

**MINUTES OF THE**

**NEW MEXICO EDUCATIONAL RETIREMENT BOARD**

**November 16, 2018**

**1. a. ROLL CALL: QUORUM PRESENT**

A meeting of the New Mexico Educational Retirement Board was called to order on this date at 10:00 a.m. in the John Milne Community Board Room, Albuquerque Public Schools, 6400 Uptown Boulevard, Albuquerque, New Mexico.

**Members Present:**

Ms. Mary Lou Cameron, Chairwoman  
Mr. H. Russell Goff, Vice Chairman  
Mr. Larry Magid, Secretary  
The Hon. Tim Eichenberg, New Mexico State Treasurer  
Dr. Donald W. Duszynski  
Mr. Christopher N. Ruskowski

**Members Excused:**

None

**Staff Present:**

Ms. Jan Goodwin, Executive Director  
Mr. Rick Scroggins, Deputy Director  
Mr. Roderick Ventura, General Counsel  
Ms. Susanne Roubidoux, Deputy General Counsel  
Ms. Liz Lorang, Executive Assistant  
Ms. Monica Lujan, Member Services Director  
Ms. Leilia Nelson, Outreach Coordinator  
Mr. Lawrence Esquibel, IT Director

**Others Present:**

Mr. Ryan Falls, Gabriel Roeder Smith [by telephone]  
Mr. Connor Jorgensen, LFC Analyst  
Ms. Judith Beatty, Board Recorder  
[See sign-in sheet.]

**b. Approval of Agenda**

**Mr. Magid moved approval of the agenda, as published. Mr. Eichenberg seconded the motion, which passed unanimously.**

c. Introduction of Guests

Chairwoman Cameron welcomed staff and guests.

2. 2019 LEGISLATIVE PROPOSAL: JAN GOODWIN, EXECUTIVE DIRECTOR

a. Public Comment

Ms. Goodwin stated that actuarial consultant Ryan Falls, from Gabriel Roder Smith (GRS) was on the phone and prepared to answer any questions.

Ms. Goodwin noted that, at the October meeting, the board directed her to arrange a meeting with the Governor-elect's transition team to get some feedback on what kinds of changes they would like to see to the ERB plan. Even though she applied on the day after the election, the transition team meeting is not scheduled until Wednesday, December 5.

Ms. Goodwin reviewed the NMERB proposed legislation, which was discussed at length during the last meeting:

Element 1: Tiered multiplier. There will be a multiplier of 1.35 for the first 10 years of someone's career, 2.35 for the following 10 years of their career, and 3.35 for the next 10 years of their career. Any years in excess of 30 will have a 2.4 percent multiplier. This means that if someone works a 30-year career at an ERB employer, their final multiplier will be 2.35. This change is being done to address the number of short career employees the ERB has, who are very expensive to the plan.

Element 2: Employer Contribution. Increasing the employer contribution by 1 percent per year for three years.

Element 3: Anti-spiking. This is similar to SB 68 from the 2013 legislative session. Salary increases that are part of normal career progressions for educational employees will be exempted. Salary increases greater than 30% will have to be in effect for several years to be reflected in benefit calculations.

Element 4: Return to Work. The board's RTW exception rule will be eliminated. Retirees and employers will pay contributions, and retirees may still suspend retirement benefit and work to earn more service credit. Layout for all retirees would change from 12 months to 6 months. Retirees who work .25 FTE or less will not be subject to the 6-month layout.

Element 5: PERA Retirees. All PERA retirees who work for an ERB employer will pay member contributions, as will their employers, who are already paying contributions.

Element 6: Minimum Retirement Age of 58 for new employees hired on or after July 1, 2019. This will be a “soft” minimum retirement age, meaning that their benefit will be actuarially reduced if they retire before they reach age 58.

Element 7: COLA. Institute a 1 percent cap on the COLA until the plan is fully funded.

Element 8: Substitute Teachers. If working more than .25 FTE, substitute teachers would be members and pay contributions, as would their employer.

Element 9: Restitution to the Fund for the AFSCME settlement. As part of the settlement, the board will work with the unions to get an appropriation for \$248.3 million in the 2019 legislative session for the damage caused to ERB by the contribution swaps and the delayed increases in employer contributions passed in 2005.

Ms. Goodwin said the element that seems to give the most heartburn to some of the members is the change in the COLA. The ERB has asked members of the Stakeholder group to weigh in on what they would suggest instead, but she has heard nothing back. The ERB has come up with a couple of different proposals on what could replace the COLA, if it were eliminated.

Mr. Falls discussed the importance of reforms. He said the changes proposed by Ms. Goodwin significantly close the gap between the expected and desired funding period of 2042, and the current proposals generally share the impact equitably across all of the stakeholders. If reforms do not include COLA changes, savings must come from some other source.

Mr. Falls noted that all the projections presented up to this point are based on the actuarial valuation measured as of June 30, 2017. GRS has since updated the valuation for the 2018 measurement date. As of June 30, 2018, if all of the reforms (including the COLA) were put in place, the ERB could expect to be fully funded by 2045, or in 27 years.

Mr. Falls discussed the effect of removing the COLA reforms. Under the proposed reforms, with the current COLA provisions in place, the projected UAAL would go from \$2 billion to \$5.4 billion, the funding period would go from 27 years to 32 years (FY 2050), and the negative amortization would be 15 years instead of 12.

Mr. Falls reviewed alternate scenarios that would be necessary to meet the 2042 funding goal without the proposed COLA change. These included increases to the employer contribution and/or changing active member benefits, or basing the COLA on investment returns.

Mr. Goff noted that one alternative scenario suggested imposing a new tiered multiplier on current active members who are more than five years from retirement, and asked if the ERB could legally do that.

Mr. Ventura responded that Bartlett v. Cameron said changes can be made if someone hasn't applied for a benefit.

[Secretary Ruskowski arrived.]

The floor was opened for public comment.

Gloria Birkholz – UNM Retiree

Ms. Birkholz said she was one of the stakeholders in the 2011 and 2012 group that agreed to a compromise so the ERB could reach 100 percent sustainability. She said no COLA cut was required in order to meet that goal at that time. She stated that the board accepted the compromise that the stakeholders worked hard on, and now this feels like a breach of faith. She said she was also part of a group of four that did the Bartlett case as well. She stated that the COLA is a minor cushion to the value of their pension over time. According to calculations resulting from the 2013 compromises, the average loss to a retiree over a period of 25 years was \$20,000. Ms. Birkholz also stated that women's pensions are less than men's for many reasons; for instance, a lot of them join the workforce later in life after a divorce, and make less money than their male counterparts, so the COLA cut is especially devastating for them, and made worse because women tend to live longer than men. She suggested raising the minimum retirement age to 62 as an alternative.

Charles Bowyer – NEA New Mexico

Mr. Bowyer said the NEA New Mexico board of directors reluctantly accepted all of the changes with the exception of the COLA. He suggested the board look at this as a matter of "not can we do this, but is it right to do this?" He said what was done last time "really was a theft to retirees. You made a promise to them and you broke it. Now you're saying we've got to break a promise to retirees again unless active employees are willing to take a massive benefit cut." He noted that Judge Singleton's ruling in the Yazzie-Martinez case said that the compensation given to teachers has a major impact on the fact that at-risk children don't have the quality of teachers that are needed. He said these benefit cuts would drive people out of the profession in droves, because they would retire before the changes kicked in for them.

Mr. Bowyer said the plan is solvent, and recommended the board change the funding goal by five years.

Joe Montaño – NMAER and Retired Superintendents, State of NM

Mr. Montaño said he has been attending the stakeholders meetings. He said no one wants to see their COLA cut, but suggested that the sacrifice be shared by everybody rather than imposing these changes on one particular group. He said the State of New Mexico owes their educators a pension that gives them some quality of life at retirement. He asked the board

to take into account the groups that will be affected positively if the program is solvent – retirees and actives.

Lee Brown, retired professor of economics, UNM

Dr. Brown said he was involved with Ms. Birkholz and others in the Bartlett case. He said one of his specialties was econometric forecasting, and he built the economic forecasting model used by the Bureau of Business and Economic Research. He attended the sustainability tour last fall when it came to Albuquerque, and was pleased to hear Ms. Goodwin's comments that the cut to the COLA would not be on the table this time. In looking at this more recent change, it appears that virtually everything is traceable to the decision by the board to accept the actuarial recommendation that the inflation assumption should be reduced from 3 to 2.5 percent. This changed the period for full funding to 139.4 years from 44 years, and apparently the metric has changed, because now the funding period is now 61 years. He stated that he thought the change from 3 percent to 2.5 percent was a "serious mistake." The CPI for 2019 is already at 2.5 percent and the price index that goes with social security is at 2.8 percent, so things are moving back to 3 percent. He stated that he thought the basic assumption should be reexamined given that it appears the recession is largely over.

Therese Saunders, AFT and AFT NM Retirees President

Ms. Saunders said the COLA is very important to retirees, who rely on it to cover their rent increases. AFT cannot support a cut to the COLA. She complimented Ms. Goodwin on trying to get the Governor-elect's transition team involved, which is important, because the Governor-elect has pledged to support public education. If this board enacts the benefit cuts as proposed, it will significantly impact the state's ability to recruit educators into the public school system. She suggested that the board wait until it can get the Governor-elect to work with the ERB.

Lawrence Straus, retiree, Professor UNM Dept. of Anthropology

Dr. Straus stated that he has an adult child living at home with autism and other disabilities. He said he views the COLA as a promise that was made to schoolteachers and university professors. He taught for 41 years, and is now a working retiree. He said this is unconscionable. When he was persuaded to retire and told he could come back as a working retiree at .25 FTE and not have to contribute to ERB. He commented that this is another promise that will be broken. He urged the board to think long and hard about the impact the COLA changes will have. He said it will be very difficult to attract people here if these changes are made.

This concluded public comment.

Ms. Goodwin read the letter she had sent to the board earlier this week. The letter detailed the nine proposed changes to the plan and also stated, "Taken together, without the COLA, these changes are projected to have ERB fully funded within 29 years. Without the COLA

and if ERB does not receive the \$248.3 million appropriation, the funding period will be 31 years.

“The atmosphere at the Roundhouse, largely the result of a significant amount of new money and more progressive members newly elected to the House, may make enacting controversial benefit cuts difficult. We may be better off getting 90% of something good, rather than have an uphill battle that could keep anything good from happening.

“I realize that we had hoped that we would have received some input from the incoming administration before today’s Special Board meeting about making changes to the COLA. I submitted a meeting request last Wednesday and heard over the weekend that we will not hear about having a meeting until after Thanksgiving.

“In my opinion the Board has the following options:

1. Pursue legislation containing a COLA reduction in 2019 which would meet the Board’s confirmed funding policy of being fully funded in 24 years and aggressively lobby for the entire package;
2. Pursue legislation containing a COLA reduction in 2019 which would meet the Board’s confirmed funding policy of being fully funded in 24 years, acknowledging that it is quite likely that the COLA provision will be removed during the legislative process; or
3. Amending the Board’s funding policy to set a goal of being fully funded in 30 years and putting forward the components on which there is consensus by the members of the stakeholder group. This third option would omit any proposed COLA reduction. Although the Board has just this past summer affirmed its desire to be fully funded by 2042, the Board could amend its funding period from 24 to 30 years. It is quite likely that any legislative proposal by PERA will include a 30-year funding period.

“Please note that pursuing option 2 or 3 does not preclude the Board from revisiting the COLA or making additional changes in the future. If there were a significant market decline in the future, all of the parties, including the legislature, will likely be forced to address this crucial topic again.”

Mr. Eichenberg suggested delaying a decision to see what happens in the upcoming legislative session. He said the Governor has publicly stated what she wants and doesn’t want, which may differ from what the board is proposing and could result in a potential veto. He said playing defense might be the best thing to do, which isn’t kicking the can down the road, but instead just waiting. He stated that as many as 5,000 bills may be introduced in this session, “and everybody and their brother is going to be asking for funding and it all ends up in Senate Finance, and that’s where compromises are made.” He suggested “waiting until everything filters out.”

Mr. Goff said he favored the idea of amending the funding policy to set a goal of being fully funded in 30 years, and omit any proposed COLA reduction.

Dr. Duszynski commented that he was swayed by some of Mr. Eichenberg's argument, in that if it comes down to voting on these bullet points, they should be voted on individually. He agreed with Mr. Goff's idea of moving forward without touching the COLA in any way.

**Mr. Eichenberg moved to remove the COLA and to have no further discussion today on the COLA. Mr. Goff seconded the motion.**

Mr. Ruskowski expressed concern about taking action that is not fiducially responsible, which is take certain things off the table from a proposal in which the ERB is trying to achieve sustainability within its own stated goal of 24 years.

**The motion failed on a 3-3 vote, with Mr. Eichenberg, Mr. Goff and Mr. Magid voting for, and Chairwoman Cameron, Mr. Ruskowski and Dr. Duszynski voting against.**

**Mr. Goff moved to pursue #3 on Ms. Goodwin's list of options. Chairwoman Cameron seconded the motion, which failed on a 3-3 vote, with Mr. Goff, Chairwoman Cameron and Dr. Duszynski voting in favor, and Mr. Eichenberg, Mr. Magid and Mr. Ruskowski voting against.**

**Mr. Goff moved to review the proposals and vote on them one at a time. Chairwoman Cameron seconded the motion, which failed on a 3-3 vote, with Mr. Goff, Chairwoman Cameron and Dr. Duszynski voting in favor, and Mr. Eichenberg, Mr. Magid and Mr. Ruskowski voting against.**

Mr. Ruskowski said he found the public comments to be compelling, particularly the point raised by one speaker who discussed female teachers and the point at which they join the workforce and the point at which they exit. He thought that warranted further discussion. That being said, he was trying to be respectful of the work that the team has done over the past year to construct something with broad stakeholder consensus while making some tough decisions, and acknowledging that the legislature will be the final decision maker. He said he thought option #2 on Ms. Goodwin's list allowed the board to say that this was their best thinking today while understanding that the Governor-elect and legislature would have the final word. Otherwise, he thought the board ought to "hit the pause button."

**Mr. Eichenberg moved that the ERB play defense and put no proposal forward at this time. Dr. Duszynski seconded the motion.**

Ms. Goodwin stated that many legislators have told her that they expect the ERB to bring forward the board's proposal to the 2019 session. She noted that LFC analyst Connor Jorgensen was present and could respond to any questions about that.

**The motion failed on a 3-3 vote, with Mr. Eichenberg, Dr. Duszynski and Mr. Magid voting in favor, and Mr. Goff, Mr. Ruszkowski and Chairwoman Cameron voting against.**

Asked to comment by the Chair, Mr. Jorgensen stated that the August LFC hearing ended with Chair Patricia Lundstrom giving direction that they would look forward to a proposal coming out of ERB as well as PERA from the Investments & Pensions Oversight Committee (IPOC) with further guidance that perhaps if those proposals didn't appear from IPOC, the legislature would move to create its own reform proposal. He added that he believed IPOC was slated to hear proposals from both PERA and ERB this month, and that a proposal from PERA was currently in the works.

Chairwoman Cameron said she had been asked to be present at the IPOC meeting, which was scheduled on Monday, November 26.

**Mr. Goff moved that the board vote on the proposed legislation (Elements 1 through 6, and Elements 8 and 9) without the COLA, and then vote on the COLA (Element 7) in a separate motion. Chairwoman Cameron seconded the motion.**

Mr. Eichenberg asked Mr. Jorgensen, in his capacity as LFC analyst, and also with the work he does with IPOC and the Senate Finance Committee, where is the legislature coming from. He commented that he unfortunately spent half a day in front of budget hearings last Wednesday, "and out of a dozen that spoke to me, nobody was on the same page." He asked Mr. Jorgensen if he was hearing the same thing.

Mr. Jorgensen responded that he could not speak to the intent or sentiment of individual legislators or the legislature as a whole.

**The motion failed on a 3-3 vote, with Mr. Goff, Dr. Duszynski and Chairwoman Cameron voting for, and Mr. Ruszkowski, Mr. Magid and Mr. Eichenberg voting against.**

Mr. Eichenberg asked for comments from AFT and NEA representatives.

NEA New Mexico representative Charles Bowyer said this was a prolonged discussion with the NEA board of directors. He went through each item and discussed its effect; and while there was not a good feeling about changing some of the items that would affect future employees, there was some fear from some board members that it would affect the ability to recruit teachers. He said the feeling was that all of the changes were prospective and didn't affect any current employee or retiree. The board unanimously supported all of the items and unanimously opposed any legislation that would change the COLA.

Mr. Eichenberg expressed concern that NEA New Mexico might change its mind during the legislative session about one or more of the items in the proposal. He has seen this happen in the past.



Mr. Bowyer responded that if a piece of legislation were proposed from the ERB along the lines of option #3 from Ms. Goodwin, NEA New Mexico's board of directors is committed to supporting that legislation. He said a legislator or legislative committee might make changes to the proposal, but the NEA New Mexico board of directors is committed to legislation that extends the funding period and removes any consideration of change to the COLA.

Mr. Ruszkowski asked if the NEA New Mexico board is in support of removing the exclusion for substitute teachers, which would have potentially a detrimental adverse effect on being able to recruit and support full-time professionals who have gone through the appropriate training. Mr. Bowyer responded that the board was supportive of including casual employees in the system if they worked over a certain number of hours. The board was also happy to see that if they worked a sufficient number of hours, they would not only pay into retirement but would also receive a benefit at some point. This was not viewed as a detriment to recruitment.

Mr. Ruszkowski asked if there was any discussion as to whether that would be any detriment to recruit and retain full time professionals. Mr. Bowyer responded that, if the question was whether he believed school districts should move toward hiring permanent substitutes rather than hiring qualified teachers, he did not believe that would happen and that the Public Education Department would police that and make sure school districts were looking for fully qualified teachers before hiring substitutes.

AFT representative Therese Saunders said AFT's executive council met last weekend. As a whole, their concern is primarily that they not have a reduction in COLA, and that the lawsuit is included, but AFT cannot support benefit cuts because it would severely impact the ability to recruit new educators. Therefore, they do not support this proposal.

Mr. Ruszkowski commented that he was still struggling with the recruitment issue, and that he thought he was hearing AFT and NEA say they were comfortable with creating incentive structures for non-fully licensed, non-fully certified and not fully professional educators.

Ms. Saunders responded that she could not say that. She said AFT wants the best for its students and members, and this proposal does not meet their standards.

[Break.]

**Mr. Ruszkowski moved to adopt option #2, which is to pursue legislation with all of the elements outlined by ERB today. Chairwoman Cameron seconded the motion.**

Mr. Ruszkowski stated that option #2 says to pursue legislation containing a COLA reduction in 2019 which would meet the Board's confirmed funding policy of being fully funded in 24 years, acknowledging that it is quite likely that the COLA provision will be removed during the legislative process.

Mr. Bowyer stated that, if this proposal were to pass, NEA New Mexico would be opposed to the legislation and would request that it be vetoed.

**The motion failed to pass 5-1, with Mr. Ruskowski voting in favor.**

**Mr. Eichenberg moved that the board wait until the last day of the legislative opportunity to introduce legislation, which is February 15, and that the board meet on February 17, giving staff an opportunity to review all of the legislation that has been introduced, and to get feedback from the stakeholders, and then move forward.**

**The motion died for lack of a second.**

Mr. Ruskowski asked if the board has ever taken an action like this in the past, i.e., agreed to punt on its duty and wait until two days after the legislature has deliberated.

Chairwoman Cameron responded that the board has not done that in her memory.

Mr. Ruskowski pointed out that the ERB operates largely outside of what is a highly politicized process inside of the Roundhouse, and he would not want to see precedent set here. In that light, he questioned what the point was of the team's hard work and lengthy deliberations in creating a comprehensive proposal.

**Mr. Eichenberg proposed a substitute motion that the board adjourn and wait for Ms. Goodwin to meet with the transition team on December 5, and to keep the stakeholders in the loop, and that the board meet on December 7 at its regularly scheduled meeting to continue the discussion. Mr. Magid seconded the motion.**

Mr. Goff said he thought it important the Ms. Goodwin meet with the transition team on December 5, but the IPOC Committee was scheduled to meet on November 26 and was expecting a proposal from the ERB at that time.

Dr. Duszynski asked if it was appropriate for the board to send this proposal forward without the COLA, but without voting on it, with a caveat that it could be subject to change based on discussion with the Governor-elect's transition team.

Ms. Goodwin responded that one of the first questions she would be asked at the November 26 IPOC Committee would be whether the board had endorsed the proposal. She felt her response would not be well received.

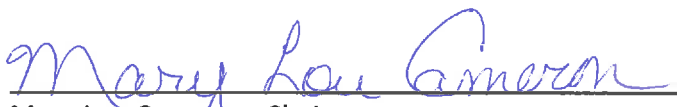
Ms. Goodwin said she felt the board needed to come up with something that the ERB could go forward with the understanding that it will change, and the ERB will solicit the input that's necessary so that it would not get a veto.

The motion failed on a 3-3 vote, with Mr. Eichenberg, Mr. Magid and Dr. Duszynski voting in favor, and Mr. Goff, Mr. Ruszkowski and Chairwoman Cameron voting against.

Mr. Eichenberg moved to accept option #3. Mr. Magid seconded the motion, which passed 5-1, with Mr. Ruszkowski voting against the motion.

3. ADJOURN

Its business completed, the Educational Retirement Board adjourned the meeting at 12:30 p.m.

  
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Mary Lou Cameron, Chairwoman

ATTEST:

  
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Larry Magid, Secretary