

PUBLIC EMPLOYEES' RETIREMENT BOARD

100 North Park Avenue, Room 201

Helena MT 59601

AGENDA

Thursday, November 17, 2011

1:30 p.m.

SPECIAL MEETING

Conference Call

President John Nielsen called the special PERB Meeting to order at 1:30 p.m. on Thursday, November 17, 2011. Roll call was taken. Six Board members present. Member Darcy Halpin was excused. Board members and staff present were:

John Nielsen, President
Terry Smith, Vice President
Patrick McKittrick, Member
Scott Moore, Member
Dianna Porter, Member
Timm Twardoski, Member
Roxanne Minnehan, Executive Director
Melanie Symons, Chief Legal Counsel
Flora Sebens, Executive Assistant

Others present: Mike O'Connor, AMPRE; Tom Schneider, MPEA; Leo Berry, AMRPE; *MPEA staff*: Barbara Quinn, Fiscal Services Bureau Chief; and Kate Talley, Legal Counsel, joined the meeting.

OPEN MEETING

- I. Roll Call** – Six PERB Board members were present. Member Darcy Halpin was excused.
- II. Public/Member Comment** – No comments were given.

Action items

III. Executive Director's Report – Roxanne Minnehan, Executive Director

A. MPEA/MPERA Collective Bargaining Agreement

On behalf of the Board Personnel Committee, Member Timm Twardoski reviewed the changes to the Supplement to Master Contract. It was agreed by everyone that the Association/Management Committee needs to be established. Ms. Rende Mackay from the Department of Administration Labor Relations will arrange training for the committee. The employees requested a Board member sit on the committee. It was agreed that a Board member will participate in the first four committee meetings. After that it will be determined whether or not the board member and MPEA representative will continue to attend these meetings.

There were changes made to the minimum and target pay rates to be able to more easily recruit and retain at the lower pay bands. MPEA also agreed to receive notice if and when an employee new to state government starts at a salary greater than 85% of target.

Most of the other changes were mainly clean-up items for items that were no longer relevant to the contract.

It is the Board Personnel Committee's recommendation that the Board ratify the MPEA/MPERA Collective Bargaining Agreement.

Motion: Member Scott Moore moved to ratify the MPEA/MPERA Collective Bargaining Agreement.

Second: Member Timm Twardoski

No public comment.

Vote: 6/0

B. PERS Guaranteed Annual Benefit Adjustment Actuarial Study

Ms. Roxanne Minnehan reviewed the letter received from Mr. Stephen T. McElhaney, Principal Consulting Actuary for Cheiron. She explained that the Board Legislative Committee had met on October 27, 2011, and decided they wanted Cheiron to determine what the impact to the funding would be if the GABA was reduced from 3% to 2% for current members and retirees in the PERS system. It was also requested Mr. McElhaney determine the impact of increasing the GABA from 1.5% to 2% for those members. Mr. McElhaney indicated that it would cost approximately \$5,000 to do this study. He will be able to present this information via phone to the Board at the December 8, 2011, PERB meeting. It was asked if this was for all of the systems and President Nielsen clarified that it was only for the systems that do not amortize. Ms. Minnehan stated that she had only indicated the study was for PERS to Mr. McElhaney. She will discuss this with him further to see if this additional request will affect his cost.

Motion: Vice President Terrence Smith moved to have the actuary move forward with the study of the unamortized systems with incremental GABA increases and/or decreases in PERS only. Also, give staff the discretion to spend up to an additional \$1500 on the study, if necessary.

Second: President John Nielsen

Public comment

Mr. Leo Berry, attorney for AMRPE, stated that he has done extensive research on what can be done legally in changing retirement benefits. Mr. Berry asked the Board to consider a few things before making any final decisions in regards to this study. He noted that he was unclear if the Board was trying to bring funding back to within a 30-year amortization period, or whether they were attempting to eliminate the unfunded liability all together. When he spoke before the legislature in the past he noticed that the legislators tend to get those two things mixed up. He felt it was important that the Board make the best use of trust fund money in getting information from our actuary and realize that if they start down the path of modifying GABA benefits for existing

retirees they are going to run into major legal issues. He stated that he does not think the legislature even has the authority to modify GABA benefits. The legislature does have the ability to change the terms of the contract for new hires. Mr. Berry mentioned that the Board could zero out the GABA for new hires and even though it might create some inequities and policy issues, at least this would be legally defensible. He stated that if the Board moves ahead with this plan, then he would still recommend the actuary zero out the GABA for new employees and see what that does to the unfunded liability. Mr. Berry cautioned against a knee-jerk reaction. He feels that with time, the unfunded liabilities will eventually work themselves out. He mentioned that a bill was proposed at the last session which would cap the diversion of the coal severance tax into the different programs, with 50% going into the retirement trust funds at this point. Thereafter, the bill would have capped the other diversions at their existing rates and anything above that would go to the unfunded retirement plans. The production and price of coal are going up so there is a potential source of funding if we can get it passed through the legislature. It was passed through the House but failed in the Senate at the last legislative session. Mr. Berry ended by stating that there are other ways to solve the funding issues other than changing the GABA for existing retirees and employees.

Mr. Tom Schneider, MPEA, stated that he had started in the pension system in 1956 and has been involved in all plan changes that has happened in PERS. He stated that wanted a copy of whatever request was sent to our actuary because he wanted to make sure that every employee who is in the PERS system understands what this Board is thinking of doing. He pointed out that the Constitution clearly provides that one of the jobs of this Board is to maintain the benefits of the retirement systems – not to destroy those benefits. He acknowledged that although we have to have the money to pay for the systems, we still need to look at both sides of the issue. He stressed the importance of keeping in mind that whatever we ask the actuary to do is going to have an effect on House Bill 122. He noted that we have not even seen the effects of House Bill 122 yet because the actuarial valuation was finalized as of June 30th and House Bill 122 did not go into effect until after that date. Mr. Schneider noted that this Board had asked MPEA to support House Bill 122 and they did, even though the members did not necessarily support it. Now the Board is asking MPEA to go further before we even know what effect House Bill 122 is going to have on the future of the retirement systems. He requested that anything the Board asks the actuary to research take into consideration the effect it will have on House Bill 122. He questioned why, with the passage of House Bill 122 and an investment earnings of 22%, the Board is talking about taking money away from retirees. He again requested a copy of the letter that will be sent to the actuary so that he can forward it to MPEA members to let them know what the PER Board is thinking of doing.

Mr. Mike O'Connor, AMPRE, stated that he feels he has an educated observation of what the Board is trying to do. He felt that MPERA has some very competent attorneys on staff that the Board should seek advice from. He stated that decreasing the GABA is one thing; but increasing the GABA for employees is another and he felt that there are obvious equal protection issues involved. He does not feel that it is legal that the Board can reduce the GABA for one employee and increase it for another. That just would not be fair. We already know that just reducing the GABA isn't going to give us enough to fund the systems. It is going to take additional revenue. He ended with stating that if the

Board wants to split the increase in the contribution between the employee and the employer it isn't an equal split because the employees take the money out when they refund.

Vice President Smith reiterated that the Board is not planning on taking any immediate action at this time. They are only requesting this information from the actuary because they feel this is information that the Board should know. He stressed again that the Board was not endorsing taking any action at this time.

Member Dianna Porter agreed with Vice President Smith in that the Legislative Committee was asking the actuary to perform these studies only with the intent to gather information in preparation for the next legislative session. The Board wanted to be able to say that they had researched every option available and be able to respond to legislator requests.

Member Scott Moore stated that in light what Member Porter just said that maybe we should think about waiting. He felt that if a legislator requested specific information then maybe they should have to pay for it instead of us. Ms. Melanie Symons also noted that any information we ask for is considered public, so even if our Board decides not to pursue anything we have used our trust fund money to research this information and any other entity that decides to go that way can use this information free of charge.

Member Patrick McKittrick stated that he had voted against House Bill 122 and felt that the Board was going down the wrong path asking our actuary to research this information. He suggested that the Board hold off on this for right now.

President John Nielsen stated that it is the Board's fiduciary responsibility to protect the system for future generations and he felt we needed to research different avenues to have a clear picture of what has to be done to fulfill this duty.

Ms. Roxanne Minnehan suggested the Board find out how much money is needed to make the system stable today and how much it needs to meet our requirements in the future. She stated the Board needed to determine their objectives first, and then ask the actuary to research how they can reach those objectives.

Ms. Symons agreed with Ms. Minnehan and stated that the Board needed to figure out how much money is needed first, before they start making decisions on how to come up with that money. President Nielsen reiterated that we are only gathering information right now but that the Board was not planning on taking any action at this point in time. Member Timm Twardoski pointed out that the perception, though, would be that if the Board were to ask the actuary to gather this information that we were going to be taking some sort of action; even though we are saying we aren't, the perception would still be that we are. Once news of this information that we are asking for from the actuary hits the public, the perception is that this is going to become reality.

Member Porter asked that the motion that is currently on the table be rescinded and that instead we ask the actuary to research how much we need to make the

unamortized systems sound. After receiving this information the Legislative Committee can meet again and discuss a variety of other funding options.

Vice President Terence Smith withdrew his motion. President John Nielsen withdrew his second.

Vice President Smith commented that he still feels the Board needs this information and if there is a less controversial way of getting it then we should try to obtain it. The Board is trying to be proactive and they would be remiss not to know what affects this is going to have on our plans. He suggested inviting Mr. Leo Berry, Mike O'Connor and Tom Schneider to participate in the discussions at the Board Legislative Committee meetings in the hopes that they can provide us with more acceptable avenues in which to obtain this information.

Recap: The actuary will proceed with researching how much money we need to make the systems actuarially sound and this information will be presented at the December 8th PERB meeting. A Board Legislative Committee meeting will then be scheduled to discuss this information and brainstorm ways we can make the systems actuarial sound.

CLOSED MEETING

The following portion of the meeting relates to matters of individual privacy. The Board President determined that the demands of individual privacy clearly exceeded the merits of public disclosure. As such, this portion of the meeting was closed as of 2:35 p.m.

Closed Meeting Summary

C. Actuary Calculation of Maximum Damages Award - CMH

Max Davis, the attorney representing us in a lawsuit filed by employees of the Center for Mental Health, has requested that our actuary assist in determining the amount of MPERA's possible liability. After some discussion regarding other possible defenses and approaches, the Board agreed to have the actuary provide the requested information.

ADJOURNMENT

There being no further business before the Board, President John Nielsen adjourned the regular meeting at approximately 3:50 p.m. The next regular meeting will be Thursday, December 8, 2011, at 8:30 am.

John Nielsen, President

ATTEST:

Roxanne M. Minnehan, Executive Director