



State of New Mexico
Educational Retirement Board

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**MINUTES OF THE
NEW MEXICO EDUCATIONAL RETIREMENT BOARD OF TRUSTEES
REGULAR MEETING**

October 13, 2023

1. a. ROLL CALL: QUORUM PRESENT

A Regular Meeting of the New Mexico Educational Retirement Board was called to order on this date at 9:00 a.m. at the Albuquerque Public Schools Headquarters, 6400 Uptown Boulevard, N.E., Albuquerque, New Mexico. A quorum was established following roll call.

Members Present:

Mr. H. Russell Goff, Chair
Ms. Mary Lou Cameron, Vice Chair
Mr. Larry Magid, Secretary
Hon. Laura M. Montoya, New Mexico State Treasurer [arriving at 10:30 a.m.] She had dialed in while enroute.
Mr. Max Baca
Dr. Donald W. Duszynski
Dr. Matías Fontenla [joining at 10:00 a.m. by phone]
Mr. Mario Suazo

Members Excused:

Mr. Antonio Ortiz

Staff Present:

Mr. David Archuleta, Executive Director
Mr. Lawrence Esquibel, Deputy Director
Mr. Bob Jacksha, Chief Investment Officer
Ms. Monica Lujan, Member Services Director
Ms. Susanne Roubidoux, General Counsel
Mr. Randall Cherry, Deputy General Counsel
Mr. Kevin Swinson, Chief Information Officer
Ms. Ariana Wakefield, Executive Assistant

Others Present:

Ms. Judith Beatty, Board Recorder

b. Approval of Agenda

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

c. Approval of Minutes

- **August 25, 2023 and September 11, 2023**

Ms. Cameron moved approval of the minutes of the August 25, 2023, meeting. Mr. Magid seconded the motion, which passed unanimously.

Dr. Duszynski moved approval of the minutes of the September 11, 2023, meeting. Mr. Baca seconded the motion, which passed unanimously.

d. Introduction of Guests

Chairman Goff welcomed guests and staff.

2. CONSENT AGENDA: BOARD TRAVEL

There were no requests.

Mr. Archuleta stated that future board books will include high level summaries of meetings or conferences attended by board members, including information presented at those meetings.

3. APPROAL OF 2024 BOARD MEETING DATES

Ms. Cameron moved approval of draft #1. Mr. Baca seconded the motion, which passed unanimously.

4. NMERB COMMITTEE APPOINTMENTS

a. Alternative Retirement Plan (ARP) Committee

Chairman Goff moved the following appointments:

1. Max Baca, Chairperson
2. Don Duszynski
3. Mario Suazo

Ms. Cameron seconded the motion, which passed unanimously.

b. Audit Committee

Chairman Goff moved the following appointments:

1. Mary Lou Cameron, Chairperson
2. Honorable Laura Montoya
3. Antonio Oritz

Mr. Baca seconded the motion, which passed unanimously.

c. Evaluation Committee

Chairman Goff moved the following appointments:

1. Russell Goff, Chairperson
2. Mary Lou Cameron
3. Larry Magid

Mr. Suazo seconded the motion, which passed unanimously.

d. Investment Committee

Chairman Goff moved the following appointments:

1. Larry Magid, Chairperson
2. Russell Goff
3. Matias Fontenla

Ms. Cameron seconded the motion, which passed unanimously.

5. RETIREMENTS: MONICA LUJAN, MEMBER SERVICES DIRECTOR

a. Disability Retirements

Ms. Lujan reported that, during the August-September period, 10 disability cases were closed, for a total of 25 cases for the 2023 calendar year.

Responding to a question asked by Ms. Cameron at the August meeting, Ms. Lujan said NMERB is currently disbursing disability benefits to 806 members. The monthly averages remain steady.

b. Age and Service

Ms. Lujan reported that, for the August-September period, 4 members were approved for disability benefits, 20 reciprocity applications were approved.

Ms. Lujan reported that, during the June-July period, 4 members were approved for disability benefits, 35 reciprocity applications were received, and there were 220 applications received for normal retirements, for a total of 244 applications.

Ms. Lujan provided a breakdown of the 244 applications by age, for an average retirement age of 62.74.

Responding to Chairman Goff, Mr. Archuleta reported that there were 146 employees on the 90-day wait-out as of this morning.

Mr. Baca moved to approve the Disability Retirements and Age and Service reports. Ms. Cameron seconded the motion, which passed unanimously.

6. EXECUTIVE DIRECTOR'S UPDATE: DAVID ARCHULETA, EXECUTIVE DIRECTOR

a. Retiree Health Care Authority

- Mr. Archuleta will be serving as NMERB representative on the NMRHCA board going forward, replacing Rick Scroggins, who will be retiring from the NMERB at the end of this month.
- The NMRHCA board of directors approved staff's 2024 legislative proposal to (1) request of \$150 million one-time appropriation and (2) request a joint resolution proposing an amendment to the New Mexico Constitution recognizing the NMRHCA as a benefit or property right.

b. Operational Updates:

- Susan Roubidoux, who has been general counsel since 2016, will be retiring at the end of this month.
- Assistant Director Rick Scroggins will be retiring at the end of this month.
- A groundbreaking ceremony is scheduled at noon on October 18 at Las Soleras.
- NMERB's FY 2025 budget hearing is scheduled at the LFC on October 25.
- The Pension Administration System Modernization Project is proceeding according to the Telus Project Plan. Overall, the project received a "green" rating, which indicates it is on track with only minor issues. Kevin Swinson and the IT team, along with member

services, deserve a huge round of applause for all of their hard work and effort.

c. Board Policy Review

Mr. Archuleta said the initial draft of the NMERB Board Policies and Procedures document, with proposed changes, was included in the board packet. Board members are encouraged to provide any additional input. Following a legal review, it will be back before the board for final approval in December.

Treasurer Montoya requested the following: 1. That legal counsel considers adding the Chief Investment Officer, CIO, and Executive Director, as well as anybody who has the responsibility of direct investing, to the Standards of Conduct. 2. The Secretary of State's financial disclosure statement is required by statute, so it is not necessary to state that the NMERB board requires it. 3. That the annual financial disclosures be brought before the board for review. 4. Clarifying the conflict of interest on the financial disclosure is on an annual basis.

d. Legislative Proposal

Mr. Archuleta reviewed agency highlights and presented three proposal options for board consideration:

- Option 1) one-time supplemental payment to the Fund;
- Option 2) Increase employee/employer contributions (10.92/19.24); and
- Option 3) one-time supplemental payments to retirees.

Mr. Archuleta recommended Option 3:

- Percent of pension based on ask:
 - 2% - \$28 million
 - 3% - \$35 million
 - 4% - \$42 million
 - 13th check (8.33%) - \$118 million
- Flat dollar amount:
 - \$500 - \$28.1 million
 - \$750 - \$42.3 million
 - \$1,000 - \$56.4 million

Referring to Option 1, Mr. Archuleta said a one-time infusion of \$250 million, for instance, would not have a significant-enough impact on the fund to receive legislative support.

Referring to Option 2, Mr. Archuleta said the increases would expedite the funding period by four years to 2048 versus 2052, and create an additional \$81 million in recurring revenue to the program every year. This would be consistent with a policy the board adopted in 2019. This is not likely, however, because it extends out their obligations to this program, which are already expected to grow if salaries increase.

Referring to Option 3 (recommended), Mr. Archuleta said it is important to keep in mind that the NMERB will be competing with overall compensation for public employees, healthcare benefit rates that need to increase, employee/employer contribution requests, supplemental checks going to PERA, and relief payments to New Mexicans. He said he felt this option had a much better chance of receiving support than the first two options he presented.

Mr. Archuleta said he would work with a legislator who has supported the NMERB in the past, and request that they introduce a bill containing a direct appropriation that would provide a 13th check that would be equivalent to about \$1,000.

In discussion on Return to Work, Mr. Baca pointed to a growing problem in state government with the loss of workers in crucial areas such as IT, HR, accounting and teaching, and the need to incentivize people to continue working. He said he would support changes to the NMERB's Return to Work laws provided there was no adverse effect. He said New Mexico is an employment desert, and he thought it important to consider a new approach.

Mr. Baca asked staff to provide fiscal impact information on the options along with side-by-side comparisons.

7. INVESTMENT REPORTS: BOB JACKSHA, CIO

a. Staff Selection Committee Report

Mr. Jacksha reviewed actions taken at the SSC in September:

- Global Alpha International Small Cap Contract: Continued the investment management services provided by the manager for a period of four years.
- Raith Separate Account Conversion: Approved conversion of existing Raith NMERB Core Plus Real Estate Credit Separately Managed Accounts to a single open-end fund structure for the Real Estate portfolio.

- Andromeda Fund V: Approved a commitment of \$150 million for the Infrastructure portfolio.

b. Investment Committee Report

Mr. Jacksha summarized actions taken by the Investment Committee this morning:

- Accepted the Proxy Voting Report
- Reviewed the quarterly Commissions Report.
- Looked at the Derivates Compliance Report. The high point for the quarter was 2.3%, well within policy limits.

c. Investment Policies Revisions

Mr. Jacksha said NEPC is recommending that the NMERB replace the LIBOR + 200 basis points benchmark for Global Tactical Allocation and Other Diversifying Assets with the Secured Overnight Financing Rate (SOFR) + 200 basis points as an alternative reference rate to USD LIBOR. He said the LIBOR benchmark has been phased out.

Treasurer Montoya moved to approve the benchmark change from LIBOR to SOFR in the Investment Policy Statement, as recommended by the Investment Committee. Mr. Baca seconded the motion, which passed unanimously.

d. Other Investment Reports

None.

RETIREMENTS: SUSANNE ROUBIDOUX AND RICK SCROGGINS

Board members acknowledged and thanked Ms. Roubidoux and Mr. Scroggins for their years of service to the NMERB.

- Staff is requesting that the Board of Trustees review the NMERB Policies and Procedures document, which was last reviewed and adopted by resolution in 2012. Staff will be presenting a revised and redlined document at the October meeting for review, with proposed adoption at the December meeting.

8. EXECUTIVE SESSION: 10:15 A.M.

Chairman Goff moved that the board go into Executive Session for the following purpose:

- a. Pending litigation in which the board is a participant (session closed per NMSA §10-15-1(H)(7). Update regarding Katherine Chippeaux and Robert Jacksha et al., v. NMERB et al., Case No. D-101-CV-2023-01297.
- b. Deliberations in connection with an administrative adjudicatory proceeding (session closed per §10-15-1(H)(3). Delilah Tenorio, Assistant Attorney General, New Mexico Office of Attorney General.
 1. Kellee Brandenburg; Case No. NMERB-23-02; and
 2. Jose Wallace; Case No. NMERB 23-03

Ms. Cameron seconded the motion, which passed unanimously by roll call vote:

For: Chairman Goff; Ms. Cameron; Mr. Magid; Treasurer Montoya; Mr. Baca; Dr. Duszynski; Dr. Fontenla; Mr. Suazo

9. ACTION FROM EXECUTIVE SESSION: 11:55 A.M.

Chairman Goff moved to come out of Executive Session. The only matters discussed during Executive Session were:

- a. Pending litigation in which NMERB is a participant, specifically Katherine Chippeaux and Robert Jacksha et al. v. NMERB et al., Case No. D-101-CV-2023-01297; and
- b. Deliberations in connection with an administrative adjudicatory proceeding, specifically the administrative appeals of Kellee Brandenburg, Case #ERB 23-02 and Josie Wallace, Case #ERB 23-03.

Mr. Magid seconded the motion, which passed unanimously by roll call vote:

For: Chairman Goff; Mr. Magid; Treasurer Montoya; Mr. Baca; Dr. Duszynski; Dr. Fontenla; Mr. Suazo.

Abstaining Ms. Cameron.

Ms. Tenorio stated that, in the matter of the appeal of Kellee Brandenburg, #ERB 23-02, it is her understanding that the board wishes to entertain a motion to modify the Hearing Officer's recommended decision to reinstate Ms. Brandenburg's retirement benefits based on her credible testimony that

Ms. Brandenburg attempted to submit a Return to Work application to NMERB in May 2022.

Treasurer Montoya so moved. Dr. Fontenla seconded the motion, which failed on the following roll call vote:

For: Treasurer Montoya; Dr. Fontenla

Against: Chairman Goff; Ms. Cameron; Mr. Magid; Mr. Baca; Dr. Duszynski; Mr. Suazo

Explaining her vote, Treasurer Montoya said she realized that this put the board in a very bad predicament because of the statute and the rules in the policy, but her responsibility as a member of the board is consider what is in the best interest of the fund and the educators. Because of the lack of communication in process with school districts, unions, or anyone else involved in education, she didn't feel teachers should bear the burden of having to pay back money they work hard for, especially when there is intent to turn in the paperwork.

Mr. Baca moved to adopt the Hearing Officer's recommended decision in Case #ERB 23-01, which concludes that Kellee Brandenburg: 1) failed to establish by a preponderance of evidence that shows that she timely filed a return to work application; 2) that NMERB, pursuant to §2.82.11.5.15(f) NMAC can properly recover the retirement benefits that were paid to her during the period that she was ineligible and 3) that the NMERB decision to deny her request is upheld.

Mr. Magid seconded the motion, which passed on the following roll call vote:

For: Chairman Goff; Ms. Cameron; Mr. Magid; Mr. Baca; Dr. Duszynski; Mr. Suazo

Against: Treasurer Montoya; Dr. Fontenla

Ms. Tenorio stated that, in the matter of the appeal of Josie Wallace, #ERB 23-03, it is her understanding that the board wishes to entertain a motion to modify the Hearing Officer's recommended decision to reinstate benefits for Mr. Wallace for the months of November 2022, December 2022, and January 2023, because testimony by Ms. Wallace indicated that she experienced a seven-year time lapse between the time of her retirement and her return to work. Ms. Wallace returned to work as a substitute teacher. Immediately after Ms. Wallace was notified that she would experience a suspension of her benefits, she immediately terminated her employment with Farmington New

Mexico School District and followed the return to work procedures as outlined in the act and the board rules, and that her return to work application was ultimately approved.

Treasurer Montoya s Moved. Ms. Cameron seconded the motion, which failed on a tried roll call vote:

For: Treasurer Montoya; Dr. Duszynski; Dr. Fontenla; Ms. Cameron.

Against: Chairman Goff; Mr. Magid; Mr. Baca; Mr. Suazo.

Mr. Baca moved to adopt the Hearing Officer's recommended decision in Case #ERB 23-03 that concludes that Josie Wallace: 1) failed to establish by a preponderance of evidence that showed that she timely filed a return to work application; 2) that NMERB, pursuant to §2-82.11.5.15(f) NMAC can properly recover the benefits that were paid to her during the period she was ineligible; and 3) that the NMERB decision to deny her request is upheld.

Mr. Magid seconded the motion, which passed on the following roll call vote:

For: Chairman Goff; Ms. Cameron; Mr. Magid; Mr. Baca; Mr. Suazo

Against: Treasurer Montoya; Dr. Fontenla

Abstaining: Dr. Duszynski.

Treasurer Montoya commented that the statute is very clear that it only requires that the application be done for the return to work. NMERB policy is requiring a fee. She asked legal staff to look into notifying members by mail when they failed to fill out the paperwork and reminding them that failure to do so within 30 days will result in a loss of benefits. From a legislative perspective, the NMERB is hurting teachers who are coming back to work, whether it a substitute teacher coming back for seven years, or somebody who decided to come back to teach after a couple of months, who turned in the paperwork but didn't get it there. She said a certified letter should be required so it is clear whether the paperwork was in fact turned in or not turned in.

Treasurer Montoya said educators aren't paid enough as it is, coming from a family of educators herself, and for the NMERB to have to make a decision to not allow people to get the money that they put into the fund the whole time, plus come back to work and put more money into the fund that they won't get, isn't very just. She said the NMERB should figure out a process and

some policies that put things in better perspective so the board isn't put in the position of having to make these kinds of decisions.


Mr. Baca recommended that the executive director send a letter to all superintendents and school board presidents letting them know about this process and some of the issues involved so the NMERB can communicate better with school districts and avoid these problems in the future.

10. NEXT MEETING: FRIDAY, DECEMBER 8, 2023 - ALBUQUERQUE

11. ADJOURN: 12:08 p.m.



Russell Goff, Chairman

ATTEST:


Larry Magid, Secretary

