

**Minutes**  
**North Dakota Public Employees Retirement System**  
**Thursday, January 29, 2004**  
**ND Association of Counties, Bismarck**  
**BCBS, 4510 13<sup>th</sup> Ave SW, Fargo**  
**8:30 A.M.**

Members Present: Mr. Weldee Baetsch  
Mr. David Gunkel  
Mr. Howard Sage  
Ms. Arvy Smith  
Ms. Sandi Tabor

Via Video Conference Chairman Jon Strinden  
Ms. Rosey Sand

Others Present: Mr. Sparb Collins, Executive Director NDPERS  
Ms. Kim Humann, NDPERS  
Ms. Kathy Allen, NDPERS  
Ms. Sharmain Dschaak, NDPERS  
Mr. Bryan Reinhardt, NDPERS  
Ms. Deb Knudsen, NDPERS  
Ms. Sharon Schiermeister, NDPERS  
Ms. Rebecca Fricke, NDPERS  
Ms. Cheryle Masset, NDPERS  
Mr. Scott Miller, Attorney General's Office  
Ms. Rhonda Peterson, BCBSND  
Mr. Tom Tupa, INDSEA  
Mr. Howard Snortland, AFPE  
Ms. Chris Runge, NDPEA AFT 4660  
Mr. Greg Sund, City of Dickinson  
Mr. David Peske, ND Medical Association  
Dr. Terry Dwelle, ND State Health Officer

Via Video Conference Mr. Larry Brooks, BCBSND

Chairman Strinden called the meeting to order at 8:30 a.m.

**MINUTES**

Chairman Strinden called for any questions or comments regarding the minutes of the December 19, 2003 meeting.

**MR. GUNKEL MOVED APPROVAL OF THE DECEMBER 19, 2003 NDPERS BOARD MINUTES. MR. BAETSCH SECONDED THE MOTION.**

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**Blue Cross Blue Shield Utilization Review (Informational)**

Included with the board materials was information from BCBS on the PERS plan utilization and prenatal plus program. Representatives from BCBS reviewed the prenatal plus program and the PERS plan utilization analysis information. The utilization information indicates that the wellness/disease management strategy to be discussed is important to PERS and may be of help in reducing the trends.

**Disease Management/Wellness Initiative (Informational)**

Dr Dwelle, State Health Officer, shared with the Board some concepts on the importance of having a Wellness/Disease Management strategy in responding to today's health care challenges.

Staff and BCBS are looking at adding a disease management firm's services to the efforts of BCBS. BCBS and PERS staff met with several disease management firms in January. The goal of these efforts would be to continue to improve the quality and efficiency of the care given to our members which should help to reduce costs. Further reports on this issue will be provided to the Board in the next several months.

In addition, it was reported that PERS staff and Dept of Health staff have met with UND School of Medicine seeking their assistance in the development of an approach to do risk assessments on PERS plan members and provide follow-up support to those members whose risk factors require attention. PERS staff is also seeking assistance from the School of Medicine to develop an approach for employer-based wellness programs. PERS staff will be meeting again with the School of Medicine in early February and will be also be meeting with the active employee benefit committee to solicit ideas about incentives.

**Smoking Cessation (Informational)**

Mr. Brooks, BCBS, provided an update on the progress of the Smoking Cessation Program.

**Blue Cross Blue Shield Member Survey (Informational)**

Ms. Peterson, BCBS, reviewed the results of the BCBS Member Service Survey for August 2003. This survey was conducted to assess the satisfaction of NDPERS subscribers with the BCBS Service Unit assigned to the PERS group.

**Heart of America Renewal (Board Action Requested)**

Ms. Allen indicated that included with the board materials was a request from Heart of America in Rugby to continue offering its HMO membership to state employees in its Rugby service area. The term of this renewal is from July 1, 2004 through June 30, 2005. Staff requested the Board to accept or reject the Heart of America request to offer its HMO to PERS membership in the Rugby service area.

**MS. TABOR MOVED APPROVAL OF THE HEART OF AMERICA REQUEST TO OFFER THEIR HMO TO PERS MEMBERSHIP IN THE RUGBY SERVICE AREA. MS. SAND SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sage, Sand, Smith, Tabor and Chairman Strinden

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**Nays:** None

**PASSED**

**Plan Design (Informational)**

Mr. Collins reviewed with the Board the Legislative Employee Benefits Committee meeting of January 15. Per the Committee's request, staff reported the cost of plan designs that had a \$500 deductible and a \$1,000 deductible. Information also reviewed with the Committee included: placing a cap on prescription costs, eliminating the employee cost sharing and what the premium payment practices of the largest BCBS groups were.

**Life Insurance Update (Informational)**

Mr. Reinhardt provided an update on the PERS Life Insurance Plan for the July 2002 through July 2003 period.

**Surplus/Affordability (Informational)**

The December 2003 surplus projection and affordability analysis for the NDPERS group medical plan were included with the board materials.

**Quarterly Graphs (Informational)**

The quarterly health utilizations graphs for the third quarter of 2003 were included with the board materials.

**DEFINED CONTRIBUTION DEFERRED COMP**

**Deferred Comp Provider Training (Board Action Requested)**

Last fall provider training programs were conducted in September in Bismarck, Fargo and Minot and November in Bismarck and Grand Forks. Ms. Allen conveyed the meetings were well attended; however, there were a number of provider representatives who did not satisfy the training requirements specified in the administrative contract. On December 1, 2003, letters were sent to the home office contacts for each provider company, citing the contract requirements and included a list of representatives not in compliance with the contract. At this time, staff indicated they had received responses from all provider companies out of compliance except The Equitable. The respondents all took action by sending notification to the representatives on the list PERS provided that they were no longer eligible to participate as agents in the state's deferred compensation plan. This action brought these providers into compliance with the contract provisions. Staff has removed these individuals as instructed. Staff recommended notifying The Equitable via a letter that this situation was reviewed by the Board who found them out of compliance with the contract and that the Board would consider taking action to implement a loss of provider status for The Equitable at its February meeting.

**MR. GUNKEL MOVED APPROVAL OF STAFF'S RECOMMENDATION. MS. TABOR SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sage, Sand, Smith, Tabor and Chairman Strinden

**Nays:** None

**PASSED**

**Defined Contribution 2003 Enrollment (Informational)**

Included with the board materials was the annual report outlining the number of contacts made with new eligible employees and the number that transferred to the Defined Contribution plan in 2003.

**457 and 401(a) Proposals (Informational)**

A summary from Deloitte & Touche on the providers who responded to the RFP for the 457 and 401(a) plans was included with the board materials.

**RETIREMENT**

**Benefits Committee Program Suggestions (Board Action Requested)**

During the last several months the employee benefits committee for actives and the retiree benefits committee have met to review the status of the retirement programs and develop suggestions for the Board's consideration. Staff has also met with representatives of the Highway Patrol, Judges and National Guard relating to their systems. The following is a list of the benefits committee's suggestions relating to retirement, retiree health and deferred compensation:

<b>Benefits Committee Suggestions:</b>	<b>Staff Recommendation</b>
Do not seek increase in retirement contribution	Agree
Change final average salary to high 36 of last 180	Agree
Add a Joint & Survivor level social security option	Agree
Provide for a Partial Lump Benefit with 12 month maximum	Agree
Add a 20 term certain and eliminate the 5 year provision	Agree
Provide for a 13 <sup>th</sup> check for retirees if earning exceed 10.3% by enough to pay for it	Agree
Increase retiree health contributions to 1.25% and increase benefit to \$5	Agree
Provide for a default election for new employees of \$25 to the deferred comp companion plan stable value option	Agree
Investigate increasing Final Average Salary to offset loss of a general salary increase	This is suggested by staff
For the Highway Patrol change definition of Final Average Salary to highest 36 instead of consecutive 36	Agree
For Highway Patrol propose and review changing definition of disability	Agree
For the Highway Patrol system add the employer purchase provisions	Agree

Staff sought direction from the Board on each of these suggestions to determine if they should continue working on developing these ideas into legislation for final consideration in March. All legislation for the 2005 session must be submitted by March 30, 2004. Discussion followed.

**MR. SAGE MOVED TO REMOVE THE DEFAULT ELECTION FOR NEW EMPLOYEES TO THE DEFERRED COMPENSATION PLAN FROM FURTHER STUDY. MR. GUNKEL SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sage, Sand, Smith, Tabor and Chairman Strinden  
**Nays:** None

**PASSED**

The Board requested that staff seek information on increasing the retiree health credit to \$6.00 or \$6.50. Ms. Sand inquired if the proposal for the highway patrol's final average salary would be changed to be consistent with the main system. Mr. Collins indicated they were interested in pursuing those changes also.

**MR. SAGE MOVED TO APPROVE TO PREPARE PROPOSED LEGISLATION FOR THE ABOVE RECOMMENDATIONS EXCEPT FOR THE DEFERRED COMPENSATION PROPOSAL. MS. SAND SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sage, Sand, Smith and Chairman Strinden  
**Nays:** None  
**Absent:** Tabor

**PASSED**

**IRS Letter Determination (Informational)**

The 2001 Legislative session authorized the purchase of service credit on a pretax basis. However, the legislation specified that the section would become effective on the date the PERS Board of Trustees received a letter ruling from the IRS that implementation of this provision did not jeopardize the qualified status of the plan. It further stated the Board should notify the Legislative Council of the effective date. The request was submitted to the IRS in 2001. Included with the board materials was a copy of the letter opinion from the IRS approving the process.

Based upon the opinion, staff is working with the Segal Company to develop the procedures for pretax purchases and will be prepared to review the recommendations with the Board when they are complete. Mr. Miller, legal counsel, conveyed he felt the letter qualified for notification to the Legislative Council with an effective date of sometime after December 11 or whenever the letter was received for the main system and the highway patrol.

**MS. SMITH MOVED TO ACCEPT THE IRS OPINION AND AUTHORIZE STAFF TO NOTIFY THE LEGISLATIVE COUNCIL OF THE EFFECTIVE DATE OF THIS PROVISION. MR. SAGE SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sage, Sand, Smith and Chairman Strinden  
**Nays:** None

**Absent:** Tabor

**PASSED**

**Interest Payments (Board Action Requested)**

In November the Board reviewed the procedure for refunding employer contributions made in error. PERS practice had been to pay interest on amounts over 90 days. The Board decided in November not to continue this practice based on the advice of our attorney, Mr. Miller, that it was not authorized in statute. Staff was able to identify the cases that were paid interest in the past. Since the conclusion to not pay was based upon the advice that we did not have the legal authority to make this payment, then our past practice was not valid and interest paid was a mistake. Staff will proceed to contact those that were paid interest in error and request a refund. However, several of the amounts are small. Staff requested Board approval to not pursue the small amounts since they are deminimus.

**MR. SAGE MOVED NOT TO PURSUE THE DEMINIMUS AMOUNTS. MS. SAND SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sage, Sand, Smith and Chairman Strinden

**Nays:** None

**Absent:** Tabor

**PASSED**

**Royalty Payments (Board Action Requested)**

Dickinson Public Schools has remitted retirement contributions on oil royalty payments. The School addressed a letter to the PERS office stating that they erroneously included the monies as eligible compensation and wish a return of the retirement contributions. The School's letter also stated that they believe that the oil royalty payments do not meet PERS definition of bonuses based on the phrase "for service performed in addition to base salary". The oil royalty payments are disbursed based on the number of full-time positions the school employs.

Mr. Miller, legal counsel, has reviewed this case and concluded that the payments could be interpreted to be bonuses but also stated that the payments don't seem to fit well within any provisions in either the PERS statutes or rules. An argument could be made that the payments are not salary, and should not have contributions made on them. As such, Mr. Miller stated that there does not seem to be anything requiring NDPERS to accept contributions on the oil royalty payments.

Staff recommended that oil royalty payments do not meet the definition of eligible bonuses since the payments most closely resemble a retention bonus and therefore, would not be eligible. Discussion followed. During discussion it was noted that TFFR reviewed this issue and concluded that retirement contributions were required.

**MS. SAND MOVED TO KEEP THE MONEY PAID BY THE DICKINSON PUBLIC SCHOOLS AND GO BACK AND CORRECT THE ACCOUNTS WITH REGARD TO THE OIL ROYALTY BONUSES PAID. MR. SAGE SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sage, Sand and Smith

**Nays:** Strinden

**Absent:** Tabor

**PASSED**

### **MISCELLANEOUS**

#### **Administrative Rules (Board Action Requested)**

A hearing was held on December 11, 2003 in the Missouri Room at the State Capitol at 11:00 a.m. regarding proposed administrative rules. A period for written comments was held open until 5:00 p.m. on January 13<sup>th</sup>. The minutes of the hearing were included in the board materials. Also included with the board materials was a copy of an attorney general's opinion that is referred to in the hearing minutes. To staff's knowledge, all legal requirements have been satisfied to date, regarding promulgation of these rules. There has been no request for a regulatory analysis received and the proposed rule is not anticipated to have a cost impact on the regulated community. The Board was sent an analysis of the rules impact on small business entities under separate cover. The Board also reviewed the following written comments that were submitted to the PERS office: proposed alternative definition for "Retirement Allowance" from Mr. Greg Sund, Dickinson City Administrator, letter from Mr. Timothy Priebe, Dickinson City Attorney, e-mail from Ms. Jamie Kinsella, and written testimony by Mr. Greg Sund, Dickinson City Administrator. Staff requested the Board's approval of the rules as promulgated and asked for the authority to submit the rules to the Attorney General's Office for review. Subject to obtaining the Attorney General's approval, staff will then submit the rules to Legislative Council for final promulgation.

Mr. Greg Sund, appeared before the Board regarding the proposed adoption of the definition for "retirement allowance". Mr. Sund believes that the "retirement allowance" should be defined by the individual plans maintained by political subdivisions, not a mandated definition by PERS. Discussion of the submissions followed.

**MR. GUNKEL MOVED FOR STAFF TO FURTHER LOOK AT THE DEFINITION OF "RETIREMENT ALLOWANCE" AND COME BACK TO THE BOARD WITH THEIR RECOMMENDATION. MS. SAND SECONDED THE MOTION.**

Mr. Miller pointed out if there are substantive changes to that particular rule the rule making process would have to start at the beginning of process and if the rules are not approved, the implementation of all the rules will be delayed. Mr. Miller indicated that rule can be deleted from the packet that is being approved or technical changes may be made.

Mr. Gunkel amended his previous motion:

**MR. GUNKEL MOVED TO APPROVE THE RULES WITH THE EXCEPTION OF THE DEFINITION RELATING TO "RETIREMENT ALLOWANCE" AND REQUESTED STAFF**

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**TO FURTHER LOOK AT THIS DEFINITION AND COME BACK TO THE BOARD WITH THEIR RECOMMENDATION AND ACT ON THAT RULE SEPARATELY. MS. SAND SECONDED THE MOTION.**

**Ayes:** Baetsch, Gunkel, Sand, Smith and Strinden

**Nays:** Sage

**Absent:** Tabor

**PASSED**

**Meeting Schedule (Informational)**

The following upcoming Board meetings have been scheduled:

- February 12th 8:30 - North Dakota Association of Counties  
**Investment Subcommittee Meeting will follow**
- February 19th, 8:30 - North Dakota Association of Counties
- March 24th, 8:30 - 4:00 PM - Peace Garden Room, State Capital
- March 25th, Board Meeting

**NDPERS Comprehensive Annual Report (Informational)**

The 2003 PERS Annual Report was included with the board materials. The report is also available on the PERS website under the News button. The report was published in December and distributed to all participating employers participating in the retirement system. The report was submitted to the Government Finance Officers Association with an application for the GFOA Certificate of Excellence in Financial Reporting.

**Compensation Committee Recommendation**

Mr. Baetsch indicated the Executive Director's review and salary adjustment recommendation was discussed at the December meeting and was carried forward. Mr. Baetsch conveyed the compensation committee recommended a 3% salary adjustment for the Executive Director based on the methodology which was used in the past. Discussion followed.

**MR. SAGE MOVED TO NOT GRANT THE EXECUTIVE DIRECTOR A SALARY INCREASE. MS. SAND SECONDED THE MOTION.**

**Ayes:** Sage, Sand, Smith and Strinden

**Nays:** Baetsch, Gunkel

**Absent:** Tabor

**PASSED**

**MR. BAETSCH MOVED THAT THE HUMAN RESOURCE MANAGEMENT SERVICES DIVISION OF OMB BE REQUESTED TO CONDUCT A STUDY COMPARING JOB DESCRIPTIONS AND SALARIES OF PUBLIC EMPLOYEES RETIREMENT EXECUTIVE POSITIONS IN SELECTED STATES TO PROVIDE THE BOARD WITH MORE DETAILED AND APPROPRIATE DATA FOR DETERMINING FUTURE SALARY ADJUSTMENTS. MS. SAND SECONDED THE MOTION.**

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**Ayes:** Baetsch, Gunkel, Sage, Sand, Smith and Chairman Strinden

**Nays:** None

**Absent:** Tabor

**PASSED**

Chairman Strinden called for any other business or comments. Hearing none, the meeting was adjourned at 12:52 p.m.

Prepared by,

Kim Humann  
Administrative Assistant