

MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD
REGULAR MEETING

October 24, 2008

A Regular Meeting of the New Mexico Educational Retirement Board was called to order on this date at approximately 10:10 a.m. in the Educational Retirement Board Room, 6201 Uptown Boulevard, N.E., Ste. 203, Albuquerque, New Mexico.

ROLL CALL – QUORUM PRESENT:

Members Present:

Mr. Bruce F. Malott, Chairman
Mr. Gary B. Bland, Secretary
Ms. Mary Lou Cameron, Vice-chair
Mr. H. Russell Goff
Mr. James B. Lewis
Dr. Beulah Woodfin [by teleconference; departing 10:30]

Members Excused:

Dr. Veronica Garcia

Legal Counsel Present:

Mr. Chris Schatzman, General Counsel
Mr. Robert Shulman, Assistant General Counsel

Staff Present:

Ms. Jan Goodwin, Executive Director
Mr. Bob Jacksha, Chief Investment Officer
Ms. Linda Kissko, Executive Admin. Assistant
Ms. LeAnne Larrañaga-Ruffy, Investment Officer
Ms. Clara Mares, HR Director
Mr. Steve Moreno, Benefits Manager
Mr. Steve Neel, Portfolio Manager
Mr. Greg Trujillo, IT Director

Others Present:

Mr. Allan Martin, New England Pension Consultants
Ms. Judith Beatty, Recorder
[Also see sign-in sheet]

a. Approval of Agenda

Ms. Cameron moved approval of the Agenda, as published. Mr. Lewis seconded the motion, which passed by voice vote.

b. Approval of Minutes:

06-27-08 Regular Meeting

Mr. Lewis moved approval of the June 27 meeting minutes, as submitted. Mr. Goff seconded the motion, which passed by voice vote.

07-28-08 Special Meeting

Ms. Cameron moved approval of the July 28 meeting minutes, as submitted. Mr. Lewis seconded the motion, which passed by voice vote.

09-10-08 Special Meeting

Mr. Goff moved approval of the September 10 meeting minutes, as submitted. Mr. Lewis seconded the motion, which passed by voice vote.

09-29-08 Regular Meeting

Ms. Cameron moved approval of the September 29 meeting minutes, as submitted. Mr. Goff seconded the motion, which passed by voice vote.

c. Introduction of Guests

Guests were introduced.

2. CONSENT AGENDA — BOARD TRAVEL

None.

**3. APPOINTMENT OF INVESTMENT COMMITTEE MEMBERS:
CHAIRMAN MALOTT**

Chairman Malott recommended that all existing Investment Committee members be reappointed: Chairman Malott, Ms. Goodwin, Mr. Lewis and Mr. Bland. He said he felt it would be inappropriate to make any changes given recent events in the financial markets.

Mr. Lewis moved these recommendations. Ms. Cameron seconded the motion, which passed by voice vote.

4. DISABILITY APPEALS PANEL DESIGNATION: CHAIRMAN MALOTT

Chairman Malott recommended the appointments of the following Board members to the Disability Appeals Panel: Chairman Malott, Dr. Woodfin and Mr. Goff.

Mr. Lewis moved these recommendations. Ms. Cameron seconded the motion, which passed by voice vote.

**5. DISCUSSION OF CHANGES TO INVESTMENT COMMITTEE
COMPOSITION**

Chairman Malott said he is discussing with staff the idea of combining the Investment Committee, Private Equity Investment Committee and Real Estate Committee. He said he, Mr. Bland, Mr. Lewis and Ms. Goodwin comprise the membership of all three committees, and combining them would allow for less frequent scheduling and better attendance, although the meetings would obviously be longer.

Chairman Malott said he would ask the Board to act on this recommendation at a future meeting.

6. INVESTMENT REPORTS:

a. September Flash Report — Bob Jacksha

Mr. Jacksha reported that the ERB portfolio is down 15.4% for the twelve-month period, down 7.9% for the three-month period, and down 6.74% for the month of September.

Mr. Jacksha noted that several major financial firms—Lehman Brothers, Washington Mutual, AIG, Wachovia and Merrill Lynch—either went bankrupt or had to be bailed out due to their illiquid mortgage related assets. He said this situation has led to a loss of confidence in the markets and the S&P 500 ended September 25% below its closing high last October.

Mr. Jacksha said domestic equity markets were down in the range of 20% for the twelve-month period. He said the worst performers were the foreign markets, both EAFE and Emerging Markets, which were down around 30% for the year.

Mr. Jacksha stated that fixed income has done better, with fairly small negative numbers on the high yield. He noted that Post is 450 basis points over the index, while WAMCO is down 10% relative to the benchmark.

Mr. Jacksha said REITs held up very well for the three-month period, but that trend has now reversed itself in October.

Mr. Jacksha stated that hedge funds have also experienced losses, which is disappointing, although they have done much better than the equity markets. He said staff will call in each of the managers in the next few weeks for in-depth discussions.

Mr. Jacksha agreed to share the hedge fund manager meeting schedule with Board members and encouraged their participation.

Mr. Martin reported that the ERB portfolio is down 13.72% for the year to date, but the ERB has done better than more than half of all other public funds in the U.S. He pointed out that, had the ERB not started diversifying its portfolio a year ago, the returns would have been far worse. He commented that everything went down—but at least the things the ERB invested in went down less than the equity markets.

Mr. Jacksha distributed a chart reflecting that the SPX (Standard & Poor's) dropped 44.4% between October 2007 and today. He referred to another chart showing that the EAFE Index dropped 52% during the same period.

Mr. Jacksha reviewed an historical perspective of the S&P 500 reflecting post WW II bear market declines with subsequent recoveries during various time periods, as well as the frequency, magnitude and duration of bull and bear markets over the last 108 years.

As a follow-up to that, Mr. Jacksha stated that the Investment Committee yesterday decided to discuss with the Board whether to put more money into the equity market above the current 45% target allocation. He said the feeling is that the market is nearing the bottom, based on history, and could bounce back.

Chairman Malott pointed out that the ERB has to achieve an 8% return, and if it is more likely than not that the equity market will move forward at rates that will facilitate that 8%, the question is whether it makes sense to take this step.

Mr. Bland commented that, historically speaking, the probability of a 10-20% rally at this point is greater than the probability of a 10-20% decline.

Mr. Jacksha agreed with the Chair's point. He stated that the ERB has to hit 8% long term, and obviously the ERB missed it last year and had a mild negative this year, and so far is experiencing very negative returns—therefore, the ERB may want to participate more in a rally than it normally would in an effort to get the returns back up.

Chairman Malott asked Mr. Jacksha if he would recommend going back to 45% in private equity after there is a substantial rally, and Mr. Jacksha responded that he would recommend going back to 45% at some point. He said this is just a temporary measure, although “temporary” could be 12-18 months. He said it might be a good idea to wait until the Fund reaches a certain dollar value—perhaps around \$9.5 billion, since that is close to what it was previously—and then go back to the normal asset allocation.

Mr. Bland commented that this market is unusual because there has been no place to hide, so to speak; and the ERB will not be able to achieve its 8% actuarial requirement in bonds or many other component assets with the exception of equities and equity-related hedge funds.

Mr. Bland pointed out that it was helpful to remember that the ERB looks at a rolling average as opposed to an annual average.

Mr. Jacksha noted that the ERB's five-year rolling average as of June 30 was 9.5%.

Mr. Jacksha stated that he would recommend a maximum 50% allocation to equities at this point.

Mr. Martin commented that NEPC normally does not recommend making these tactical moves, but in this case an 8% rate of return has to be earned in order for the ERB's pension plan to meet all of its payment obligations to current and future retirees without requiring additional contributions on the part of the employer and employee. He said the drop in the market has been severe enough that, were the ERB to earn 8% now and forever and absorb the 20% loss, it would have a challenge getting back to its original funding level. He stated that this would argue for a bigger appetite for risk now than what is normally the case.

Mr. Martin pointed out that the credit markets are off even more than the equity markets are, and with a 5% commitment to Post and a \$300 million commitment to PIMCO, he said NEPC feels that the ERB will earn higher returns in this space with risk levels that are lower than equities.

Mr. Martin said he would caution the ERB against increasing equity exposure, if the Board decides to do that, until at least the elections are over. He said the ERB also has the ability to increase its credit strategy allocation. He added that the Investment Committee yesterday approved a search for a GTAA manager, and some of those managers have strategies that offer this opportunity, so that is yet another option.

Mr. Jacksha said the portfolio is overweighted in investment grade fixed income, so he would recommend allocating all of those monies in equities.

Mr. Martin stressed that the ERB has entered hedge funds through the use of fund-of-funds, and it has about 300 of them; and while some hedge funds are going to have problems, they will be less than half of 1% of the portfolio—so while the ERB will experience some of the impact of hedge funds failing, it will be a fraction of its total exposure. He commented that, while the performance has been disappointing, the de-leveraging situation that has created the problems being experienced by hedge funds is not sustainable in the long term.

In discussing what action the Board might need to take to allow staff to increase the allocation to equities, Mr. Jacksha said that is unclear, because the ERB's investment policy has a target of 58% to equities. He said the Board adopted a new asset allocation of 45% but with targets only—there was no discussion of ranges because the new policy is still in draft form. He said the old policy, however, allows a range of 5±% without prior approval from the Board or Investment Committee.

Chairman Malott said he would interpret that to indicate Mr. Jacksha has the discretion to move the allocation up or down 5% without authorization from the Board or Investment Committee.

Mr. Goff thanked Ms. Goodwin for making an outstanding presentation last Friday at a state convention of retirees.

b. Private Equity/Real Estate Committee Update

Mr. Jacksha reported that the Investment Committee yesterday approved a \$25 million commitment to Alterna Infrastructure Fund. He noted that infrastructure is in the area of transportation assets, roads, bridges, airports, shipping, and energy production. He said the Fund seeks to raise \$1.5 billion, and was recommended to

the Investment Committee by Courtland. He stated that Courtland is negotiating terms with Alterna with the intent of getting a better deal on fees.

c. Other Investment Reports

Ms. Cameron said Sen. Smith has expressed concern to her about the Retiree Health Care Authority, which seems to be in a state of limbo.

Chairman Malott said the RHCA has made more progress over the last two months than it has in the last two years, and he feels very positive about how it is being managed right now.

7. RESOLUTION REGARDING TRUSTEE PER DIEM FOR COMMITTEE MEETINGS: CHRIS SCHATZMAN

Mr. Schatzman stated that this resolution authorizes payment of per diem and mileage to Board members who attend a meeting of any committee or task force established by the Board, and also authorizes payment of per diem and mileage to Mr. Goff and Dr. Woodfin for their attendance at the September 23 Investment Committee meeting.

Ms. Cameron moved approval. Mr. Goff seconded the motion, which passed by voice vote.

8. RESOLUTION REGARDING REFUND OF PERA RETIREES' ERB CONTRIBUTIONS: CHRIS SCHATZMAN

Mr. Schatzman reported that, prior to approximately 2005, a number of PERA retirees who had not suspended their PERA retirement went to work for educational institutions, including ERB. He said they were making contributions to ERB; however, because of the fact that someone cannot collect on two state pensions together, the Legislature passed a statute that said the ERB could no longer collect those contributions. He stated that approximately 135 individuals who were PERA retirees, who had been making contributions, could not receive any ERB pension, and so the ERB withheld it. He said members were then encouraged to resign from their jobs as ERB employees on a Friday, put in a termination and refund request, and be rehired Monday.

Mr. Schatzman said the ERB is trying to address what it believes to be some refunds made under misrepresentation, and related to that was a policy that encouraged people to do something that the ERB was trying to stop, which was refunds under misrepresentation.

Mr. Schatzman said this resolution directs staff to go forward, audit those 135± accounts, and see which ones have money that the ERB has been withholding as a result of the statutory change. He said there are accounts with as little as \$5.50 in them, and another may have \$29,000—but there are many people with less than a year's credit. He pointed out that the ERB is not earning enough interest on these accounts to cover the cost of managing them.

Mr. Schatzman said the resolution also authorizes staff to refund the money at the refund rate and clear these accounts off the books.

Mr. Bland moved approval of this resolution. Mr. Goff seconded the motion, which passed by voice vote.

9. REVIEW OF PROPOSED REVISION TO RETURN TO WORK RULE: CHRIS SCHATZMAN

Mr. Schatzman stated that the existing Return to Work rule requires a 12-month layout, which is recommended by the actuaries, and also requires that it be immediately in front of returning to work at greater than .25 FTE employment, but there is no actuarial reason for that immediate adjacency.

Mr. Schatzman said the immediacy requirement is now removed and the actuaries have indicated that the Fund remains protected with this change.

Mr. Schatzman said the resolution also clarifies some other issues. He cited an instance where somebody employed by a university asked to retire from their job, go to work for a nonprofit corporation controlled by the university for 12 months doing the exact same thing they do now, and then in 12 months go back to the university. He said one of the conceptual ideas behind the layout period is that it leaves a position open so that new members can come into the fund, but there are some employers attempting to use the creation of a nonprofit as a way to put the person into the same job, warehouse them for 12 months, and then bring them back. He said the rule now clarifies what has been the staff's procedure.

Mr. Schatzman said the rule will be published for public comment; after the comments are addressed, the final rule with the comments will be brought to the Board at either the December meeting or the February meeting.

**10. RESOLUTION REGARDING BENEFITS ENHANCEMENT:
CHRIS SCHATZMAN**

Mr. Schatzman said this resolution sets forward a number of issues regarding the actuarial assumptions, structure and management of the Fund, constitutional issues regarding increases in benefits that are part of §22, and puts on record the Board's policy not to endorse any legislation that proposes to enhance or increase benefits that may create an unfunded liability for the Fund unless the legislation is accompanied by an increase in statutory contribution rates calculated on an actuarial-sound basis. He said the resolution also opposes any ad hoc or special COLA that is not prefunded by an appropriation sufficient to ensure that its cost is fully borne.

Mr. Bland moved for approval. Ms. Cameron seconded the motion, which passed by voice vote.

[Break.]

11. LEGISLATIVE AGENDA: JAN GOODWIN

Ms. Goodwin asked the Board to approve the following six items that staff has been working on for the upcoming Legislative Session:

1. Increase retirement to 30 years for new employees coming into the Fund. Ms. Goodwin explained that people are living longer, and this change will have a beneficial effect on the ERB's unfunded actuarial accrued liability; additionally, it will help stabilize the Retiree Health Care Fund.

Mr. Bland moved for approval. Ms. Cameron seconded the motion for discussion.

Ms. Cameron asked Ms. Goodwin if the actuaries have provided figures.

Ms. Goodwin responded that preliminary numbers indicate it would take a few years to reduce the unfunded actuarial accrued liability to the point where there would be much impact.

Chairman Malott stressed that no one in the system today would be affected.

Mr. Goff said the support of the unions would be crucial in seeking this change.

Ms. Cameron stated that the effective date of the legislation would be important, since people doing their student teaching this year who anticipate going into the Fund next year with a 25-year retirement plan could be impacted by the change.

Ms. Cameron stressed the importance of conveying to people that this change does not signal that there is something wrong with the Fund and that they will not get their check when they retire. She agreed with Mr. Goff that union support could be very important.

The motion passed by voice vote, with Ms. Cameron in abstention.

2. Changes to the Alternative Retirement Plan: change the payout option to more than just an annuity to allow more flexibility for participants; increase investment providers from two to five; allow participants to withdraw their investment and roll it into another employer's sponsored plan in the event the employee changes employers; allow a member who has been in ARP for seven years to buy into ERB at an actuarial-neutral rate.

Mr. Bland moved for approval. Mr. Goff seconded the motion, which passed by voice vote.

3. Grant audit authority to the ERB so it can audit the different local administrative units to ensure they have been paying the proper contribution on behalf of their members.

Ms. Cameron moved for approval. Mr. Lewis seconded the motion, which passed by voice vote.

4. Creation of a confidentiality statute. There are currently no statutory prohibitions against improper dissemination of confidential information about members. There is also no statutory language that allows the ERB to share certain information with other agencies, specifically, the PERA or RHCA.

Ms. Cameron moved for approval. Mr. Goff seconded the motion, which passed by voice vote.

5. Change how members can purchase military service time. Currently, a member can only buy their military time, which can be up to five years, within the first three years of employment, and at a relatively low cost. It is not actuarially equal to the Fund. The ERB proposes to increase the cost so that it reflects the true cost of the plan and, with that, give the members more time in which to buy their service time. PERA members are allowed to purchase their military time anytime after they become vested. The ERB would like something similar to that. Even though it costs more to the member buying the time, the ERB feels that having the greater window of opportunity to buy the time is a worthwhile tradeoff.

Mr. Bland moved for approval. Mr. Lewis seconded the motion, which passed by voice vote.

6. Renew the Return to Work program, which expires on 12/31/11, and increase flexibility for the return to work period. PERA members can come back anytime after 90 days, while the ERB has a mandatory one year layout period. Many schools have asked for a shorter layout period in order to give them more flexibility in bringing experienced people back into the system.

Mr. Goff moved to renew the Return to Work program. Mr. Lewis seconded the motion.

Ms. Cameron pointed out that actuarial reports have cautioned against cutting down the timelines, and now the ERB is proposing to do so, and she would like to see supporting data before deciding to cut the layout period.

Ms. Cameron also stated that the Return to Work program has failed to open up jobs, which was one of the reasons for creating this program, because some divisions are holding jobs open for people during the layout period. She stated that, if the ERB is going to propose shorter timelines, she would like that spelled out carefully along with penalties for employers who circumvent the rule.

Ms. Goodwin asked Ms. Cameron if she would keep the layout period at one year, and Ms. Cameron responded that she would like to see the actuarial data along with assurances for safeguards.

LFC analyst Michelle Aubel noted that the PERA Board had this same discussion recently, and they are looking at extending from three months to ERB's twelve months. She stated that there is a workaround in holding positions for state members in particular, and therefore less upward mobility, and legislatively she would suggest that reducing the 12-month period would be difficult.

Chairman Malott said he would not support reducing the layout period.

Mr. Goff restated his motion to renew the Return to Work program but to continue the one-year layout. Ms. Cameron seconded the motion, which passed by voice vote.

12. APPROVAL OF 2009 BOARD MEETING DATES

[Deferred to the December meeting.]

Ms. Aubel invited Board members and staff to attend the LFC meeting of November 21, which begins at 9:00 or 9:30 a.m. in Room 322, State Capitol Building, when the ERB budget would be reviewed.

13. DISABILITY RETIREMENTS

a. New Applicants (Permanent & Continuing)

Ms. Cameron moved for approval. Mr. Goff seconded the motion, which passed by voice vote.

b. COLAs

None.

c. Appeals

None.

14. AGE & SERVICE RETIREMENTS: STEVE MORENO

Ms. Cameron moved for approval. Mr. Lewis seconded the motion, which passed by voice vote.

15. DIRECTOR'S REPORT

a. NMRHCA Report

Ms. Goodwin reported that customer service has improved dramatically at the Retiree Health Care Authority, and the agency has been working on their legislative agenda for presentation at the next IPOC meeting. She added that, on the investment front, NEPC financial adviser Allan Martin has agreed to offer his assistance, which will be a huge help.

b. Dual Control Issue

As a follow up to the last meeting, Ms. Goodwin asked for additional input from the Board as to what types of contracts should have more than one signature, and whether the signature or signatures should be signed by staff and/or Board members, etc.

Ms. Goodwin explained that some contracts are subject to the Procurement Code and go through an extensive series of checks and balances, while investment manager and investment attorney contracts are outside of the Procurement Code but typically go through a procurement process.

Mr. Goff said he thought the Executive Director and Board Chair's signatures would provide the necessary control for contracts that are not subject to the Procurement Code.

Chairman Malott said he could provide his signature electronically.

Mr. Schatzman stated that subsection 198 of the Procurement Code exempts investment advisor contracts, which in the ERB's case would be the investment managers selected through the RFP process, and, currently, the Foster Pepper law firm. He said arrangements could be made to allow for electronic signatures.

Mr. Jacksha pointed out that investment manager contracts typically are for managers who handle stocks, but there is another class of contracts that are limited partnership agreements, private equity funds, etc., where the ERB has authorized the Executive Director, the Deputy and CIO to sign those. He said he didn't think those needed dual authorization.

Mr. Schatzman added that, in those cases, the Board has already approved the investments and then the contracts are negotiated between the staff investment managers and the Foster Pepper law firm.

Chairman Malott agreed that dual authorization wasn't necessary in those cases.

Mr. Schatzman stated that he is developing a standardized contract to increase the ERB's protections. He said these contracts are always available for Board review.

c. Employee Bonding

Ms. Goodwin stated that Mr. Schatzman has talked with Risk Management, which is part of GSD, and it is staff's understanding that the employees in question are covered by bonding through the state's insurance policy.

Mr. Schatzman explained that the state has a "faithful performance endorsement" to the property and casualty policy, and he managed to obtain a copy (after numerous requests) that unfortunately was dated from July 1, 2006, to July 1, 2007. He said it is not uncommon to see those, but he was told by the Risk Management director that the endorsement is in place and it covers employees for theft of money, forgery, and so forth. He said it is \$5 million per occurrence with a \$50,000 deductible per occurrence, which is generally absorbed by Risk Management. He

stated that he would read the endorsement, which he received just yesterday, and would also obtain a current one.

16. EXECUTIVE SESSION

- a. **Administrative Appeal of Maria Tercero**
- b. **Administrative Appeal of David Montoya**

Mr. Goff moved to go into Executive Session pursuant to NMSA §10-15-1(H)(3) to consider the administrative appeals as noted on the agenda. Mr. Bland seconded the motion.

Mr. Schatzman advised the Board to ask any questions of hearing officer Randall Childress at this time in open session.

There were no questions of Mr. Childress.

Mr. Tercero stated that he and Mrs. Tercero did not receive the hearing transcript until yesterday, and they discovered ten discrepancies that they wished to correct.

[A five-minute recess was called to allow discussion with Mr. Schatzman, attorney Andrea Buzzard, and Maria Tercero and her husband.]

The motion passed on the following Roll Call vote:

For: Chairman Malott; Ms. Cameron; Mr. Bland; Mr. Goff; Mr. Lewis.

Against: None.

[The Board was in Executive Session from 12:30 until 12:55 p.m.]

Ms. Cameron moved to come out of Executive Session. Mr. Goff seconded the motion, which passed on the following Roll Call vote:

For: Chairman Malott; Ms. Cameron; Mr. Bland; Mr. Goff; Mr. Lewis.

Against: None.

17. ACTION FROM EXECUTIVE SESSION

Chairman Malott stated that the only matters discussed in Executive Session were the matters relating to the administrative appeal of Maria Tercero and the administrative appeal of David Montoya.

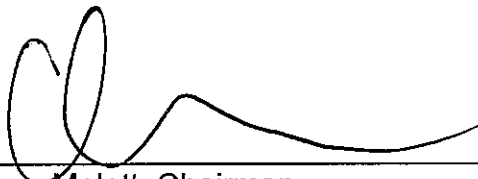
With respect to the appeal of Maria Tercero, Ms. Cameron moved that it was a reasonable filing. Mr. Goff seconded the motion, which passed by voice vote.

With respect to the appeal of David Montoya, Mr. Bland moved to deny the appeal. Ms. Cameron seconded the motion, which passed by voice vote.

18. NEXT MEETING: DECEMBER 5, 2008 — ALBUQUERQUE

19. ADJOURN

Its business completed, the Educational Retirement Board adjourned the meeting at approximately 1:00 p.m.



Bruce Malott, Chairman

ATTEST:

Gary B. Bland, Secretary