

Note: These minutes from the June 12, 2012, regular meeting were approved and executed at the July 10, 2012 regular Meeting of the Board of Trustees.

**Regular Meeting
Board of Trustees
June 12, 2012**

The Public Minutes

**New Hampshire Retirement System
54 Regional Drive
Concord, New Hampshire**

Trustees: Lisa Shapiro, Ph.D., *Chair, presiding*; Danny O'Brien, *Vice Chair*; Dean Crombie; Dick Gustafson, Ph.D.; Karen McDonough; Kate McGovern, Ph.D.; Brian Morrissey; Cathy Provencher; Tara Reardon; Hershel Sosnoff; Jack Wozmak. Don Roy, *absent*.

Staff: George Lagos, *Executive Director*; Larry Johansen, *Director of Investments*; Jack Dianis, *Director of Finance*; Tim Crutchfield, Esq., *Chief Legal Counsel*; Nancy Miller, *Director of Member Services*; Denise Call, *Director of Employer Services*; John Browne, *Internal Auditor*; Heather Fritzky, *Accounting & Finance Reporting Supervisor*; Carolyn Johnson, Esq., *Hearings Examiner*; Marty Karlon, *Public Information Officer*; Bill Spead, *Regulatory Compliance Officer*; Kristie Kathan, *Human Resources Coordinator*; and Shannan Hudgins, *Administrative Coordinator*.

Guest: Andrew Schulman, Esq.

Chair Shapiro called the meeting to order at 9:06 a.m. and requested a motion to approve the public minutes from the May 8, 2012 Regular Meeting of the NHRS Board of Trustees. Following an amendment proffered by Trustee O'Brien, on a motion by Trustee Reardon, seconded by Trustee Morrissey, the May 8, 2012 Regular Board Meeting public minutes, as amended, were approved unanimously.

Chair Shapiro requested reports from Board committees, beginning with the Audit Committee. Committee Chair Provencher began with the audit Tracker, noting that two items had been added and that Director of IT Paul Zahensky had assured the committee his goal was to address the outstanding audit items in IT quickly. She stated that the Qualified Domestic Relations Order (QDRO) audit had produced recommendations to improve the process but that no errors had been identified. Chair

Provencher expected results from the death benefits audit at the August meeting, as well as a proposed draft for the 2013 planned audit. Regarding the expected GASB statement, she stated Director of Finance Jack Dianis would provide a report to the Board at the July Board meeting. She announced the next Audit Committee meeting was scheduled for Tuesday, July 10, 2012, at 8:30 a.m.

In proceeding to the Benefits Committee report, Chair Shapiro asked Richard Welch and his daughter and representative, Attorney Kimberly Welch, to address the Board. As previously approved by the Board of Trustees, Atty. Welch presented a fifteen minute oral statement of Mr. Welch's appeal to the NHRS Board of its determination on October 9, 2007 that certain payments made to him when he was a school administrator in Farmington that were treated "as if they were salary" are not considered earnable compensation under RSA 100-A.

At the conclusion of her oral statement, Dr. Shapiro asked if Atty. Welch had any further information that the Board of Trustees required for its deliberations. Hearing none, Dr. Shapiro next asked Atty. Welch to describe in detail why her father's case, in which he had asked the school administration to consider his benefits as salary similar to the teachers over 55 in Farmington, was different and distinguishable from the NH Supreme Court decision in Farmington Teachers in which the practice had been ruled illegal. Atty. Welch replied that her father's contract stated he "may" reimburse the school district, not "must." Atty. Welch concluded her statement, and Dr. Shapiro stated that the Board would consider the matter and render its decision.

On a motion by Trustee McDonough, seconded by Trustee O'Brien, the Board, by roll call, voted to enter into non-public session under RSA 91-A:3, II(e) to discuss the claims made against the NHRS in the Welch matter, as follows:

Ayes: Trustees Shapiro, O'Brien, Crombie, Reardon, McGovern, Wozmak, Gustafson, Sosnoff, McDonough, Morrissey, and Provencher.

Nays: None.

On a motion by Trustee Morrissey, seconded by Trustee Wozmak, the Board unanimously voted to conclude the non-public session.

Chair Shapiro announced that the Board's opinion on the Welch matter was being drafted and she expected it to be issued by the end of the meeting. She then asked for the remainder of the Benefits Committee report. Committee Chair McGovern referenced the recoupment policy documents included in the Board materials and Executive Director

George Lagos explained that the varying recoupment cases brought before the Board warranted attention to Board policy and practice. He expected to present more comprehensive recoupment information at a subsequent Board meeting.

Chair Shapiro next requested the Governance Committee report which Mr. Lagos opened by addressing the review and renegotiation of the Governance consultant contract with Hewitt EnnisKnupp (Hewitt). He reported a positive conversation with Hewitt's Nancy Williams in which he narrowed the scope of services to be provided and reduced the fees by 50%. He recommended a re-evaluation of this relationship at the end of the contract period, December 31, 2013.

On a motion by Trustee O'Brien, seconded by Trustee Wozmak, the Board unanimously voted to accept the amendment to the governance consultant contract with Hewitt EnnisKnupp.

At Chair Shapiro's request, Atty. Crutchfield presented the Governance Committee's recommended amendments to the Governance Manual as presented in the Board materials. He also reviewed the Committee's recommended standardized language for standing committee composition.

On a motion by Trustee Gustafson, seconded by Trustee McGovern, the Board unanimously voted to accept the recommendation of the Governance Committee that the full Board approve the proposed revisions to Sections VII and IX of the Governance Manual and to use uniformed wording regarding the composition of Board Committees.

Trustee Sosnoff presented the Independent Investment Committee (IIC) report, first detailing asset performance for the period ending April 30, 2012, and second providing details of the IIC's recent meetings. Beyond its regularly scheduled monthly meeting in May, Trustee Sosnoff stated that the IIC had met in a special meeting on June 5, 2012, to discuss asset allocation. At the May IIC meeting, three manager contracts had been renewed, hedge fund opportunities had been carefully reviewed and he reported that the IIC had requested NEPC to provide an example of a hedge fund program for the NHRS at the June IIC meeting to further the discussion of hedge funds in the current investment climate. He briefly detailed the special meeting and the broad discussion of risk factors considered for investment management. He reported that the final investment mix may likely be 75-25 or 80-20, equity – fixed income with a reduction in fixed income investments.

Chair Shapiro next requested the Legislative Committee report. Committee Chair Reardon presented a summation of the Legislative

session, reporting that SB 230 and SB 244 were technical corrections bills coming out of the 2011 Legislative session and had passed both houses of the Legislature. Trustee Reardon made particular note of SB 229 and HB 1460, stating that these defined contribution bills had failed in both chambers. She expressed the Committee's praise and gratitude for the work of George Lagos, Jack Dianis and Marty Karlon who gained the respect of the Senate and the Legislature with their honesty and integrity, and were reliable for good information upon which the legislators could base their decisions. Trustee Reardon also stated the Committee's appreciation for their efforts. She announced that the Legislative Committee would convene in the fall after LSR's had been submitted and staff had a perspective on the next Legislative session.

Chair Shapiro offered a brief report from the Personnel, Performance and Compensation Committee (PPCC), stating that the Committee had reviewed its charter, the organization chart, and had tasked Mr. Lagos with aligning the duties in his job description with those duties detailed in the Governance Manual. The effort would result in a formalized Delegation of Authority document that appropriately allocated tasks and responsibilities for the management of the System.

Executive Director Lagos presented his executive report in which he outlined the structure of future operational reports by division. He anticipated including an action plan summary for each division. Mr. Lagos provided a brief outline of the policies and procedures project, stating that consultant Nina Calkins had been commissioned to organize all critical NHRS policy and procedure documents within 90 days. The organization was integral to the fulfillment of the short- and long-term goals for NHRS.

Mr. Lagos referenced the Three-Year Strategic Plan that was required by the NHRS Governance Manual. Noting that the Plan was not overly detailed but rather an outline for management's use in fulfilling goals, Mr. Lagos requested action on the draft Plan from the Board.

On a motion by Trustee Reardon, seconded by Trustee Sosnoff, the Board unanimously voted to approve the Three-Year Strategic Plan as presented.

Chair Shapiro requested the Legal update from Chief Legal Counsel Timothy Crutchfield, who opened his remarks with an update to his written remarks in the Board materials. He stated that a status conference had been scheduled for the HB 1645 case for Thursday, June 14, 2012, and noted that the HB 2 bench trial was scheduled to take place the week of August 27, 2012. Trustee Provencher asked for an estimate of timing for the dispositions of the lawsuits, and Atty.

Crutchfield stated there was a growing sentiment from counsel for all the parties to adjudicate the related cases as quickly as possible. He further explained that if any of the decisions in Superior Court were adverse to the Retirement System, NHRS would immediately request a stay until a final decision had been issued from the Supreme Court. This strategy would avoid operational upheaval in fulfilling Superior Court determinations open to appeal. Atty. Crutchfield stated that the HB 2 contribution suit was the closest to being resolved at the Superior Court.

Jack Dianis, Director of Finance, began his report with the Statement of Assets (Statement), reporting that NHRS assets were down \$100.9 million in April 2012 compared to April 2011, which had been a very good month. He noted that year-to-date statutory administrative budget expenses were 25.4% under budget with only two months left in the fiscal year. Mr. Dianis stated that the extra and special duty pay (ESDP) data entry project had been completed and the spreadsheets could be uploaded into the Pension Gold software. He reported that KPMG auditors were on site for two weeks gathering data for the FY 2012 NHRS audit and would return in September. Following a discussion of variances in lines 3 and 7 in the Statement, Mr. Dianis gave his formal presentation of the 2013 Trust Fund Administrative Budget.

Mr. Lagos provided an introductory explanation of the four sections of the Trust Fund budget, focusing his remarks on the Investment Expense/External line of the proposed budget. He emphasized that all controlled areas of the budget had been reduced. Mr. Dianis provided a hand-out of the diagram prepared for the budget presentation, and Mr. Lagos carefully explained the expense budget items and the limited partnership fees that were considered investment dollars, not expense budget dollars. A lengthy discussion followed.

On a motion by Trustee Provencher, seconded by Trustee O'Brien, the Board unanimously voted to accept the Fiscal Year 2013 Trust Fund Budget contingent upon receipt and acceptance of a Staff-prepared exhibit further detailing investment fees.

Chair Shapiro announced that Vice Chair O'Brien would chair the July Board meeting in her absence. She also announced that Vice Chair O'Brien's term would end July 13, 2012, and he had not sought reappointment.

Mr. Dianis moved from the budget presentation to the valuation, first discussing the Gabriel Roeder Smith & Company (GRS) valuation of June 30, 2011, provided to the Board in its final form in anticipation of its approval at the July meeting. He asked if the Board wished to invite David Kausch, Chief Actuary of GRS, to discuss the valuation at its July

meeting. Receiving affirmative consensus on that point, Mr. Dianis next discussed the significance of pending issues on the Trust fund. Specifying the outcome of litigation and the effects of the economy on the number of members of the NHRS and their salaries, Mr. Dianis recommended the Board commission an interim valuation of June 30, 2012, at an additional cost of approximately \$25,000.

On a motion by Trustee Provencher, seconded by Trustee Wozmak, the Board unanimously voted to authorize GRS to perform an interim valuation for Fiscal Year 2012.

Chair Shapiro continued with operating reports, and Nancy Miller, Director of Member Services, reported the current developments in her areas, specifically detailing the July 1 retirement information. She also detailed tasks related to HB 2 legislation, ESDP adjustments, and preparation of member statements.

Chair Shapiro welcomed the newest executive team member, Paul Zahensky, Director of IT, who reported on his assessment of the critical IT issues that included both hardware and software, and an outline of his IT plans through calendar year 2012.

Following a break for lunch, Larry Johansen, Director of Investments, presented his monthly report to the Board. He reported that the performance of the total marketable assets, approximately 90% of System assets, was 4.2% for the three months ending April 30, 2012, exceeding the benchmark return of 3.8% by 40 basis points, and was 15.3% for the three years ending April 30, 2012, exceeding the benchmark return of 14.8% by 50 basis points. Mr. Johansen asked that the Board review the new IIC quarterly report to the Board found at the end of his materials in the Board book, noting that it represented a compilation of summary quarterly data for the Trustees' information. Mr. Johansen reviewed the NHRS Investment Managers and noted those Managers with recent poor relative performance and the steps that have been taken to address that short-term performance. He noted that at the May IIC meeting, NEPC had presented various potential asset allocation mixes, as well as an educational overview of hedge funds, as part of the Asset Liability Modeling/Asset Allocation Review discussions. The Committee had scheduled a special meeting focused exclusively on asset allocation which had been held June 5th as reported by Trustee Sosnoff. Mr. Johansen stated that Staff had scheduled interviews with four candidates out of the 16 responses to the RFP for investment consulting services. He cautioned that an investment return of 7.75% for the year ending June 30, 2012, would be difficult to achieve, given the turbulent capital markets and the performance for the fiscal year to date.

On a motion by Trustee McGovern, seconded by Trustee Reardon, the Board, by roll call, voted again to enter into non-public session under RSA 91-A:3, II(e) to discuss the claims made against the NHRS in the Welch matter, as follows:

Ayes: Trustees Shapiro, O'Brien, Crombie, Reardon, McGovern, Wozmak, Gustafson, Sosnoff, McDonough, Morrissey, and Provencher.

Nays: None.

On a motion by Trustee Morrissey, seconded by Trustee Wozmak, the Board unanimously voted to conclude the non-public session.

Dr. Shapiro read the Findings of Fact and Rulings of Law in the matter of Richard Welch, as follows:

Findings of Fact and Rulings of Law in the Matter of Richard Welch
June 12, 2012

1. The Board of Trustees has considered petitioner's procedural and substantive arguments de novo, without providing any deference to the determinations of the hearings officer.
2. The Trustees find that petitioner has had an adequate opportunity to provide the Trustees with facts, law and argument.
3. To the extent that petitioner argues that there were procedural defects in the hearings process, the Trustees find that these issues are moot in light of (a) the Trustees' de novo consideration of the substantive merits of petitioner's claim; (b) petitioner's ability to present facts, law and argument to the Trustees; and (c) the simplicity and clarity of the facts relating to the substance of petitioner's claim. No amount of additional due process could possibly change the outcome of this case. There is no need to make specific findings on each of petitioner's procedural arguments because, even if they were all decided in petitioner's favor, the Trustees would still reach the same substantive conclusion about the outcome of the case.
4. The March 1, 2006 "Notice of Earnable Compensation, Contribution And Pension Adjustment" ("the Notice") was timely because NHRS staff first received notice of the Farmington School District's policy concerning the District's "fringe benefit plan" in November, 2003, and it did not discover that petitioner

was affected by the policy until November, 2005. Cf: RSA 508:4 (statute of limitations).

5. The Notice adequately informed petitioner of the scope of NHRS Staff's decision in his case. The sole substantive question presented is whether petitioner "made retirement contributions on certain fringe benefits that do not qualify as 'earnable compensation.'" The same question can be rephrased as whether petitioner received payments from his employer that (a) were treated "as if they were salary" but (b) should not have been included in his certified 'earnable compensation.'" The petitioner was well aware of the meaning and effect of the NHRS staff decision at the time he requested a hearing.

6. The Board of Trustees upholds NHRS Staff's decision for the following reasons:

A. This case is controlled by the New Hampshire Supreme Court's decision in Petition of Farmington Teachers Association, 158 N.H. 453 (2009). The petitioner, who was an administrator in the Farmington School District, received the same fringe benefit and reimbursed the same school district in precisely the same way as the teachers in the same district who were the subject of the N.H. Supreme Court's opinion.

B. The Trustees reject petitioner's argument that he was free to spend the disputed compensation as he saw fit, and that even though he accepted the compensation he was not required to participate in the school district health insurance plan. The Trustees, exercising their independent judgment, adopt the reasoning of the hearings officer at pages 2-3 of her recommendation on reconsideration ("Analysis, Substantive Law, Section A) and at pages 2-4 of her initial recommendation ("Analysis, Sections I and II).

C. For the reasons recommended by the hearings examiner, the Trustees order recoupment from petitioner pursuant to RSA 100-A:27 per standard NHRS recoupment policy Section I(2).

On a motion by Trustee Provencher, seconded by Trustee Wozmak, the Board unanimously voted to approve the Findings of Fact and Rulings of Law in the Matter of Richard Welch, as read into the record by Chair Shapiro.

NHRS Board of Trustees
June 12, 2012

On a motion by Trustee Wozmak, seconded by Trustee O'Brien, the Board unanimously voted to approve the Consent Agenda without Item #11, the Administrative Reconsideration of G. Hackney.

A discussion followed in response to Trustee Morrissey's question and statement regarding member information. On a motion by Trustee Morrissey, seconded by Trustee O'Brien, the Board unanimously voted to accept the Hearings Examiner's recommendation in the Administrative Reconsideration of G. Hackney.

On a motion by Trustee Reardon, seconded by Trustee Sosnoff, the Board unanimously voted to approve Trustee McGovern's travel request.

Dr. Shapiro appointed Trustee McDonough to the Audit Committee and Trustee Gustafson to the PPCC. In response to a question from a Trustee, Atty. Crutchfield stated that there were no explicit restrictions or prohibitions on political contributions made by Trustees. Mr. Lagos reminded the gathering that an appearance of a conflict of interest was an important factor for everyone's consideration.

On a motion by Trustee Reardon, seconded by Trustee Crombie, the meeting adjourned at 1:47 p.m.

Respectfully submitted,
Shannan Hudgins