDAHO 83702

MINUTES OF SPECIAL
MEETING OF RETIREMENT BOARD

The Board of the Public Employee Retirement System of Idaho met at the PERSI Administration Building, 607 North Eighth Street in Boise, Idaho at 2:00 p.m., October 27, 2016. The following members were present:

- Jody Olson
- Kirk Sullivan
- Jeff Cilek
- Celia Gould

Trustee Fisher was absent and excused. Executive Director Don Drum, Chief Investment Officer Bob Maynard, Deputy Attorney General Cheryl George, and Management Assistant Jess Simonds were also in attendance. Other persons attending the meeting were:

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|--------------|---------------------------|-----------------|---------------------------|
| Andy Snook | Attorney General's Office | Roger Gable | Attorney General's Office |
| Robert Elgee | Petitioner | Suzanne Guinard | Supreme Court |

EXECUTIVE DIRECTOR

PERSI Fund Contribution Rates: Executive Director Don Drum stated that at the October 18 Regular Board Meeting the PERSI Board unanimously recommended a 1% total contribution rate increase, however, the Board unintentionally did not indicate the effective date of the proposed increase. Chairman Olson stated that the Board was going to follow historical precedent regarding the timing of a proposed rate increase by timing the proposed rate increase with the State's fiscal year. Trustee Cilek made a motion to use a grace period so that the implementation of the rate increase would be July 1, 2018, which is the start of the State FY 2019. Trustee Gould seconded the motion, which passed unanimously.

EXECUTIVE SESSION

At 2:10 p.m. Chairman Olson stated the Board intended to move to Executive Session in accordance with Idaho Code 74-206(1)(f), to communicate with the Board's legal counsel on the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Trustee Sullivan made a motion to move into executive session. The motion was seconded by Trustee Gould, and approved unanimously via roll call vote.

Upon conclusion of the Executive Session, Trustee Cilek made a motion to return to regular session. Trustee Gould seconded the motion, which passed unanimously.

REGULAR SESSION

The Board returned to regular session at 2:45 p.m. and members of the public were invited into the boardroom. Judge Robert J. Elgee joined the meeting via conference call. Chairman Olson stated that during the Executive Session the Board discussed the legal ramifications of and the legal

options in the pending matter before the Board -- Case 01-15 Robert J. Elgee vs. PERSI. The Board then began discussing Case 01-15.

Chairman Olson stated that the proceedings before Hearing Officer Mallea resulted in Hearing Officer Mallea's issuance of his Proposed Findings of Fact, Conclusions of Law, and Recommended Order on November 19, 2015 and concluded upon Petitioner's filing of his Addendum to Elgee Brief in Response to PERSI's Exceptions on January 25, 2016. As of January 25, 2016, this matter was properly before the Board for its review. Since that time, the Board members had individually and collectively reviewed the administrative record created before Hearing Officer Mallea, including Hearing Officer Mallea's Recommended Order. On May 27, 2016, after review and discussion, the Board members determined the record created before Hearing Officer Mallea was insufficient for purposes of entering a final decision. Throughout its consideration of this matter, the Board had consulted with the Board's general counsel.

Chairman Olson continued by stating that on September 21, 2016, the Board held an additional hearing in this matter on the issues of:

- Whether Petitioner's requested relief for a PERSI retirement benefit would comply with the PERSI plan and applicable IRS regulations; and
- PERSI's historical treatment of individuals similarly situated to Petitioner with respect to PERSI retirement.

Chairman Olson stated that following the September 21 hearing, the Board's general counsel prepared a draft order for the Board's consideration. The draft order was prepared at the Board's direction based upon the feedback and observations expressed by the Board. The draft order prepared by the Board's general counsel was provided to the Board members in advance of this meeting for individual review and consideration.

Trustee Cilek, citing the length of the draft order, provided an outline of the draft order under consideration by the Board. He stated that the Board is not required to accept the findings proposed by Hearing Officer Mallea in his Recommended Order. Trustee Cilek stated that where the Board's findings differ from those of Hearing Officer Mallea, he and his fellow Trustees recognized their duty to explain why their findings differ. He stated that such explanations appear in the draft order and are summarized by the following points:

- In order to be eligible for a PERSI retirement benefit a member must be vested, age eligible, and terminated from employment.
- At all times relevant to this case, Petitioner has been continuously employed by the State of Idaho and remains employed by the State of Idaho.
- Petitioner's election to transfer from PERSI to the JRF when he became a district court judge was not a termination of Petitioner's employment with the State of Idaho.
- Because Petitioner has not terminated his employment with the State of Idaho he is not eligible for a PERSI retirement benefit.
- Payment of Petitioner's requested PERSI retirement benefit is not allowed under the terms of the PERSI plan and would be a violation of the PERSI plan terms and represent an operational failure under federal law.

- The Board's conservative approach to administering the PERSI plan, particularly with respect to terminations of employment, protects the qualified pension plan status of the PERSI plan.
- PERSI's administration of the PERSI plan, particularly with respect to terminations of employment, is consistent with the Legislature's intent for the PERSI plan to provide retirement benefits to those members no longer employed.
- PERSI is responsible for administering the PERSI plan, and PERSI utilizes a reasoned, measured, and consistent approach to its administration.
- With one exception, PERSI has consistently processed retirement benefit payments to JRF members with prior PERSI service since 1991. As a result, PERSI's administration of the plan is entitled to deference.
- For the same reasons in which PERSI's administration of the plan is entitled to deference, PERSI has not acted in an arbitrary or capricious manner with respect to Petitioner's requested PERSI retirement benefit.
- PERSI is not estopped from denying Petitioner his PERSI retirement benefit by any prior inconsistent communications from PERSI to Petitioner regarding his PERSI retirement benefit.
 - o Estoppel generally does not apply to state agencies.
 - o And, even if estoppel applied, Petitioner did not show any reliance on the inconsistent retirement information received from PERSI.
- PERSI's denial of Petitioner's PERSI retirement benefit is not a violation of equal protection.
 - o Equal protection does not apply in this case since Petitioner has not identified a specific statute appropriate for an equal protection analysis.
 - o And, even if an equal protection analysis were warranted, PERSI's treatment of members who have participated in both PERSI and the JRF is rational and has been consistently applied since 1991 with only one exception.
- Neither PERSI nor the Board has breached any fiduciary duty owed to Petitioner.
 - o Petitioner has not identified an applicable fiduciary duty owed to Petitioner – without duty, there can be no breach.
 - o And, even if a duty were properly identified, Petitioner has not shown a breach of any such duty.
- No interest is owed to Petitioner since Petitioner is not currently eligible for a PERSI retirement benefit.

Chairman Olson asked the other Board members if Trustee Cilek's outline was consistent with their understanding of the draft order prepared by the Board's general counsel.

Trustee Gould stated that since Hearing Officer Mallea's Recommended Order she has been concerned by how that recommendation was reached. She said that based on her prior legislative experience and involvement in crafting some of the statutes relative to this issue, that she found

the draft order as prepared by the Board's general counsel right on target. Trustee Gould noted that the testimony, especially the expert testimony, provided at the Board's September 21 hearing was a big help to clarify the issue and gather additional important and relevant evidence. She stated that she is very comfortable with the draft order and felt very good about the direction the Board was headed.

Trustee Sullivan stated that he wanted to associate himself with the comments provided by Trustee Gould.

Chairman Olson asked the Board if any member disagreed with or wished to discuss any particular aspect of the draft order prepared by the Board's general counsel. No additional comments were provided. Chairman Olson stated that he would entertain a motion.

Trustee Gould made a motion that in Case 01-15 Robert J. Elgee vs. PERSI that the Board adopt, as written, the draft Board order prepared by the Board's general counsel. Trustee Cilek seconded the motion, which passed unanimously.

Chairman Olson stated that the Board, by a unanimous vote, had adopted, as written, the draft Board order prepared by the Board's general counsel, which was prepared at the Board's direction based upon the feedback and observations expressed by the Board.

For the reasons set forth in the draft order, the Board thereby ordered that the Board's initial decision denying Petitioner's application for PERSI retirement benefits was Affirmed on the basis that Petitioner has not terminated his employment with the State of Idaho and is not eligible to receive a PERSI retirement benefit until a termination of his State employment has occurred.

The Board's Final Order in this matter would be entered and provided to the parties shortly after the meeting.

Adjournment: There being no further business to come before the Board, meeting adjourned at 3:00 p.m.

Donald D. Drum
Executive Director

Jody Olson
Chairman