





Employees' Retirement System of Rhode Island

Employees' Retirement System of Rhode Island -- Retirement Board Meeting

Schedule	Wednesday, September 18, 2019 9:00 AM — 11:00 AM EDT
Venue	50 Service Avenue, Warwick, Rhode Island, 2nd Floor Conference Room
Description	Retirement Board Meeting
Notes for Participants	<p>Parking is available in front of our building. Additional parking is available in the parking lot as you pass through the gate which will open using your identification. You can enter either by the back parking lot entrance to come up the stairs to the 2nd floor or you can walk around to the main entrance which is in the front of the building to enter. If you forget or lose your ID badge, you will need to enter through the front door.</p> <p>If you are unable to attend the September meeting, please contact Frank at 462-7610 or Roxanne at 462-7608.</p>
Organizer	Frank J. Karpinski

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* Subcommittee members may seek to convene in Executive Session pursuant to Rhode Island General Laws §42-46-5 (a) (1) to discuss the job performance and compensation of the Executive Director
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Posted Agenda



EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND

RETIREMENT BOARD MEETING

Wednesday, September 18, 2019

9:00 a.m.

2nd Floor Conference Room
50 Service Avenue, Warwick, RI

- I. Chairperson Call to Order
- II. Approval of the Draft Meeting Minutes of the July 10, 2019 Retirement Board Meeting
- III. Chairperson's Report
- IV. Executive Director's Report
 - Consideration and Potential Approval of the FY 2021 Retirement Administration Budget
 - Administration Subcommittee Recommendation on FY 2021 Budget
 - Update on 2020 Board Election
- V. Administrative Decisions

Administrative Appeals:

Kimberly McGowan vs. ERSRI

Richard P. D'Addario vs. ERSRI

- VI. Approval of the July and August Pensions as Presented by ERSRI
- VII. Legal Counsel Report
- VIII. Committee Reports
 - Disability Subcommittee – (See Attachments I and II)*
 - *Governance Subcommittee – Discussion and Recommendation on Executive Director Compensation*
- IX. Adjournment

** Subcommittee members may seek to convene in Executive Session pursuant to Rhode Island General Laws §42-46-5 (a) (1) to discuss the job performance and compensation of the Executive Director.*

Attachment I

Disability Applications and Hearings on August 2, 2019

- * Barry Sullivan
- * Andrea Castro
- * Edward Esposito
- * Jason Wheatley
- * Joanne Melo
- * Doreen Shottek
- * Michael Defusco
- * Jorge Heyaime
- * Barbara Roser-Aponte
- * Karen Sargeant
- * Joseph Alves
- * Patricia Barrett
- * Eric White
- ** Paula McVeigh
- ** Donald Fravala
- ** Danny Price

*Votes by the full Board on these applications will be limited to approvals made by the Disability Subcommittee at their August 2, 2019 meeting.

**Recommendations on these denied applications or decisions reversing prior denials were approved by the Disability Subcommittee at their August 2, 2019 meeting.

Attachment II

Disability Applications and Hearings on September 6, 2019

- * Barbara Roser-Aponte
- * Denis Laferriere
- * James Bruckshaw
- * Donna Cramer
- * Sheila Dupuis
- * Michael Panarello
- * Jamie Lemont
- * Deborah Krous
- * Steven Adamczyk
- * Holly Manchester
- * Ann Lachance
- * Dianne Gagne
- * Jennifer Carroll
- ** Doreen Shottek
- ** Donald Fravala

*Votes by the full Board on these applications will be limited to approvals made by the Disability Subcommittee at their September 6, 2019 meeting

**Votes by the full Board on these denied applications, and on decisions reversing prior denials are subject to approval of the decisions by the Disability Subcommittee at their September 6, 2019 meeting

Employees' Retirement System of Rhode Island



1. Chairperson Call to Order

Call to Order

Presented by Treasurer Seth Magaziner

Employees' Retirement System of Rhode Island



2. Roll Call

Roll Call of Members

Presented by Frank J. Karpinski

Employees' Retirement System of Rhode Island



3. Approval of the Draft Meeting Minutes of the July 10, 2019 Retirement Board Meeting

For Vote

Presented by Treasurer Seth Magaziner



Employees' Retirement Board of Rhode Island
Meeting Minutes
Wednesday, July 10, 2019
9:00 a.m.
2nd Floor Conference Room, 50 Service Avenue

I. Call to Order

The Meeting of the Retirement Board was called to order at 9:04 a.m., Wednesday, July 10, 2019 in the 2nd Floor Conference Room, 50 Service Avenue, Warwick, RI.

II. Roll Call of Members

The following members were present at roll call: General Treasurer Seth Magaziner; Mark A. Carruolo; Brian M. Daniels; Michael DiBiase; Paul L. Dion, Ph.D., Thomas M. Lambert; John P. Maguire; Thomas A. Mullaney; Claire M. Newell; Jean Rondeau; Dr. Laura Shawhughes and Lisa A. Whiting.

Also in attendance: Frank J. Karpinski, ERSRI Executive Director; Attorney Michael P. Robinson, Board Counsel.

Members absent were: Roger P. Boudreau

Recognizing a quorum, Treasurer Magaziner called the meeting to order.

III. Election Subcommittee Report

Jean Rondeau, Chair of the Election Subcommittee provided a report on the special election beginning. He noted that the elected candidates will complete the remaining 6 months of Retiree Representative Marcia B. Reback and Active Teacher Representative William B. Finelli's four-year terms.

Mr. Rondeau said there were 2 candidates who requested a declaration of candidacy for the active Teacher and 3 candidates who requested a declaration of candidacy for the Retiree position. At the close of business on May 20th, only one Active Teacher, Michael J. Twohey and only one Retiree Representative Raymond J. Pouliot, returned 100 signatures as required by Regulation No 1.5.2 (D)(2).

He apprised the Board that the Subcommittee, as reported by the Director, certified that Mr. Michael J. Twohey had secured 100 valid signatures of active Teachers and Mr. Raymond J. Pouliot, secured 100 valid signatures of Retirees.

Consistent with Regulation No 1.5, as only one candidate for each position has returned 100 signatures that have been validated, Mr. Rondeau said they shall be deemed elected. On a motion duly made by Paul L. Dion, Ph.D., and seconded by Claire Newell, it was unanimously

VOTED: That the Election Subcommittee certifies the election results of Michael J. Twohey as the active teacher representative and Raymond J. Pouliot as the retiree presentative and deem them elected as they were the

only candidate for each position to return 100 signatures and direct the Executive Director to publish the results.

Treasurer Magaziner then officiated the swearing in and Oath of Office for the new Board Members.

IV. Nominations and Election of Vice-Chairperson of the Retirement Board

Treasurer Magaziner asked for nominations for the Vice-Chairperson of the Board. A motion was duly made by Thomas M. Lambert and seconded by Jean Rondeau to nominate and elect John P. Maguire as Vice-Chairperson of the Retirement Board. It was unanimously

VOTED: To designate John P. Maguire as the Vice-Chairperson of the Retirement Board.

John P. Maguire recused from participation in this vote

V. Approval of Minutes

On a motion duly made by Jean Rondeau and seconded by Mark A. Carruolo, it was unanimously

VOTED: To approve the minutes of the May 17, 2019 meeting of the Retirement Board of the Employees' Retirement System of the State of Rhode Island, as revised to reflect corrections to recusals by John P. Maguire on certain Disability Subcommittee recommendations.

VI. Chairman's Report

- **Consideration of Treasurer's Nomination for Subcommittee Chairs**

On a motion duly made by John P. Maguire and seconded by Thomas M. Lambert, it was unanimously

VOTED: To accept and approve the General Treasurer's recommendation of Dr. Laura Shawhughes as Chairperson of the Disability Subcommittee, and Roger P. Boudreau as Chairperson of the Member Services Subcommittee.

Consistent with Regulation 1.1.1K1(a), Treasurer Magaziner announced that Claire M. Newell was being removed from the Administration Subcommittee and appointed to the Disability Subcommittee, that Raymond J. Pouliot was being appointed to the Administration Subcommittee, and that Michael J. Twohey was being appointed to the Member Services Subcommittee.

- **Discussion and Consideration of ERSRI Assuming Management of Central Falls Public Safety Retirement Plan.**

Treasurer Magaziner updated the Board on recent legislation enabling legislation, H6236 Sub A and S991 Sub A, permitting the City of Central Falls to accept Retirement Board management and administration of its public safety retirement plan. He then asked Director Karpinski to provide a presentation on the plan and provisions. Director Karpinski summarized the provisions of the plan and key points of the legislation.

Following the presentation and discussion by the Retirement Board, a motion was duly made by Michael DiBiase and seconded by Brian M. Daniels and it was:

VOTED: To accept the plan as presented, contingent on no other changes made to benefits in the CBA through August 30 other than to raise the employee contribution rate in the closed plan to 11.7% and elimination of the partial disability benefit and that all labor organizations and Retirees must assent to participation of their respective memberships, through a CBA and ratification of the decision by a majority vote of those members.

Paul L. Dion, Ph.D. and Thomas M. Lambert, voted NAY.

Ms. LeeAnn Byrne, Legislative Director for Treasurer Magaziner provided a presentation to the Board on 2019 Retirement Legislation passed by the General Assembly. She discussed a bill which was a proposal based on 2018 recommendation of Retirement Board to shorten the time for receipt of contributions by the employer. She discussed a bill related to Correctional Officers (CO) allowing them to combine time, for purposes of eligibility, for members serving as CO's and State employees.

On a motion duly made by John P. Maguire and seconded by Paul Dion, Ph.D., it was unanimously

VOTED: To change to order of the meeting agenda in order to hear the Administrative Decisions before the Executive Director's Report.

VII. Administrative Decisions

Attorney Robinson provided the Retirement Board with a comprehensive overview of the history and travel of this administrative appeal from a decision of the Executive Director and a recommendation from Hearing Officer Teresa Rusbino Esq., related to the request of certain North Providence firefighter retirees for recalculation of their pension benefits. At the conclusion of Attorney Robinson's presentation, Counsel for the appellants, Attorney Edward C. Roy, presented argument in support of his clients' appeal, and testimony from Mr. James Grande.

At the conclusion of Attorney Roy's presentation, the Retirement Board discussed the merits of the appeal.

On a motion duly made by Paul L. Dion, Ph.D., and seconded by Jean Rondeau, it was unanimously

VOTED: To affirm and adopt the Hearing Officer's findings and recommendation, upholding the actions of the Executive Director recouping pension overpayments, and denying the Retirees' request for recalculation of their pension benefits, which had improperly included longevity payments based on overtime.

A motion was then made by John P. Maguire and seconded by Raymond J. Pouliot, to waive the recoupment of pension overpayments made to the appealing retirees from date of retirement to the present, subject to a return to the system of the corresponding contributions.

The following Retirement Board members voted Yea: John P. Maguire and Raymond J. Pouliot. The remaining Board members voted Nay. There not being eight (8) affirmative votes, the motion failed.

Lisa A. Whiting left the meeting at 11:20 A.M.

VIII. Executive Director's Report

- **Discussion Regarding the Appointment of the Assistant Executive Director**

The Executive Director provided an update with regard to the appointment of an Assistant Executive Director (AED). He said that consistent with Regulation No. 1.1 (*General Administrative Rules of the Retirement Board, Section 1.1.1 (I), Duties of the Executive Director subsection (k)*), Ms. Heidi Halbur was selected as the new AED. He said Ms. Halbur will be starting on Monday, August 19, 2019.

- **Discussion and Consideration of 2019 Strategic Plan**

Following discussion by the Board and consideration of the 2019 Strategic Plan, on a motion duly made by Claire M. Newell, and seconded by John P. Maguire, it was unanimously

VOTED: To adopt the 2019 Strategic Plan of ERSRI as presented.

IX. Approval of the May and June Pensions as Presented by ERSRI

On a motion duly made by John P. Maguire, and seconded by Jean Rondeau, it was unanimously

VOTED: To approve the May and June 2019 pensions as presented.

X. Legal Counsel Report

In light of the length of the meeting, the Board had no specific questions so Attorney Robinson did not provide a formal report.

XI. Committee Reports

Disability Subcommittee

The Disability Subcommittee recommended the following actions on disability applications as a result of its May 17, 2019 meeting for approval by the full Board.

Name	Membership Group	Type	Action
1. Barbara Flynn	State	Accidental	The Board's December 18, 2018, decision to deny Ms. Flynn an accidental disability pension was reaffirmed
2. David Capozzi	State	Accidental	Denied

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee’s recommendation from its meeting of May 17, 2019 regarding Barbara Flynn.

John P. Maguire recused on the matter

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee’s recommendation from its meeting of May 17, 2019 regarding David Capozzi.

Claire M. Newell recused on the matter

The Disability Subcommittee recommended the following actions on disability applications as a result of its June 7, 2019 meeting for approval by the full Board.

Name	Membership Group	Type	Action
1. Ted Dion	Municipal	Accidental	Approved at 66 2/3%
2. Albert Lafazia	State	Accidental	Approved at 50%
3. Cornelius Tay	State	Accidental	Approved at 50%
4. Ellen Cuomo	State	Accidental	Approved at 66 2/3%
5. Robert Peloquin	State	Accidental	Approved at 50%
6. Sandra Turgeon	Teacher	Ordinary	Approved
7. Inez Travers	State	Accidental	The Board’s previous decision on 9-12-2018 to approve Ms. Travers’ application for Accidental Disability at 50% was overturned and approved for 66 2/3%
8. Ray Williams	State	Accidental	Deny

On a motion duly made by Dr. Laura Shawhughes, and seconded by Jean Rondeau, it was

VOTED: To approve the Disability Subcommittee’s recommendation from its meeting of June 7, 2019 on item 2.

Claire M. Newell recused on item No. 2. Paul L. Dion, Ph.D. voted Nay.

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee’s recommendation from its meeting of June 7, 2019 on Items 3, 5, 8 and 9.

Claire M. Newell recused on items 3, 5, 8 and 9.

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee’s recommendation from its meeting of June 7, 2019 on item 7.

John P. Maguire and Michael J. Twohey recused on item 7.

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was unanimously

VOTED: To approve the Disability Subcommittee’s recommendation from its meeting of June 7, 2019 on item Nos. 1, 4 and 6.

The Disability Subcommittee recommended the following actions on disability applications as a result of its July 3, 2019 meeting for approval by the full Board.

Name	Membership Group	Type	Action
1. Christopher Konturas	State	Accidental	Approved at 66 2/3%
2. Renee Hill	State	Accidental	Approved at 66 2/3%
3. Scott Rossi	State	Accidental	Approved at 66 2/3%
4. Olga Beauregard	State	Accidental	Approved at 66 2/3%
5. Michael Petit	State	Accidental	Approved at 50%
6. Kevin Swanson	Municipal	Accidental	Approved
7. Gregg Snowling	Municipal	Accidental	Approved
8. Ruth Carpenter	Teacher	Ordinary	Approved
9. David Thacker	State	Ordinary	Approved
10. Laura Baker	Teacher	Ordinary	Approved
11. John Guadagni	Municipal	Ordinary	Approved
12. Janet Casavant	State	Ordinary	Approved
13. Yvette Mongeon	Teacher	Ordinary	Approved
14. David Marzella	State	Accidental	The Board’s previous decision of 3-18-2019 to approve Mr. Marzella’s application for Accidental Disability at 50% was upheld
15. Albert Campanini	State	Accidental	The Board’s previous decision on 12-18-2018 to approve Mr. Campanini’s application for Accidental Disability at 50% was overturned and approved at 66 2/3%
16. Margaret Dixon	State	Ordinary— Deny	Accidental--Deny
17. Donna Carew	State	Ordinary	Deny
18. Mary Beth Lombardi	State	Ordinary	Deny
19. Jay Szaro	Teacher	Ordinary	Deny

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee's recommendation from its meeting of July 3, 2019 on item 19.

Raymond J. Pouliot recused on item No. 19.

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee's recommendation from its meeting of July 3, 2019 on item 15.

Claire M. Newell recused on item 15. Brian M. Daniels and Paul L. Dion, Ph.D. voted Nay.

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee's recommendation from its meeting of July 3, 2019 on items 2, 4, 9, 11, 12, 14 and 17.

Claire M. Newell recused on item Nos. 2, 4, 9, 11, 12, 14 and 17.

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was

VOTED: To approve the Disability Subcommittee's recommendation from its meeting of July 3, 2019 on items 8, 10 and 13.

John P. Maguire recused on items 8, 10 and 13.

On a motion duly made by Dr. Laura Shawhughes, and seconded by Thomas M. Lambert, it was unanimously

VOTED: To approve the Disability Subcommittee's recommendation from its meeting of July 3, 2019 on items 1, 3, 5, 6, 7, 16 and 18.

Governance Subcommittee:

Following presentation and discussion of a recommendation by the Governance Subcommittee that the most senior tenured seated member present at a meeting of the Retirement Board or one of its Subcommittees should assume the duties of Chair in the absence of the Chairperson or Vice-Chairperson, on a motion duly made by Jean M. Rondeau, and seconded by Brian M. Daniels, it was

VOTED: To direct the Executive Director to take steps to promulgate Regulation 1.1.2 as presented, requiring that the most senior tenured seated member present at a meeting of the Retirement Board or one of its Subcommittees should assume the duties of Chair in the absence of the Chairperson or Vice-Chairperson.

Paul L. Dion, Ph.D. voted Nay. All other members of the Retirement Board voted in favor of the motion.

Member Services Subcommittee

The Retirement Board was presented with an update on a membership survey by the Member Services Subcommittee. Director Karpinski noted that the survey is scheduled to be released on July 22nd and members will receive an announcement postcard on this date that has the URL to the survey site. ERSRI will also email (for those members who have email addresses) a similar notice pointing members to the on-line survey. The survey will close on August 9th

XII. Adjournment

There being no other business to come before the Board, on a motion by Jean Rondeau and seconded by Claire M. Newell, the meeting adjourned at 11:53 a.m.

Respectfully submitted,

Frank J. Karpinski

Executive Director

Employees' Retirement System of Rhode Island



4. Chairperson's Report

For Report

Presented by Treasurer Seth Magaziner

Employees' Retirement System of Rhode Island



5. Executive Director's Report

For Report

Presented by Frank J. Karpinski

Employees' Retirement System of Rhode Island



5.1. Consideration and Potential Approval of the FY 2021 Retirement Administration Budget

For Discussion and Consideration

Presented by Stacey Whitton and Frank J.
Karpinski



Fiscal Year 2021

Budget Presentation



Legal Authority

- R.I.G.L. 36-8-3: responsibility for the proper operation of the retirement system vested in a retirement board.
- Regulation 1.1.1 (E)(m) Board Authority and Duties: approve a yearly budget
- Part of overall Treasury budget
- R.I.G.L. 36-8-10.1:
- There is a restricted receipt account, the proceeds are used to pay the expenses of the retirement board.
 - *b) There shall be transferred to this restricted receipt account seventeen and one-half (17.5) basis points (0.175%), where one hundred (100.0) basis points equals one percent (1.0%), of the average total investments before lending activities as reported in the annual report of the auditor general for the next preceding five fiscal years.*



Investment Cap Determination

Fiscal Year	Investment Value					Average Market Value	Budget Cap Per RIGL	Actual Expenditures	
	<u>Budget</u>	<u>Years</u>							
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>				
2015	2013	2012	2011	2010	2009		2015		
	7,530,855,629	7,225,025,356	7,440,116,914	6,512,473,974	5,983,666,859	6,938,427,746	\$ 12,142,249	10,023,637	
2016	2014	2013	2012	2011	2010		2016		
	8,205,539,057	7,530,855,629	7,225,025,356	7,440,116,914	6,512,473,974	7,382,802,186	\$ 12,919,904	9,059,263	
2017	2015	2014	2013	2012	2011		2017		
	7,968,194,309	8,205,539,057	7,530,855,629	7,225,025,356	7,440,116,914	7,673,946,253	\$ 13,429,406	10,196,072	
2018	2016	2015	2014	2013	2012		2018		
	7,525,307,707	7,968,194,309	8,205,539,057	7,530,855,629	7,225,025,356	7,690,984,412	\$ 13,459,223	9,219,395	
2019	2017	2016	2015	2014	2013		2019		Enacted FY19 Budget
	8,066,357,568	7,525,307,707	7,968,194,309	8,205,539,057	7,530,855,629	7,859,250,854	\$ 13,753,689	9,548,498	11,243,784
2020	2018	2017	2016	2015	2014		2020		Enacted FY20 Budget
	8,330,458,299	8,066,357,568	7,525,307,707	7,968,194,309	8,205,539,057	8,019,171,388	\$ 14,033,550	11,736,581	
2021	2019	2018	2017	2016	2015		2021		FY21 Proposed Budget
FY19 Est.	8,463,516,706	8,330,458,299	8,066,357,568	7,525,307,707	7,968,194,309	8,070,766,918	\$ 14,123,842	12,997,388	



Fiscal Year 2021 Budget Highlights

- ***Salaries and Benefits***
 - **Salaries and Wages Expense - \$4,274,168**
 - Projected salaries and benefit estimates are provided by Treasury. Benefits are based on preliminary rates and will be subject to change before enactment of budget.
 - Overtime wages for counseling, operations, and disability to assist in data validation project



Fiscal Year 2021 Budget Highlights

- ***Contractual Services***

- **Legal Services: Special Other - \$60,000**

- To provide for legal counsel services for matters such as Tax Counsel or Employee Benefits

- **Legal Services: General Other - \$405,000**

- Board counsel provided by Shechtman, Halperin, Savage, L.L.P. estimated at \$300,000 for FY2021
- Hearing officers for potential legal challenges - \$30,000
- RIGL §45-21.2-9 - Police and Fire legal fee reimbursement for disability appeals that are successfully challenged by members in court, estimated at \$75,000

- **Financial Services - \$567,200**

- Actuary Services - \$417,200
 - Valuation services for all Trusts within ERSRI - \$195,200
 - GASB 67 & 68 reporting and determination - \$82,000
 - RIGL §36-10-39 – provides the general assembly the authority to request studies of the ERSRI’s actuaries at the expense of the System - \$125,000



Fiscal Year 2021 Budget Highlights

- ***Contractual Services, continued***
 - Accounting/Auditing - \$150,000
 - Intend to engage Internal Auditing firm:
 - Review of internal operations for defined benefit and contribution operations - \$100,000
 - Employer cycle accounting review - \$50,000
- **IT System Support/General Services - \$2,816,664**
 - Morneau Shepell – annual fees - \$1,678,200
 - Morneau Shepell – payment of contract holdback - \$741,384 (50% of this holdback is budgeted in FY2020 but the timing of the payment for both pieces could push out to FY2021)
 - Potential change orders for system enhancements and Web redesign for Strategic Plan objective -\$375,000



Fiscal Year 2021 Budget Highlights

- ***Contractual Services, continued***
 - **Other Contracted Professional Services - \$150,000**
 - IT Cybersecurity Services - \$125,000
 - Potential modifications required as result of SeNet's review of Morneau Shepell's data center and/or ERSRI
 - Death audit services – PBI - \$15,000
 - ISG – investigative services for non-compliance of disability regulations. Services - \$10,000
 - **Temporary Services - \$345,000**
 - Continuation of temporary employees to complete Data Validation Project



Fiscal Year 2021 Budget Highlights

- Hired a data analyst, SWS Technologies, in October of 2017 to work with ERSRI to analyze and identify data anomalies and potential data conversion issues. SWS developed analytics and tools to assist with identifying missing time to be corrected.
- The task is part of the Board's Strategic Plan objective to improve member services processing and service.
- As a result, ERSRI has on-boarded 4 of 6 temporary staff to begin training and account validation at an estimated cost of \$345,000 annually.



Data Validation Projected Timeline

Processing Potential Missing Time Records only

Start date	8/1/2019	10/31/2019	1/30/2020	4/30/2020	7/30/2020	10/29/2020	1/28/2021	4/29/2021	7/29/2021	10/28/2021
Onboarded Staff	6	6	6	6	6	6	6	6	6	6
Estimated Complete as of	10/30/2019	1/29/2020	4/29/2020	7/29/2020	10/28/2020	1/27/2021	4/28/2021	7/28/2021	10/27/2021	1/26/2022
Weeks	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00	13.00
Accounts Processed during period	1560	1560	1560	1560	1560	1560	1560	1560	1560	1560
Percent Complete	11%	11%	11%	11%	11%	11%	11%	11%	11%	11%
Cumulative		22%	33%	44%	55%	66%	77%	88%	99%	110%
Cumulative Accounts	1,560	3,120	4,680	6,240	7,800	9,360	10,920	12,480	14,040	15,600

- Parallel to manual validation efforts, ERSRI resources will continue to identify and remediate issues programmatically where possible.



Fiscal Year 2021 Budget Highlights

- ***Operating Expenditures***
 - **Communications Expense**
 - **Postage - \$226,200**
 - Distribution of 5 ERSRI newsletters
 - Distribution of pension checks, direct deposit remittances, general payments, benefit estimates, forms, applications, etc.
 - Distribution of 1099R forms – approximately 28,000 forms prepared
 - Mailing of new handbooks for Strategic Plan Implementation to enhance customer experience
 - **Office & Supply Expenses**
 - **Computer Supplies, Software & Equipment - \$247,500**
 - \$70,000 to replace hardware (laptops/desktops, monitors etc.)
 - Disability software package projected at \$150,000 for case management software and that will also allow for better application tracking for Strategic Plan Implementation.



Fiscal Year 2021 Budget Highlights

- ***Operating Expenditures, continued***
 - **Office & Supply Expenses**
 - **Staff Training - \$33,000**
 - Online IT security awareness training module for staff
 - Professional development courses, classes, and seminars for staff
 - Board training retreat
 - **Miscellaneous - \$75,000**
 - Police and Fire Salary Reimbursement. RIGL 45-21.2-9(j) - Reimbursement to MERS employers for salary and wages for police and fire employees who are on I.O.D. status and successfully win their disability appeal.
 - **Printing & Advertising - \$103,500**
 - Printing of newsletters, retirement handbooks, brochures, annual reports, etc.
 - Increased for printing of new Benefit Handbooks and pamphlets for Strategic Plan Implementation

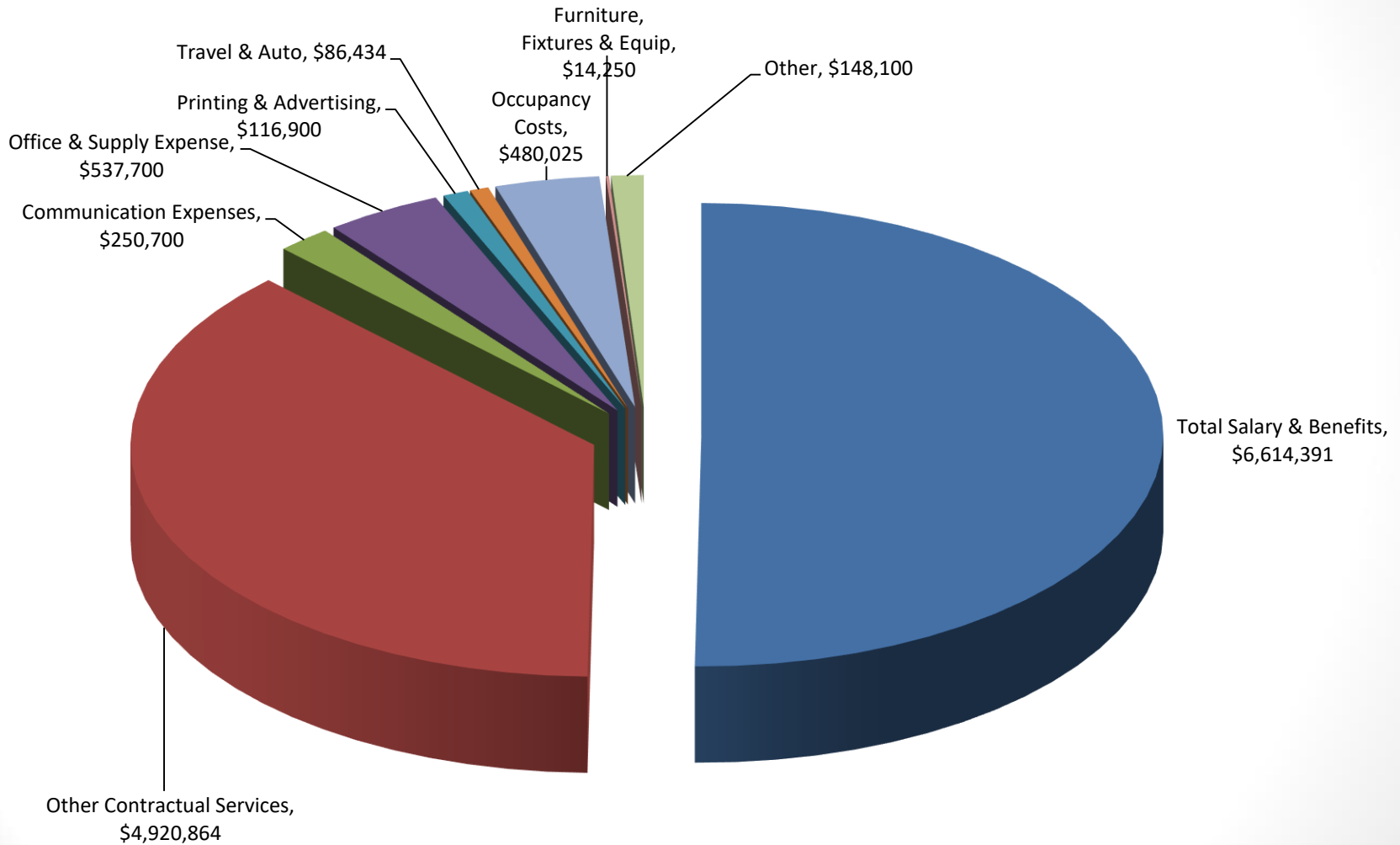


Fiscal Year 2021 Budget Highlights

- ***Operating Expenditures, continued***
 - **Occupancy Expenses - \$321,225**
 - **Rental/Lease – \$227,170**
 - Internal charges from DOA for occupying space at 50 Service Avenue
 - **Security Services - \$88,750**
 - Represents the allocated cost of armed security provided by the State.
 - **Other Expenses - \$148,100**
 - **Insurance**
 - Cyber Insurance – AIG policy
 - General property and casualty insurance



Allocation of Fiscal Year 2021 Expenses





Questions?



State of Rhode Island
Fiscal 2021 - Expense Budget
Retirement - Administration & Investment

	Fiscal 2019 Budget	Fiscal 2019 Actual	Fiscal 2020 Budget	Fiscal 2021 Budget
Personnel Costs				
Regular Wages	\$ 3,636,269	\$ 3,639,334	\$ 3,856,940	\$ 4,147,862
Family Medical Insurance Coverage Waiver Bonus	5,092	7,605	7,606	6,306
Overtime (1.5)	80,000	79,999	100,000	120,000
Subtotal Salaries & Wages	\$ 3,721,361	\$ 3,726,938	\$ 3,964,546	\$ 4,274,168
Payroll and Employee Benefits Accrual	\$ 20,998	\$ 21,397	\$ 22,354	\$ 24,209
Employees' Retirement - State Contribution	955,866	972,024	1,020,152	1,142,321
Defined Contribution Plan	33,702	33,996	35,572	37,524
Social Security (FICA) Old Age, Sickness and Disability	271,367	219,626	284,687	246,884
Assessed Fringe Benefits Fund Assessment	167,304	165,756	161,927	163,841
Retiree Health Insurance	217,506	220,851	256,391	243,480
FICA: Medicare: Hospital Insurance Tax	-	53,475	-	60,144
Employer Cost of Employee Medical Insurance	615,876	556,583	567,587	560,283
Employer Cost of Employee Dental Insurance	33,808	25,350	27,227	26,687
Employer Cost of Employee Vision Insurance	5,366	3,969	4,272	4,174
Subtotal Fringe Benefits	\$ 2,321,793	\$ 2,273,027	\$ 2,380,169	\$ 2,509,547
Total Salary & Benefits	\$ 6,043,154	\$ 5,999,965	\$ 6,344,715	\$ 6,783,715
Purchased Services				
Disability Determination	\$ 285,000	\$ 333,463	\$ 293,550	\$ 350,000
Legal: Special Counsel	210,000	46,728	130,000	60,000
Legal Services : General/Other	295,000	186,008	370,000	405,000
Financial Services: Accounting/Auditing/Actuary	513,200	243,400	579,200	567,200
IT System Support/General Services	2,523,892	2,115,715	2,473,892	2,816,664
Stenographic Services	24,000	5,165	12,000	15,000
Computer User Licenses	-	-	-	19,500
Interpreters/Translators	-	374	-	-
Other Contracted Professional Services	150,000	8,625	200,000	150,000
5.5% Contractor Legislation	-	830	-	20,000
Temporary Services	-	-	-	345,000
Maintenance/Repairs: Office/Computer Equipment	47,500	32,678	47,500	47,500
Software Maintenance Agreements	-	3,698	-	-
Subtotal Other Contractual Services	\$ 4,048,592	\$ 2,976,684	\$ 4,106,142	\$ 4,795,864
Total Personnel & Purchased Services Costs	\$ 10,091,746	\$ 8,976,649	\$ 10,450,857	\$ 11,579,579
Operating Costs				
Postage and Postal Services	\$ 222,000	\$ 172,628	\$ 203,200	\$ 226,200
Telephone - Cellular and Mobile	4,000	2,234	5,000	5,000
Telephone and Telegraph Services	10,000	-	10,500	10,500
Telecomm: Telephone Charges	3,500	8,257	3,500	9,000
Subtotal Communication Expense	\$ 239,500	\$ 183,119	\$ 222,200	\$ 250,700
Office Supplies and Equipment (less than \$5000)	\$ 25,000	\$ 27,034	\$ 26,700	\$ 26,700
Dues and Fees	46,000	42,003	49,000	54,000
Records Storage/Retrieval Costs (Records Center Charges)	40,000	11,447	40,000	40,000
Express Delivery	3,200	55	4,000	4,000
Staff Training	29,000	6,322	33,000	33,000
Computer Supplies, Software and Equipment	87,000	45,045	37,500	247,500
Miscellaneous Expenses	103,000	9,550	132,500	75,000
Subtotal Office & Supply Expense	\$ 333,200	\$ 141,456	\$ 322,700	\$ 480,200
Printing - Outside Vendors	\$ 45,000	\$ 25,921	\$ 48,500	\$ 103,500
Print Advertising	10,300	3,162	10,900	10,900
Advertising	1,236	8,789	2,500	2,500
Subtotal Printing & Advertising	\$ 56,536	\$ 37,872	\$ 61,900	\$ 116,900
Mileage Allowance - Personally Owned Vehicles	\$ 5,259	\$ 491	\$ 3,399	\$ 3,399
Out-of-State: Lodging/Other	23,500	21,205	24,205	37,135
Out-of-State: Registrations	8,500	15,504	8,755	15,000
Out-of-State: Transportation	30,000	12,734	30,900	30,900
Subtotal Travel	\$ 67,259	\$ 49,934	\$ 67,259	\$ 86,434



State of Rhode Island
 Fiscal 2021 - Expense Budget
 Retirement - Administration & Investment

	Fiscal 2019 Budget	Fiscal 2019 Actual	Fiscal 2020 Budget	Fiscal 2021 Budget
Building Relating Maintenance and Repairs	\$ 5,150	\$ -	\$ 5,305	\$ 5,305
Rental/Lease: Property	107,213	47,702	263,391	227,170
Other Building and Grounds	120,000	-	124,800	-
Security Services	<u>82,500</u>	<u>25,056</u>	<u>88,750</u>	<u>88,750</u>
Subtotal Occupancy Costs	\$ 314,863	\$ 72,758	\$ 482,246	\$ 321,225
Non-Building Related Maintenance and Repairs & Other Equipment	\$ 4,000	\$ -	\$ 4,250	\$ 4,250
Furniture and Equipment	<u>9,000</u>	<u>-</u>	<u>10,000</u>	<u>10,000</u>
Subtotal Furniture, Fixtures & Equipment	\$ 13,000	\$ -	\$ 14,250	\$ 14,250
Insurance	\$ 111,000	\$ 74,067	\$ 97,300	\$ 130,000
Subscriptions	7,725	7,124	8,475	8,500
Fees: Notary Public	200	80	200	250
Food	<u>8,755</u>	<u>5,439</u>	<u>9,194</u>	<u>9,350</u>
Subtotal Other	\$ 127,680	\$ 86,710	\$ 115,169	\$ 148,100
Total Operating Expenses	\$ 1,152,038	\$ 571,849	\$ 1,285,724	\$ 1,417,809
Total Expenditures	\$ 11,243,784	\$ 9,548,498	\$ 11,736,581	\$ 12,997,388

Budget to Actual Difference

\$ 1,695,286

Prior Year Budget

11,243,784

11,736,581

Difference from Prior budget to Current Year Budget

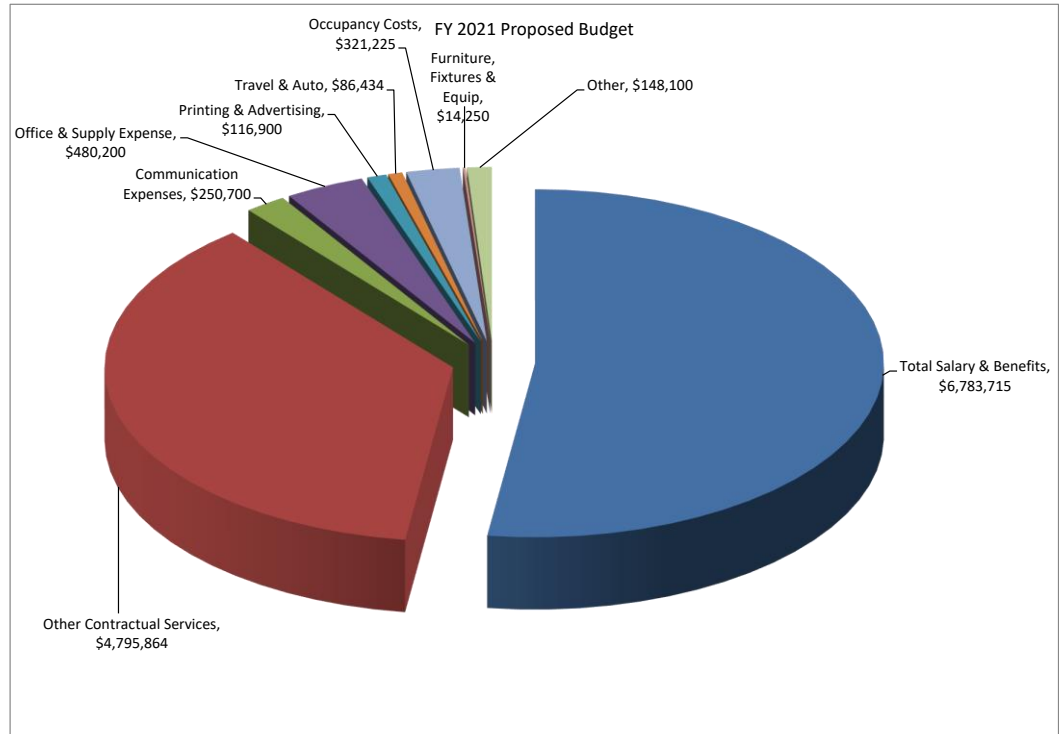
492,797

1,260,807

Percent Difference

4.38%

10.74%





State of Rhode Island
 Fiscal 2021 - Expense Budget
 Retirement - Administration & Investment
 Investment Cap Determination

Fiscal Year Budget	Investment Value Years					Average Market Value	Budget Cap Per RIGL	Actual Expenditures	
	Year 1	Year 2	Year 3	Year 4	Year 5				
2015	2013 7,530,855,629	2012 7,225,025,356	2011 7,440,116,914	2010 6,512,473,974	2009 5,983,666,859	6,938,427,746	2015 \$ 12,142,249	10,023,637	
2016	2014 8,205,539,057	2013 7,530,855,629	2012 7,225,025,356	2011 7,440,116,914	2010 6,512,473,974	7,382,802,186	2016 \$ 12,919,904	9,059,263	
2017	2015 7,968,194,309	2014 8,205,539,057	2013 7,530,855,629	2012 7,225,025,356	2011 7,440,116,914	7,673,946,253	2017 \$ 13,429,406	10,196,072	
2018	2016 7,525,307,707	2015 7,968,194,309	2014 8,205,539,057	2013 7,530,855,629	2012 7,225,025,356	7,690,984,412	2018 \$ 13,459,223	9,219,395	
2019	2017 8,066,357,568	2016 7,525,307,707	2015 7,968,194,309	2014 8,205,539,057	2013 7,530,855,629	7,859,250,854	2019 \$ 13,753,689	9,548,498	Enacted FY19 Budget 11,243,784
2020	2018 8,330,458,299	2017 8,066,357,568	2016 7,525,307,707	2015 7,968,194,309	2014 8,205,539,057	8,019,171,388	2020 \$ 14,033,550		Enacted FY20 Budget 11,736,581
2021 FY19 Est.	2019 8,463,516,706	2018 8,330,458,299	2017 8,066,357,568	2016 7,525,307,707	2015 7,968,194,309	8,070,766,918	2021 \$ 14,123,842		FY21 Proposed Budget 12,997,388

**EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND
PERSONNEL SUPPLEMENT
BUDGET FISCAL YEAR 2021**

POSITION TITLE	LAST NAME	FIRST NAME	TOTAL SALARY & BENEFITS*	RETIREMENT ADMINISTRATION	RETIREMENT INVESTMENTS
CHIEF OPERATING OFFICER (TREASURY)	MANCA JR	ANDREW	\$191.54	25.00%	15.00%
DIRECTOR OF FINANCE (TREASURY)	MEEHAN	JEFF	\$161.92	25.00%	15.00%
GENERAL COUNSEL (TREASURY)	CRANE	AMY	\$211.16	30.00%	20.00%
PROJECT COORDINATOR	KASCHEL	TIFFANY	\$104.60	30.00%	45.00%
SENIOR ADMINISTRATIVE CLERK (TREASURY ADMINISTRATION)	GALLUCCI	CYNTHIA	\$127.90	35.00%	15.00%
TECHNICAL SUPPORT SPECIALIST (TREASURY)	CATE	CHRISTOPHER	\$124.34	45.00%	10.00%
ADMINISTRATION			\$921.46	\$283.81	\$173.94
CHIEF OF STAFF (TREASURY)	BROCK	KATHARINE	\$236.14	25.00%	15.00%
DEPUTY TREASURER FOR POLICY & PUBLIC FINANCE (TREASURY)	ROGERS	KELLY	\$199.45	20.00%	20.00%
DIRECTOR OF COMMUNICATIONS (TREASURY)	ENGLAND	EVAN	\$211.16	25.00%	15.00%
DIRECTOR OF OUTREACH (TREASURY)	ROSE	CHARON	\$116.09	25.00%	10.00%
EXECUTIVE AIDE TO THE GENERAL TREASURER (TREASURY)	MULLINS	CHRISSEY	\$121.56	25.00%	10.00%
GENERAL TREASURER	MAGAZINER	SETH	\$198.17	0.00%	0.00%
OUTREACH COORDINATOR	GRIFFIN	PATRICK	\$62.47	35.00%	10.00%
POLICY AIDE	VACANT		\$102.13	10.00%	20.00%
RESEARCH DIRECTOR	BYRNE	LEANN	\$126.28	35.00%	10.00%
POLICY			\$1,373.45	\$287.40	\$170.05
DIRECTOR PARTICIPANT DIRECTED INVESTMENTS	CIVITTOLO	CHRIS	\$132.89	0.00%	0.00%
ADMINISTRATIVE ASSISTANT (TREASURY INVESTMENTS)	PAIVA	MARIA	\$94.76	0.00%	30.00%
CASH MANAGER (TREASURY INVESTMENTS)	THURSTON	JEFFREY	\$149.35	0.00%	45.00%
CHIEF INVESTMENT OFFICER (TREASURY)	STAIS	ALEC	\$412.80	0.00%	100.00%
DEPUTY COMMUNICATIONS DIRECTOR (TREASURY)	RICE	RANDALL	\$140.28	30.00%	15.00%
FISCAL MANAGEMENT ANALYST	MARTIN	LAUREN	\$97.07	0.00%	0.00%
INVESTMENT ANALYST (TREASURY)	KONRAD	JACOB	\$112.97	0.00%	100.00%
PROGRAM ADMINISTRATOR COLLEGE BOUND FUND	FATUDA PETERSON	DANA	\$121.56	0.00%	0.00%
PUBLIC DEBT MANAGER (TREASURY INVESTMENTS)	QUINN	FRANCIS	\$173.51	0.00%	0.00%
SENIOR INVESTMENT ANALYST (TREASURY)	MAISTROW	JUSTIN	\$137.80	0.00%	90.00%
SENIOR INVESTMENT OFFICER	AUGUSTO	THELMA	\$109.23	0.00%	30.00%
SENIOR INVESTMENT OFFICER	VACANT		\$179.99	100.00%	0.00%
SENIOR INVESTMENT OFFICER	POPIELARSKI	JONATHAN	\$184.38	0.00%	100.00%
INVESTMENTS			\$2,046.59	\$222.07	\$983.62
ACCOUNTING & DEBT SERVICES SPECIALIST (TREASURY RECON)	MADONNA	NATALIE	\$89.13	0.00%	0.00%
ACCOUNTING & RESEARCH SERVICES SPECIALIST (TREASURY RECON)	MARGARET	TUCKER	\$94.99	0.00%	0.00%
ARCHIVES AND RECORDS RETENTION SPECIALIST (TREASURY)	ISSA	BRIAN	\$76.11	0.00%	0.00%
BUSINESS SERVICES SPECIALIST (TREAS BUSINESS PROCESSING)	COONEY	ROBIN	\$88.69	10.00%	0.00%
CASH MANAGEMENT OFFICER	RABITAILLE	CRAIG	\$136.13	0.00%	15.00%
CHIEF FISCAL MANAGER (TREASURY)	CONKLIN	BRIAN	\$145.03	7.00%	0.00%
PRINCIPAL AUDITOR	PICCIRILLO	ANTHONY	\$144.96	0.00%	0.00%
PRINCIPAL AUDITOR	SIMEONE JR.	RALPH	\$144.96	0.00%	0.00%
PRINCIPAL AUDITOR	PIMENTAL	REGINA	\$117.40	0.00%	0.00%
SR ADMINISTRATIVE AIDE (TREASURY)	O'BRIEN	LISA	\$87.75	0.00%	0.00%
STATE RECEIPTS COORDINATOR & RET ACCT RECONCILER TREAS	HADDAD	CHERYL	\$127.29	14.00%	0.00%
DATA ANALYST	VACANT		\$101.62	14.00%	0.00%
BUSINESS PROCESSING			\$1,354.06	\$51.07	\$20.42
ACCOUNTING MANAGER	KWIATKOWSKI	ERICA	\$117.01	100.00%	0.00%
ADMINISTRATIVE AIDE	PAPA	MARIA	\$83.86	100.00%	0.00%
ADMINISTRATIVE AIDE	SALVATORE	SUSAN	\$92.09	100.00%	0.00%
ADMINISTRATIVE AIDE	COSTA	SUSANNE	\$92.09	100.00%	0.00%
ADMINISTRATIVE AIDE (TREASURY/RETIREMENT)	DONOYAN	ROXANNE	\$83.32	100.00%	0.00%
ADMINISTRATIVE ASSISTANT	MIDGLEY	JOHN	\$121.17	100.00%	0.00%
ADMINISTRATIVE ASSISTANT	VATTER	PAUL	\$97.40	100.00%	0.00%
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	KOZLIN	CHANDREE	\$112.86	100.00%	0.00%
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	CARDONA	CLAUDIA	\$113.18	100.00%	0.00%
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	PERNORIO	MARYANN	\$100.38	100.00%	0.00%
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	SCOLA	PAULA	\$100.38	100.00%	0.00%
BUSINESS ANALYST II (TREASURY/RETIREMENT)	DERHAGOPIAN	CHERYL	\$147.98	100.00%	0.00%
CHIEF FINANCIAL OFFICER	WHITTON	STACEY	\$202.15	100.00%	0.00%
CUSTOMER EXPERIENCE MANAGER	SHAW	JAY	\$121.25	100.00%	0.00%
DATA ANALYST (TREASURY RETIREMENT)	MOTTA	ERIC	\$97.64	100.00%	0.00%
DEPUTY DIRECTOR (TREASURY RETIREMENT)	HALIBUR	HEIDI	\$191.91	100.00%	0.00%
DEPUTY LEGAL COUNSEL (TREASURY RETIREMENT)	MAMBRO-MARTIN	GAYLE	\$171.81	100.00%	0.00%
DIRECTOR RETIREMENT SAVINGS PLAN	SCHOCKLEY	KIMBERLY	\$159.73	85.00%	15.00%
CONTROLLER (TREASURY RETIREMENT)	ARMSTRON	JEXSY	\$173.51	100.00%	0.00%
DISABILITY PENSION MANAGER	LUCAS	AMANDA	\$138.77	100.00%	0.00%
EXECUTIVE DIRECTOR (RETIREMENT SYSTEM)	KARPINSKI	FRANK	\$256.90	100.00%	0.00%
IMAGING TECNICIAN	FAY	KELLY	\$85.45	100.00%	0.00%
INVESTMENT ACCOUNTING MANAGER (TREASURY RETIREMENT)	IZZO	VINCENT	\$195.58	0.00%	90.00%
LEGAL COUNSEL	DIPAOLA	KARA	\$121.24	80.00%	0.00%

**EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND
PERSONNEL SUPPLEMENT
BUDGET FISCAL YEAR 2021**

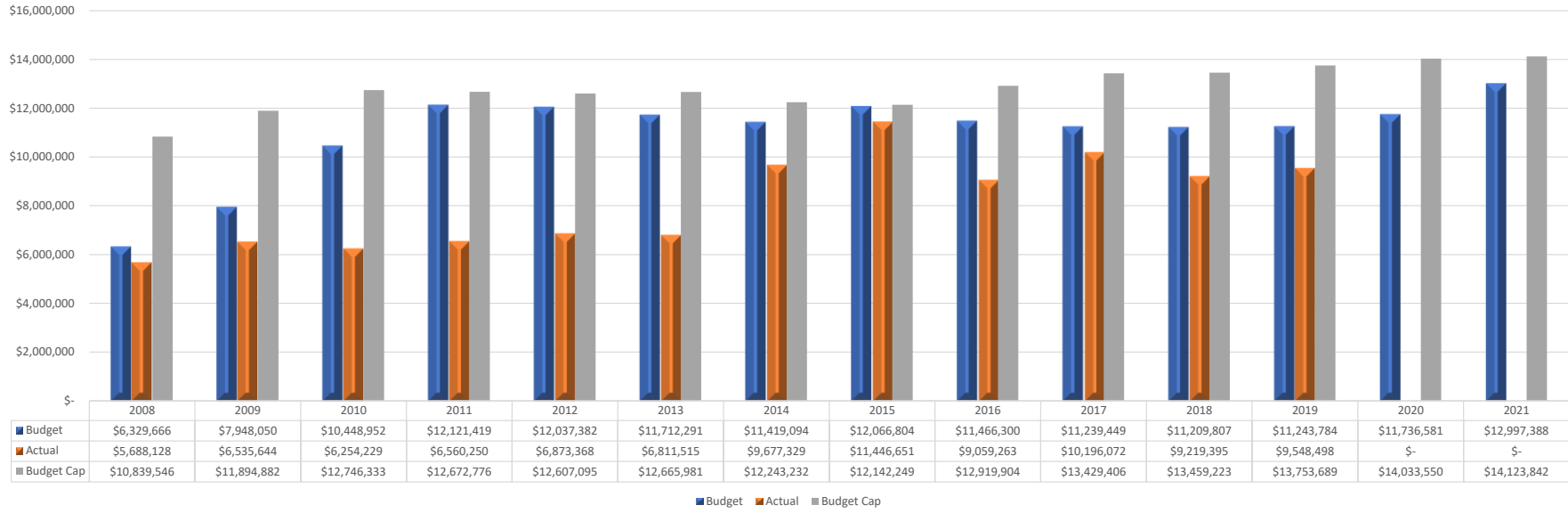
POSITION TITLE	LAST NAME	FIRST NAME	TOTAL SALARY & BENEFITS*	RETIREMENT ADMINISTRATION	RETIREMENT INVESTMENTS
MEMBER SERVICES REPRESENTATIVE (TREASURY RETIREMENT)	MARTIN	KATHLEEN	\$90.71	100.00%	0.00%
PRINCIPAL ACCOUNTANT	PHILLIPS	PETER	\$120.16	100.00%	0.00%
PROJECT COORDINATOR/COMPLIANCE ANALYST (TREASURY RETIREMENT)	DECOSTA	KIMBERLY	\$119.15	100.00%	0.00%
RETIREMENT AIDE (TREASURY)	VINGI	ANTHONY	\$71.32	100.00%	0.00%
RETIREMENT AIDE (TREASURY)	MARCOTTE	LISA	\$74.54	100.00%	0.00%
RETIREMENT COUNSELOR MANAGER	VACANT		\$125.12	100.00%	0.00%
SENIOR ACCOUNTANT (TREASURY/RETIREMENT)	BATISTA	JARVIS	\$94.97	100.00%	0.00%
SENIOR ADMINISTRATIVE AIDE (TREASURY/RETIREMENT)	BERNSTEIN	GLORIA	\$89.26	100.00%	0.00%
SENIOR ADMINISTRATIVE AIDE (TREASURY/RETIREMENT)	RODRIGUEZ	NICOLE	\$74.60	100.00%	0.00%
SENIOR ADMINISTRATIVE ASSISTANT (TREASURY)	MELISE	CHERYL	\$138.95	100.00%	0.00%
SENIOR ADMINISTRATIVE ASSISTANT (TREASURY)	COUGHLIN	JACQUELINE	\$138.91	100.00%	0.00%
SPECIAL PROJECTS MANAGER	CORCELLI	TARA	\$137.56	100.00%	0.00%
WAGE & CONTRIBUTION ANALYST (TREASURY RETIREMENT)	LONGTIN	SANDRA	\$116.25	100.00%	0.00%
RETIREMENT			\$4,569.16	\$4,325.37	\$199.98
GRAND TOTAL			\$10,264.72	\$5,169.73	\$1,548.01

* Salaries and benefits do not include overtime.

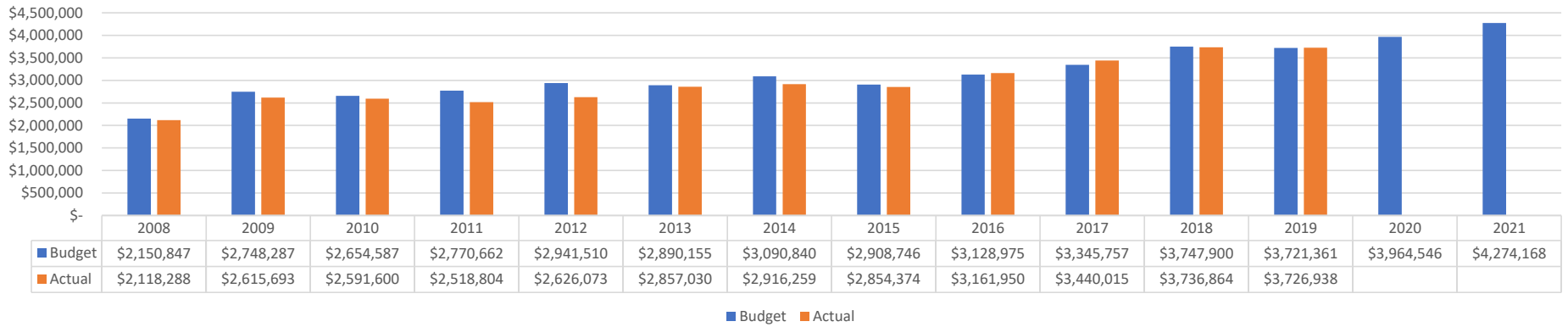
ERSRI Personnel Supplement FY 2021

Title	Grade	FTE	FY2021 Salary
EXECUTIVE DIRECTOR (RETIREMENT SYSTEM)	08545A	1.00	\$ 163,147
CHIEF FINANCIAL OFFICER (TREASURY RETIREMENT)	08542A	1.00	136,980
DEPUTY DIRECTOR	08542A	1.00	126,461
INVESTMENT ACCOUNTING MANAGER (TREASURY RETIREMENT)	08538A	1.00	121,808
CONTROLLER (TREASURY RETIREMENT)	08538A	1.00	105,920
DEPUTY LEGAL COUNSEL (TREASURY RETIREMENT)	08534A	1.00	104,582
DIRECTORY RETIREMENT SAVINGS PLANS	08536A	1.00	96,598
BUSINESS ANALYST II (TREASURY/RETIREMENT)	08533A	1.00	87,677
DISABILITY PENSION MANAGER	08531A	1.00	81,392
CUSTOMER EXPERIENCE MANAGER	08531A	1.00	81,392
SPECIAL PROJECTS MANAGER	08531A	1.00	81,392
SENIOR ADMINISTRATIVE ASSISTANT (TREASURY)	00327A	1.00	80,828
ACCOUNTING MANAGER	08531A	1.00	79,136
SENIOR ADMINISTRATIVE ASSISTANT (TREASURY)	00327A	1.00	79,109
LEGAL COUNSEL	08530A	1.00	78,248
RETIREMENT COUNSELOR MANAGER	08531A	1.00	75,733
WAGE & CONTRIBUTION ANALYST (TREASURY RETIREMENT)	00324A	1.00	71,963
ADMINISTRATIVE ASSISTANT	00325A	1.00	70,093
PRINCIPAL ACCOUNTANT	00326A	1.00	69,522
PROJECT COORDINATOR/COMPLIANCE ANALYST (TREASURY RETIREMENT)	00327A	1.00	68,008
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	00325A	1.00	63,722
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	00325A	1.00	63,722
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	00325A	1.00	63,722
SENIOR ACCOUNTANT (TREASURY/RETIREMENT)	00325A	1.00	63,462
DATA ANALYST (TREASURY RETIREMENT)	00325A	1.00	62,149
ADMINISTRATIVE ASSISTANT (TREASURY RETIREMENT)	00325A	1.00	61,961
ADMINISTRATIVE ASSISTANT	00325A	1.00	61,688
SENIOR ADMINISTRATIVE AIDE (TREASURY/RETIREMENT)	00317A	1.00	56,117
IMAGING TECNICIAN	00315A	1.00	53,911
ADMINISTRATIVE AIDE	00316A	1.00	51,039
ADMINISTRATIVE AIDE	00316A	1.00	48,719
ADMINISTRATIVE AIDE	00316A	1.00	48,719
MEMBER SERVICES REPRESENTATIVE (TREASURY RETIREMENT)	00318A	1.00	47,782
SENIOR ADMINISTRATIVE AIDE (TREASURY/RETIREMENT)	00317A	1.00	46,137
RETIREMENT AIDE (TREASURY)	00316A	1.00	46,098
RETIREMENT AIDE (TREASURY)	00316A	1.00	43,092
ADMINISTRATIVE AIDE (TREASURY/RETIREMENT)	08513A	1.00	42,737
Subtotal - Retirement personnel and salaries		37.00	\$ 2,784,766

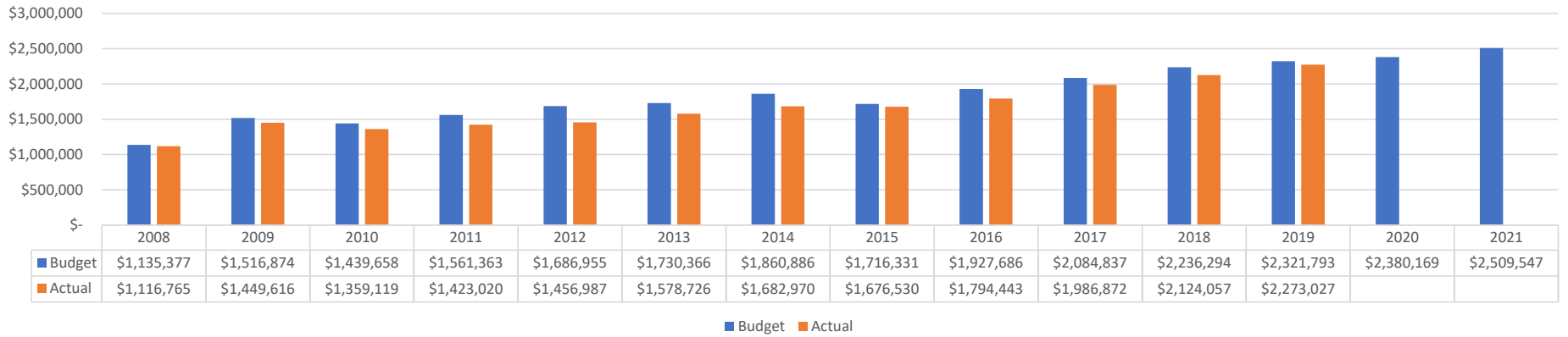
Budget vs. Actual vs. Cap



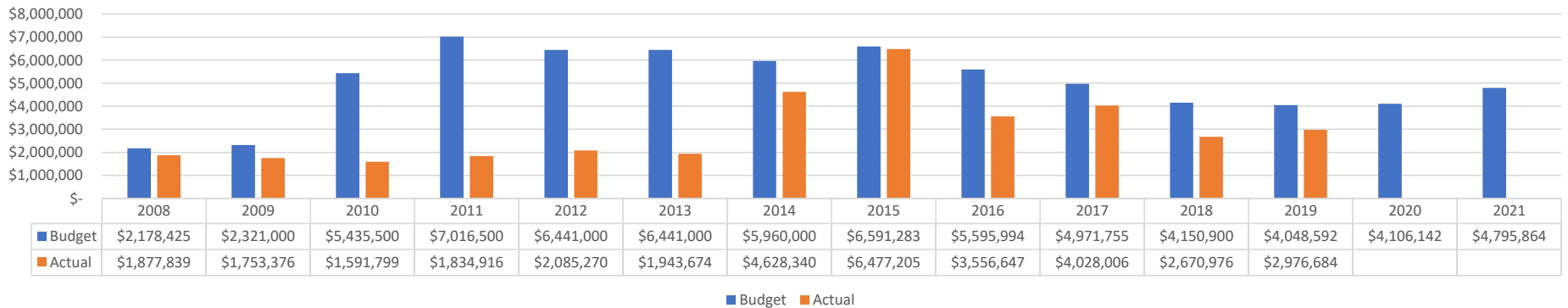
Salaries & Wages



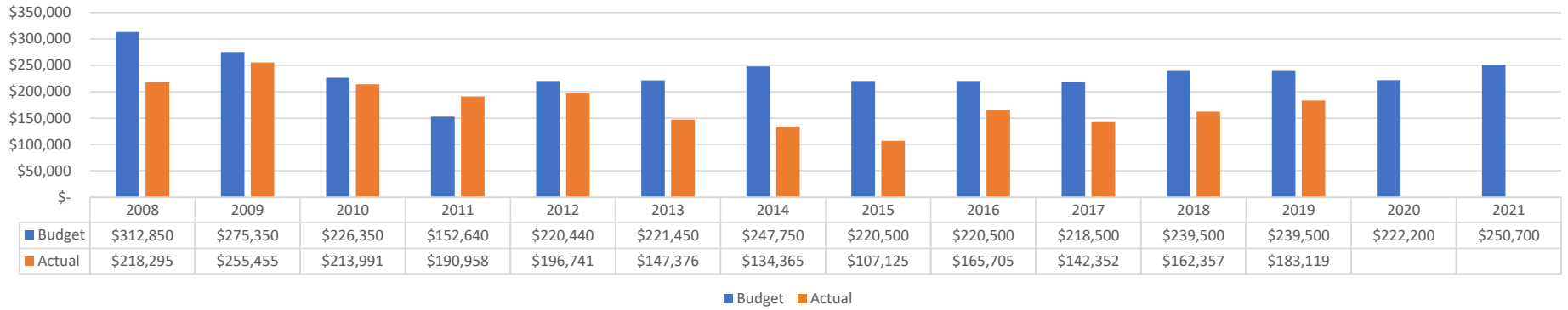
Benefits



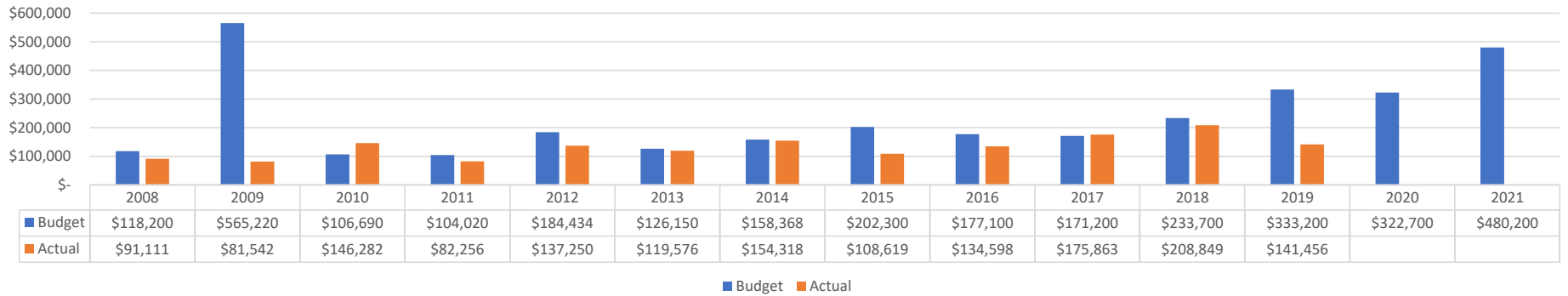
Contracted Services



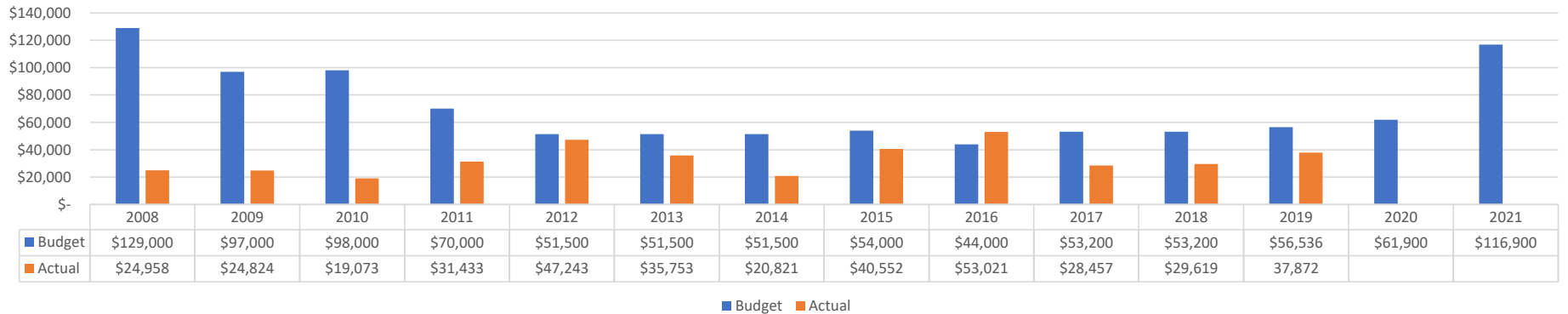
Communications Expense



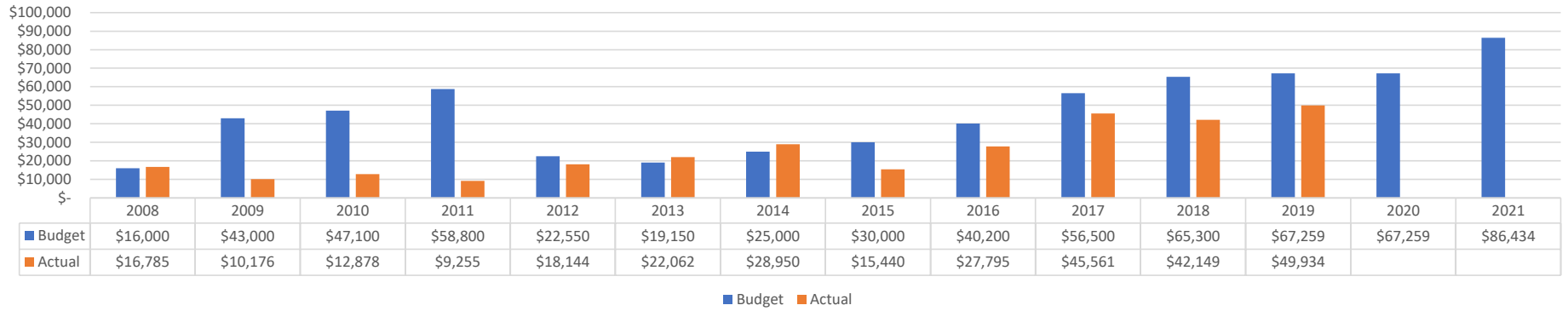
Office & Supplies Expense



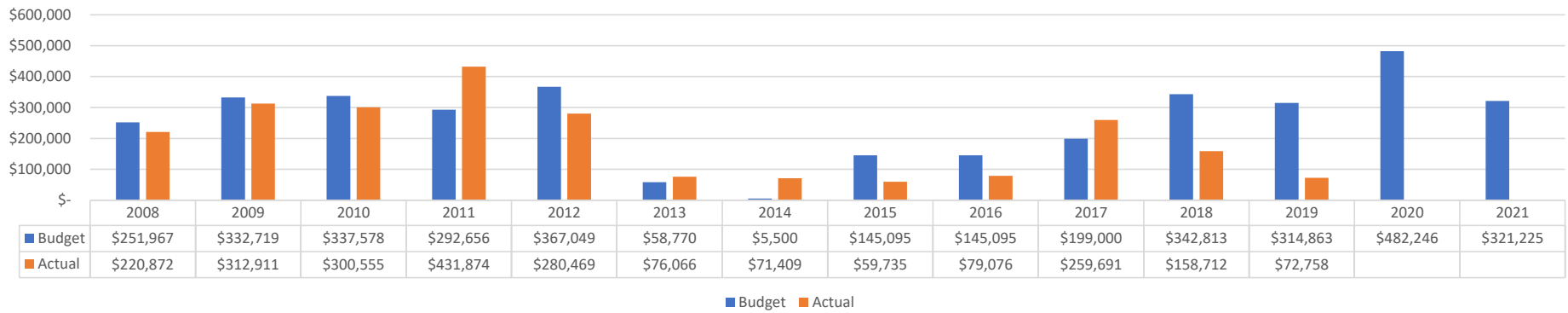
Printing & Advertising Expense



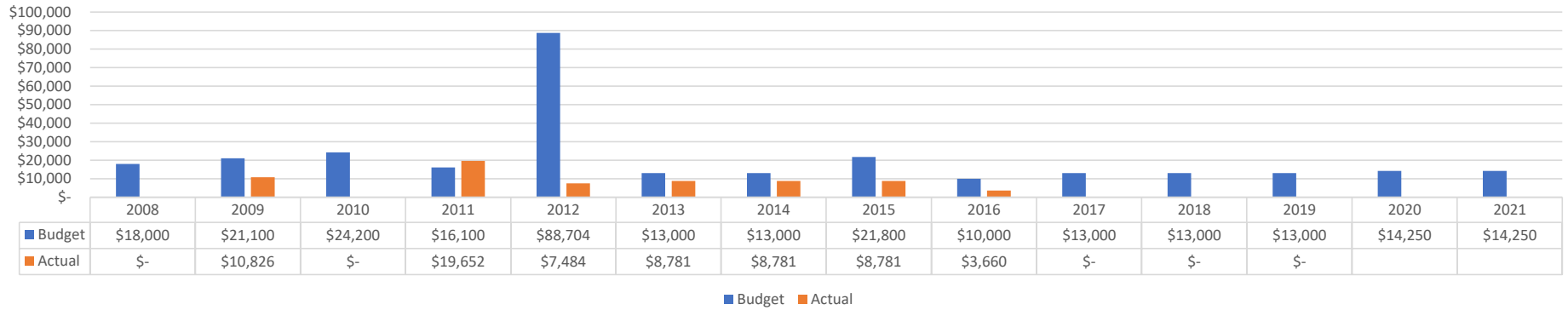
Travel Expense



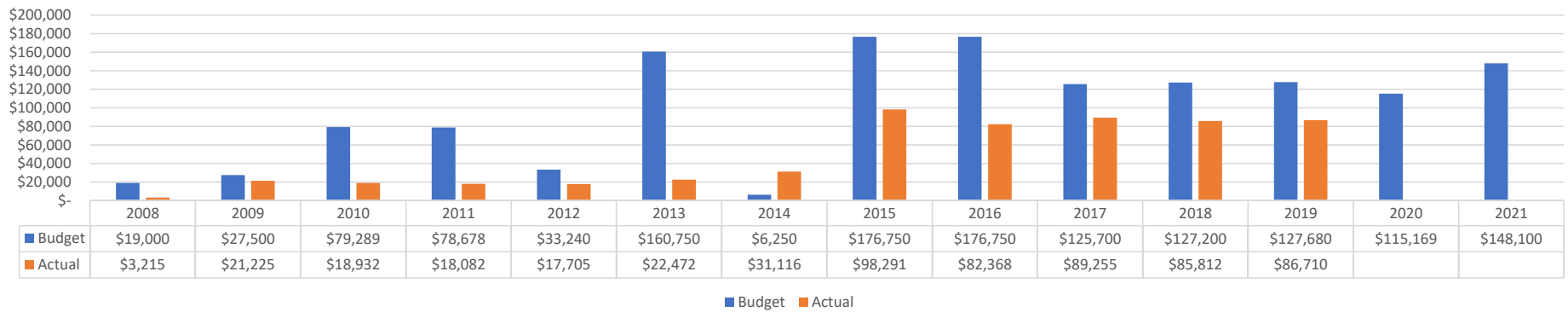
Occupancy Expense



Furniture, Fixtures, & Equipment Expense



Other Expense



Employees' Retirement System of Rhode Island



5.2. Administration Subcommittee

Recommendation on FY 2021 Budget

For Vote

Presented by Thomas Mullaney

Employees' Retirement System of Rhode Island



5.3. Update on 2020 Board Election

For Report

Presented by Frank J. Karpinski



ERSRI Memorandum

ERSRI Board:

Seth Magaziner
General Treasurer
Chair

John P. Maguire
Vice Chair

Roger P. Boudreau

Mark A. Carruolo

Brian M. Daniels

Michael DiBiase

Paul L. Dion

Thomas M. Lambert

Thomas A. Mullaney

Claire M. Newell

Raymond J. Pouliot

Jean Rondeau

Laura Shawhughes

Michael J. Twohey

Lisa A. Whiting

Frank J. Karpinski
Executive Director

Date: September 11, 2019
To: Retirement Board
From: Frank J. Karpinski, Executive Director
Subject: 2020 Retirement Board Election

As you may know, the Employees' Retirement System of Rhode Island will be conducting a retirement board election during the month of January 2020. The election will seat the following members: two active state employees (or state employee union representatives) to be elected by the state membership, two active teachers (or teacher union representatives) to be elected by the teacher membership, one municipal employee (or municipal union representative) elected by the municipal membership and two retired members elected by the ERSRI retiree membership. All elected members serve four-year terms

There has been an Election Subcommittee to review the retirement board election rules prior to the beginning of the election cycle. The Election Subcommittee oversees the election process and meets should there be a challenge or necessity for an election hearing. Most, if not all, of the work is done by retirement staff.

The counting of ballots, the vendor selection for printing of ballots, pick up of mail from the post office and scheduling of counting are all performed by the Board of Elections. Roxanne and I will coordinate the election process in conjunction with the Board of Elections. We have updated our website with the election information.

Below is a tentative schedule of events:

September 12 th to 15 th 2019	Consistent with Regulation 1.5.1 (B) and (C), an official notice will be received by all eligible members of the system.
September 12, 2019	Nomination papers available for pick up at ERSRI by eligible candidates.
October 16, 2019	Consistent with Regulation Number 1.5.1 (D), nomination papers must be received by this date.
October 17 th to 31 st 2019	ERSRI to validate eligible candidates' signatures.

<p>November 13, 2019</p>	<ol style="list-style-type: none"> 1. I will notify candidates of eligibility or non-eligibility and notify the Election Subcommittee that at their November 11, 2019 meeting there will be a lottery for ballot order. 2. At the meeting, consistent with Regulation 1.5.1 (D), the Election Subcommittee will first certify the eligibility or non-eligibility of the candidates. <p>As we now have quarterly board meetings, there is not a meeting in November, in the past a lottery was conducted at the Board meeting. As a result, the Election Subcommittee will first certify the eligibility and then will hold a lottery for ballot order, eligible candidates are notified and are invited to attend.</p>
<p>November 14, 2019</p>	<ol style="list-style-type: none"> 1. Notify candidates of ballot positions from lottery and request profile for each candidate. 2. Notify Board of Elections of ballot order.
<p>November 20, 2019</p>	<ol style="list-style-type: none"> 1. Develop and send newsletter with candidate profile to applicable eligible members.
<p>December 27th to 31st 2019</p>	<p>Ballots to be mailed to all eligible members.</p>
<p>January 2020</p>	<ol style="list-style-type: none"> 1. Send letter to Board of Elections regarding a notice of posting in Retirement and State House of the counting of the ballots and mail each candidate a copy of this notice. 2. Board of Elections to determine schedule to come in for counting of ballots. 3. Board of Elections posts legal notice in classified ads on counting of ballots per open meetings law.
<p>January 31, 2020</p>	<p>All ballots to be postmarked by this date.</p>
<p>February 2020</p>	<p>Board of Elections determines date for coming in for counting of ballots.</p>
<p>February 12, 2020</p>	<p>Consistent with Regulation Number 1.5.1 (J), I will call a meeting of the Elections Subcommittee to certify the results and subsequently apprise the Board, via letter, of the results and the names of the candidates elected. Communication to the membership shall be done via newsletter and website.</p>

March 4, 2020	March Board Meeting – Consistent with Regulation No. 1.1.2 (B)(1), elected members will be sworn in.
April 30,2020	Destroy ballots

For your convenience, I have attached a list of the current elected Board Members and their positions, consistent with RIGL §36-8-4. These are the positions that will be up for election

	Description	Member	Affiliation	Term
1	Active State Employee Member of the Retirement System OR Official from the State Employee Union to be elected by active state employees.	Paul L. Dion, Ph.D.	State Dept. of Revenue	Elected - Term Expires 3/20
2	Active State Employee Member of the Retirement System OR Official from the State Employee Union to be elected by active state employees.	Claire M. Newell	Department of Elementary and Secondary Education	Elected – Term Expires 3/20
3	Active Teacher member of the Retirement System OR an official from the teacher’s union to be elected by the active teachers.	Michael J. Twohey	Employed by Smithfield School as a Teacher	Elected - Term Expires 3/20
4	Active Teacher member of the Retirement System OR an official from the teacher’s union to be elected by the active teachers.	John P. Maguire	Treasurer RIFTHP – Retired Teacher	Elected - Term Expires 3/20

	Description	Member	Affiliation	Term
5	Active Municipal employee member of the retirement system or an official from a municipal employees' union to be elected by active municipal employees.	Thomas M. Lambert	Active municipal employee of the City of Woonsocket	Elected - Term Expires 3/20
6	Retired member of the Retirement system to be elected by retired members of the system.	Raymond J. Pouliot	Retired – Teacher East Greenwich School District	Elected - Term Expires 3/20
7	Retired member of the Retirement system to be elected by retired members of the system.	Roger P. Boudreau	Retired – Teacher Lincoln School District	Elected - Term Expires 3/20

Employees' Retirement System of Rhode Island



6. Administrative Decisions

For Decision

Employees' Retirement System of Rhode Island



6.1. Administrative Appeal - Kimberly McGowan vs. ERSRI

For Vote

Presented by Michael P. Robinson

KIMBERLY MCGOWAN

VS.

ERSRI

Roxanne Donoyan

From: Kimberly McGowan [REDACTED]
Sent: Wednesday, September 04, 2019 10:05 AM
To: Roxanne Donoyan
Subject: [EXTERNAL]Full Board Meeting

Ms. Donovan:

I will not be able to attend the meeting on 9/18/19. If you could please forward my following statement to Mr. Karpinski to read at the meeting I would appreciate it.

Good morning members of the Board,

Unfortunately I am unable to attend this meeting as I now reside in Delaware. I feel the evidence before you speaks for itself, specifically the letter from Claudia Cardona dated 4/2/14. I would also urge you to read my response to Mr. Robinson's Memorandum dated 12/21/17.

For the two years that I am not able to collect my pension I have been relying on other savings which otherwise would have been saved to use in my later years as needed. To me this does seem unfair as I followed a correct course of action and am unduly penalized.

I do thank you for your time and consideration on this matter.

Sincerely,

Kimberly McGowan
Sent from my iPad



Employees' Retirement System of Rhode Island

ERSRI Board:

August 28, 2019

Seth Magaziner
General Treasurer
Chair

Kimberly McGowan

Frankford, DE 19945

William B. Finelli
Vice Chair

RE: Notice of Full Board Meeting – *Kimberly McGowan vs ERSRI*

Roger P. Boudreau

Ms. McGowan:

Mark A. Carruolo

Please be advised that the Hearing Officer has issued an opinion in agreement with the decision of the Employees' Retirement System of Rhode Island (ERSRI) regarding your retirement eligibility date.

Brian M. Daniels

Michael DiBiase

In accordance with Regulation 1.4 of the *Rules of Practice and Procedure of the Employees' Retirement System for Hearings on Contested Cases*, this matter will be presented to the full Retirement Board for approval or denial at the September 18, 2019 Retirement Board Meeting. You have the right to appear before the Retirement Board and make oral argument in support of or in opposition to the Hearing Officer's decision.

Paul L. Dion

Thomas M. Lambert

John P. Maguire

The September meeting of the Retirement Board is scheduled for 9:00 a.m. Your hearing is scheduled as follows:

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

DATE:

Wednesday, September 18, 2019

TIME:

10:00 a.m.

Jean Rondeau

LOCATION:

50 Service Avenue, 2nd Floor Conference Room

Laura Shawhughes

Warwick, Rhode Island 02886

Lisa A. Whiting

A party wishing to file a brief or make exceptions to the decision must submit documentation to the Retirement System, Attention: Roxanne Donoyan, no later than 10 days prior to the date of the Retirement Board meeting.

Frank J. Karpinski
Executive Director

An applicant may represent herself at this Hearing, or the applicant's case may be presented by a lawyer. Consistent with Rhode Island General Law 11-27-2, entitled "*Practice of law*" defined, any person accompanying the applicant who is not a lawyer cannot present the applicant's case to the full Board.

If you are unable to attend this meeting, please notify me at 462-7608 as soon as possible. Should the meeting be rescheduled, we will notify you of the new date and time of the meeting.

Sincerely,

Roxanne Donoyan
Administrative Assistant

Cc Michael P. Robinson, Esq.

**EMPLOYEES RETIREMENT SYSTEM
OF RHODE ISLAND**

APPEAL OF:

KIMBERLY MCGOWAN, Appellant,

vs.

EMPLOYEES RETIREMENT SYSTEM, Respondent.

DECISION

This matter is on appeal initiated by Kimberly McGowan from a July 17, 2017 decision by the Executive Director providing “clarification” of Ms. McGowan’s date of eligibility to retire. The letter concluded that Ms. McGowan “will be eligible to retire with full benefits on November 29, 2020.” The letter constituted an administrative denial of Ms. McGowan’s claim to be eligible to retire with full benefits on December 15, 2016. A timely¹ appeal followed and the matter was assigned to the undersigned for hearing.

A hearing was held on November 6, 2017. The system was represented by Michael Robinson. Ms. McGowan represented herself at the hearing.

The following exhibits were marked:²

Hearing Officer 1:	September 15, 2017 letter assigning the matter to the Hearing Officer
Hearing Officer 2:	Notice of Hearing
Hearing Officer 3:	July 17, 2017 letter from Frank Karpinski to Christopher Lambert, Esq. (administrative denial)
Hearing Officer 4:	Email from Atty. Elizabeth Wiens confirming that she will not represent Ms. McGowan at the hearing.

¹ Although the record does not establish that the Appeal was timely requested, the System did not raise any objection based on timeliness. In addition, the Notice of Hearing (HOX2) requires that any assertion that an appeal is not properly taken must be raised prior to the hearing or potentially be considered to have been waived. In this case, as the parties have proceeded without any objection based on timeliness of the appeal, I consider the appeal to have been timely.

² I have redacted Social Security number, but other personal information is contained in the Exhibits, which should be handled with care.

- Member Exhibit 1: 8 pages, including two printouts of ERSRI Web Pages and April 2, 2014 letter.
- Member Exhibit 2: September 13, 2017 letter from Atty. Elizabeth Wiens to Frank Karpinski.
- System Exhibit 1: Kimberly McGowan System Application (1997)
- System Exhibit 2: System Visit form, 1999, for purchase of Substitute Teaching time.
- System Exhibit 3: Invoice for Substitute Teaching Time Purchase, 1999.
- System Exhibit 4A: Substitute Teaching verification form, Pawtucket.
- System Exhibit 4B: Substitute Teaching verification form, Lincoln.

Ms. McGowan testified on her own behalf. Mr. Karpinski testified on behalf of the System.

At the conclusion of the hearing, the parties were given the opportunity to submit additional Memoranda to the Hearing Officer. By agreement of the parties, Memoranda were submitted by both the Member and the System, the last of which was received January 17, 2018.

For the reasons which follow, the Executive Director's decision is AFFIRMED.

FACTS AND TRAVEL

The facts are not in dispute.³ The appeal is brought by Kimberly McGowan. Ms. McGowan was employed as a full-time teacher in the Lincoln School Department beginning in September, 1997. MX1, p.8. In 1999, Ms. McGowan purchased four and a half years' credit for her prior substitute teaching in exchange for a payment in the amount of \$4,485.45.⁴

Ms. McGowan's husband was transferred to a position in Pennsylvania in 2011. As a result, the McGowans made a decision to live apart to retain their employment. Hoping to reunite as soon as possible, Ms. McGowan began the process of determining when she could retire and reunite on a full-time basis with her husband.

³ Given the absence of factual disputes, for the most part I have not included transcript references to my findings.

⁴ The parties do not disagree that the purchase of this time did not, under controlling provisions, impact the date that Ms. McGowan was eligible for full retirement. Tr. p.29, 1.8-24.

Ms. McGowan's first effort in that regard was the ERSRI website, where she viewed information indicating that her earliest full retirement (RIRSA) date was December 26, 2016.

Accompanying that information was a conspicuous legend indicating:

An ERSRI counselor has not validated the accuracy of your account. What you see on this website remains an ESTIMATE ONLY until your account is validated for service credit and contributions. While the information provided here is a helpful tool for you to estimate your retirement benefit, this information has not yet been validated by a retirement analyst and should not be considered final. Accounts are validated prior to retirement. Unfortunately, accounts cannot be validated upon request. We appreciate your understanding.⁵

MX1 p.1, 2.

As her planning continued, and crystallized, Ms. McGowan reached out to the System to clarify and confirm her eligibility. The form of the request and specific request are not in the record. However, in response to the request, Ms. McGowan received an April 2, 2014 letter from a System Retirement Benefit Analyst. MX1, p.3. That letter indicated it was in response to a "request confirming retirement eligibility." The letter outlined multiple legislative events that impacted Ms. McGowan's retirement eligibility and stated: "...ERSRI has determined your earliest date of retirement to be February 9, 2016, at approximately age 60 and 6 months." The letter went on to note, in highlighted text that "...if you decided to retire as of this date, you would only receive accrued benefits through June 30, 2012. (emphasis original). The letter continued: "However, our estimated RISRA eligibility date for full retirement benefits is 12/25/16 at which point you would be approximately age 61 and 5 months. If you wait until this later date, your pension will be based on your salary and service through your termination date."

⁵ The web page also contained a link to retirement calculators "to help you determine your new retirement eligibility under the Rhode Island Retirement Security Act of 2011 (RIRSA)." There was no evidence of what use of those calculators would have revealed in this case. MX1, p.1.

The letter went on to provide examples of what Ms. McGowan would receive in benefits if she *left state service on June 30, 2014*, depending on whether she *retired* on February 9, 2016 vs. December 25, 2016.⁶

Ms. McGowan testified that, based upon this letter, she planned to take advantage of the larger monthly payout afforded by waiting to retire until the end of the school year following her full retirement age – June 2017. Consistent with that plan, in June, 2016, Ms. McGowan registered for a Teachers' Retirement Workshop to be held on October 4, 2016. MX1, p.4. She also scheduled a retirement edibility appointment for October 4, 2016. On October 3, 2016, Ms. McGowan received an email (MX1, p.5) advising her to contact a Senior Retirement Benefit Analyst. When she did so, she was informed for the first time that her purchased service credit for her work as a substitute teacher did not count towards her years of service for eligibility for full retirement, making her full retirement date some four years later, more or less. Tr. p.11, 1.5-8. Ms. McGowan's attorney, at that point, requested a hearing regarding her retirement eligibility date. MX1, p.6.

The Executive Director wrote to Ms. McGowan's counsel on July 17, 2017 explaining the manner of calculated applicable dates based upon legislation and the facts and circumstances of Ms. McGowan's employment history. The letter indicated that the dates contained in the April 2, 2014 letter were erroneous because they included service credit for 4.6 years of substitute teaching. The letter indicated that it was a final administrative denial and could be appealed pursuant to the System's Regulation. This appeal followed.

⁶ The differential between retiring on the date of first eligibility vs. full retirement age was discussed in testimony. In sum, retiring on the date of initial eligibility (Article 7) resulted in significantly lower monthly benefits than retiring at full retirement age (RIRSA).

On September 13, 2017, a different attorney representing Ms. McGowan wrote to the System (MX2), asserting various reasons that Ms. McGowan was entitled to retire with full benefits as early as December 25, 2016. The basis for these assertions is discussed below.

ISSUE

The issue in this appeal is whether, under these facts, Ms. McGowan was entitled to retire with full benefits effective December 25, 2016.

DISCUSSION

There is no dispute in this case that the applicable laws, regulations and other controlling authority, strictly applied to Ms. McGowan's employment history, support the Executive Director's July 17, 2017 letter (HOX3) concluding that Ms. McGowan's full retirement date is November 29, 2020. There is further no dispute that the dates contained in the web pages and the April 2, 2014 letter included in MX1 are incorrect in terms of the strict application of applicable laws, regulations and other controlling authority. The dispute between the parties is the consequence of the erroneous information provided to Ms. McGowan.

Ms McGowan's prior counsel, in MX2, offers several theories regarding the consequences of the System's error:

- a. She states that Ms. McGowan reasonably relied on the System's erroneous information in planning her retirement, incurring expenses and otherwise acting to her detriment in reliance on the erroneous information;
- b. She states that the elements of the tort of negligent misrepresentation are met in the circumstances; and
- c. She argues that the System is equitably estopped from asserting a position contrary to the dates and benefits as stated in the April 2, 2014 letter.

Ms. McGowan, in her Post-Hearing Memorandum, likewise stresses her reliance on the information provided to her in 2014 and, more succinctly, summarizes her position: that the Executive Director's decision is "simply not fair" in the circumstances.⁷

The System argues that principles of equitable estoppel cannot be applied to the System in these circumstances. The System further argues that, substantively, the claim of negligent misrepresentation fails.

A. Equitable Estoppel/Detrimental Reliance.

The doctrine of equitable estoppel can, where applicable, preclude a party from asserting a defense they might otherwise be legally entitled to raise. In this case, the parties do not dispute that the applicable legal provisions, properly and strictly applied, support the Executive Director's position. Therefore, the issue before me is whether the facts and circumstances preclude the System from asserting such a defense.

The System points to two cases, *Waterman v. Caprio*, 983 A.2d 841, 846 (R.I. 2009) and *Romano v. Retirement Board of the Employees' Retirement System of Rhode Island*, 767 A.2d 35, 39-40 (R.I. 2001) for the proposition that erroneous statements cannot support equitable estoppel if they are *ultra vires*.

Waterman was an appeal to the R.I. Supreme Court from a grant of Summary Judgment in favor of the System. The underlying dispute was whether workers compensation benefits should constitute an offset of disability benefits administered by the System. *Waterman* had settled a workers' compensation claim and was subsequently told that his disability benefits would be

⁷ This is not to imply that Ms. McGowan's Post-Hearing Memorandum was limited to this point. To the contrary, Ms. McGowan reiterated and summarized her position and specifically addressed the System's Post-Hearing arguments. Furthermore, fundamental fairness is, in fact, a critical component of equitable estoppel, discussed below.

suspended until the settlement amount equivalent was offset. The Court first determined that, under the law, the offset was proper. It next considered whether the System should be estopped from asserting its position, and from offsetting the workers compensation benefit, based upon specific communications between the System and Waterman's attorney which preceded Waterman's settlement of his workers compensation claim.

In those communications, Waterman's attorney specifically asked the then Asst. Executive Director of the System if workers compensation settlement funds would be offset from his disability and was told that they would not. Waterman claimed that in reliance on the Asst. Executive Director's statement – which it turned out was legally wrong – he made an election regarding the type of disability benefit he applied for. Had he made the alternate election, the workers compensation settlement would not have been offset. In the circumstances, Waterman claimed that the System could not impose the offset based on Waterman's detrimental reliance on the Executive Director's misstatement. There was no dispute in that case that a misstatement was made.

The Court noted that estoppel is an "extraordinary" remedy that the Court "will not entertain ... when a governmental employee's actions clearly are *ultra vires*." *Waterman*, 983 A.2d at 846, *citing Romano, supra* (discussed below). In *Waterman*, the Court considered the statements of the then Asst. Executive Director to have been both erroneous and *ultra vires*. While Ms. McGowan argues in her Post-Hearing Memorandum that the Retirement Benefit Analyst's misstatement in the April 2, 2014 letter was *ultra vires* because it was "well within the scope of her duties," the Supreme Court applied a different measure of *ultra vires* in this context: "[S]tatements made by the retirement system [are] not within their authority to make [if] they contradict[] state law." *Waterman*, 983 A.2d at 847, *citing Romano* (discussed below). Thus, by

definition, a governmental employee's misstatement of state law is *ultra vires*. The fact that the employee makes the misstatement while on the job does not, legally speaking, place the statement within the employee's "scope of her duties." The Supreme Court's decision effectively exclude such misstatements from the scope of the employee's duties. Put another way, a state employee can't override state law by a mistake.⁸ See *Romano*, 767 A.2d at 39-40, discussed below.

In *Romano*, the Member was a RIDOT employee who took advantage of an early retirement incentive offered by the State. At the time that the incentive offer was pending, and before accepting the deal, Romano was approached by a municipal administrator and offered a municipal job. Romano inquired of the System of the potential impact of taking both the state retirement incentive and the municipal job. He was told by a retirement counselor that she knew of no restrictions to working for the municipality, but counseled to "go to the retirement board" if he wanted clarity. 767 A.2d at 36. Romano then went to the Executive Director to confirm the information he got from the retirement counselor. The Executive Director wrote Romano a letter which stated that he could work for the municipality while he collected his state retirement.

As it happened, the information in the letter was wrong – simultaneously working for a municipality while collecting a state pension was impermissible 'double-dipping.'⁹ When this double-dipping was discovered, the state pension was terminated and Romano asserted a claim

⁸ The *Waterman* Court also noted that estoppel claims require that the misrepresenting party have the *purpose* of inducing reliance. *Waterman*, 983 A.2d at 847 ("There is nothing in the record to suggest that Reilly made his statement with the purpose of inducing plaintiff to act in reliance on the representation. The plaintiff's counsel asked Reilly a question and Reilly answered it, albeit erroneously. This does not constitute conduct on Reilly's part indicating that he deliberately induced plaintiff into believing that the settlement would not be offset against the disability payments when state law clearly specifies otherwise."). Similarly, there is no evidence in this matter that the Retirement Benefit Analyst had any affirmative intention that Ms. McGowan act in reliance on the mistaken information.

⁹ If the municipal employment exceeded 75 days per year.

that he was entitled to continue collecting his state pension while working for the municipality because he had relied on the Executive Director's erroneous letter.

The *Romano* Court reviewed extensive caselaw declining to apply principles of estoppel to governmental errors that were inconsistent with applicable law. 767 A.2d at 39. The Court specifically noted that principles of estoppel that apply in private disputes do not apply against governmental entities. The *Romano* Court noted that "neither the retirement counselor nor the board's executive director possessed any actual or apparent authority to vary or contradict 'a valid employment requirement prescribed by state law.'" 767 A.2d at p.39 (internal citation omitted). While the Court left open the door, in the right circumstances, for the doctrine of estoppel to apply against public agencies, it, at the same time, slammed the door on other circumstances: "neither a government entity nor any of its representatives has any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations." 767 A.2d at 39-40.

In sum, under controlling authority, it is my conclusion that, despite erroneous information given to Ms. McGowan, principles of estoppel do not preclude the System from enforcing applicable legal provisions as all parties agree pertain to Ms. McGowan's retirement date, benefits and otherwise.

B. Negligent Misrepresentation.

Ms. McGowan's attorney, in MX2, argues that the facts of this dispute satisfy the elements of the tort of negligent misrepresentation, citing *Mallette v. Children's Friend & Service*, 661 A.2d 67, 69 (R.I. 1995). Although this argument appears to be made principally for the purpose of supporting the estoppel argument, the System counters with an argument that the limiting language

in the website and the use of the term ‘estimated’ in the April 2, 2014 letter, effectively render the misstatements not ‘mistakes’ at all.¹⁰

As it happens, I conclude that it is not necessary for me to delve into the application of the tort of negligent misrepresentation to the facts in this case. This is not a forum for affirmative assertion of an independent tort by a Member.¹¹ My role is to consider whether the Executive Director’s administrative denial of Ms. McGowan’s claim is consistent with the legal provisions that apply to and control her pension, subject to whatever defenses or legal principles the Member asserts. I cannot adjudicate tort claims, breach of contract claims or any other claims. As such, I decline to engage in an evaluation of claims that I cannot decide – were I to conclude that there was, in fact, a negligent misrepresentation that meets the elements of the recognized tort, I could not make an award of damages, enter an enforceable judgment or otherwise adjudicate the claim in any meaningful way. Moreover, if Ms. McGowan wishes to assert a tort claim, both she and the System would be entitled to assert a jury claim if they choose, and this is not a forum where that right can be afforded.

In sum, I cannot adjudicate a claim of negligent misrepresentation and decline to offer analysis of a claim I can’t decide.

¹⁰ The April 2, 2014 letter is far less equivocal than the web pages are. The use of the term “estimated” in the letter applies only to full retirement age, as opposed to the rest of the letter discussing benefits for retirement earlier than full retirement age. In both cases, the Retirement Benefit Analyst mistakenly included Ms. McGowan’s years of substitute teaching in her calculations. I do not agree that the use of the term “estimated” in the April 2, 2104 letter means that the information in the letter is not erroneous.

¹¹ I do not opine on whether the Member has a viable negligent misrepresentation claim, or against whom.

CONCLUSION

It is apparent and unfortunate that Ms. McGowan was given inaccurate information in this matter. It is clear that she relied on this information in making plans and my conclusions above should not be construed as indicating a lack of sympathy for her and her situation. On the other hand, had she been given correct information back in 2014, it is not clear that she would have ultimately made different decisions than she has made at this point. In any case, I do sympathize with Ms. McGowan but controlling Supreme Court precedent determines the outcome of this dispute at this stage and in this forum.

For these reasons, I affirm the Executive Directors Final Administrative Denial dated July 7, 2017.

Date: February 25, 2018

/s/Jeffrey S. Michaelson
Jeffrey S. Michaelson, Hearing Officer
State Employees' Retirement System
50 Service Avenue, 2nd Floor
Warwick, RI 02886

CERTIFICATE OF SERVICE

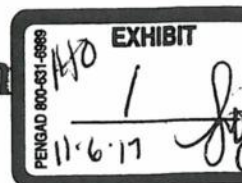
I hereby certify that I caused a copy of the foregoing document, along with Exhibits, to be emailed to the following on the 25 day of February, 2018:

Kimberly McGowan [REDACTED]
Michael Robinson (mrobinson@shslawfirm.com)
Frank Karpinski (fkarpinski@ersri.org)

/s/Jeffrey S. Michaelson



Employees' Retirement System of Rhode Island



ERSRI Board:

September 15, 2017

Seth Magaziner
General Treasurer
Chair

William B. Finelli
Vice Chair

Roger P. Boudreau

Mark A. Carruolo

Brian M. Daniels

Michael DiBiase

Paul L. Dion

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Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

Laura Shawhughes

Frank J. Karpinski
Executive Director

Elizabeth Wiens, Esq.
Gursky/Wiens, Attorneys at Law, Ltd.
1130 Ten Rod Road, Suite C207
North Kingstown, RI 02852

Dear Attorney Wiens:

In accordance with Rhode Island General Laws §36-8-3 and the Rules of Practice and Procedures for Hearings, your request for a hearing has been assigned to:

HEARING OFFICER:

Jeffrey S. Michaelson Esq.

Phone: (401) 295-4330

LOCATION:


Employees' Retirement System of Rhode Island
50 Service Avenue, 2nd Floor
Warwick, RI 02886

You should contact the hearing officer to arrange a mutually convenient time to hold the hearing.

An applicant may represent him/her self at this Hearing or the case may be presented by a lawyer. Consistent with Rhode Island General Law §11-27-2, entitled "*Practice of law*" defined, any person accompanying the applicant who is not a lawyer cannot present the applicant's case to the Hearing Officer.

Should you have any additional questions, please do not hesitate to contact me at (401) 462-7608.

Sincerely,


Roxanne Donoyan
Assistant to the Executive Director

cc: Kimberly McGowan
Jeffrey S. Michaelson, Esq. ✓
Michael P. Robinson, Esq.



EMPLOYEES RETIREMENT SYSTEM
OF RHODE ISLAND

APPEAL OF:

KIMBERLY McGOWAN, Appellant,

vs.

EMPLOYEES RETIREMENT SYSTEM, Respondent.

NOTICE OF HEARING

This Notice of Hearing is issued pursuant to Section 4.00, Rules of Practice and Procedure.

1. Time, Place and Nature of Hearing.

This matter is being heard pursuant to the request for hearing of Kimberly McGowan. If any party believes that the appeal is not properly taken from a final decision, that party must advise the Hearing Officer sufficiently prior to the hearing date to determine that issue. If the hearing is convened without such an objection by any party, the hearing may proceed on the scheduled date on the substantive issue, and I may or may not consider any claims that the issue(s) is(are) properly before me.

The Hearing will be held on NOVEMBER 6, 2017 at 3:15 p.m. at the Employees' Retirement System of Rhode Island, 50 Service Avenue, Warwick, RI 02886. In the event that any party wishes to reschedule the hearing, they are instructed to confer with the other party and select at least two alternative dates prior to contacting the hearing officer.

2. Legal Authority and Jurisdiction.

The Hearing is held pursuant to RIGL 36-8-3 and Regulation 4, Rules of Practice and Procedure for Hearings, the Employees' Retirement System of Rhode Island.

3. Attendance.

A party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

4. Memoranda.

Legal memoranda are not required, but are permitted pursuant to Section 5.00 (e), Rules of Practice and Procedure

Date: October 11, 2017

/s/Jeffrey S. Michaelson

Jeffrey S. Michaelson, Hearing Officer
State Employees' Retirement System
50 Service Avenue
Warwick, RI 02886

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be served by email only, to the following on the 11 day of October, 2017:

Kimberly McGowan [REDACTED]

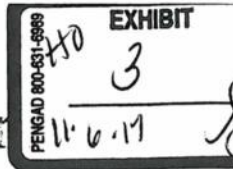
Michael P. Robinson (mrobinson@shslawfirm.com)

Roxanne Donoyan (Roxanne.Donoyan@ersri.org)

/s/Jeffrey S. Michaelson



Employees' Retirement System of Rhode Island



ERSRI Board: July 17, 2017

Seth Magaziner
General Treasurer
Chair

Christopher Lambert, Esq.
Rhode Island Federation of Teachers and Health Professionals
356 Smith Street
Providence, RI 02908

William B. Finelli
Vice Chair

Roger P. Boudreau

Mark A. Carruolo

Brian M. Daniels

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Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

Laura Shawhughes

Frank J. Karpinski
Executive Director

RE: Kimberly McGowan

Dear Attorney Lambert:

We write to provide clarification regarding Ms. McGowan's date of eligibility to retire. Thank you for meeting with us regarding this matter. It is our understanding that Ms. McGowan is requesting that the retirement system permit her to retire now at her full pension benefit or that the retirement system pay for her healthcare benefits until her retirement eligibility date. We are unable to grant her request.

Ms. McGowan was originally informed in April 2014 that her retirement eligibility date was December 25, 2016. Subsequently, at the time she contacted our office about retiring in 2016, she was notified that the date provided was calculated erroneously using service credit that she purchased in 1997 (4.6 years of substitute teaching) as that service credit was not considered contributory time. That meant she was not a Schedule ABNE member as originally calculated, but rather pursuant to the law, a Schedule B1NE member, adjusting her retirement date to November 29, 2020.

From September 1, 1997 through June 30, 2005, Ms. McGowan accrued 8 years of service credit. Rhode Island General Law (RIGL) §16-16-12 was revised in 2005 to provide that a member with 10 years of contributory service before July 1, 2005 could continue to retire at age 60 with 10 years of service credit or at any age with 28 years of service credit, 10 of those years must be contributory service on or before July 1, 2005. With the changes to retirement laws in 2009 and 2011, eligibility was advanced to 62 and 67 respectively. Those eligibility dates would be adjusted downward predicated on whether a member had or had not accrued 10 years of contributory service credit as of July 1, 2005. Although she had purchased 4 years 6 months of substitute

teaching time, that time is not considered contributory time pursuant to the Employees' Retirement System of Rhode Island Rules and Regulations, Regulation 1.6.11. Therefore, she had less than 10 years of the required contributory service at July 1, 2005, which determines her eligibility under current law.

Ms. McGowan met with Diane Bourne, the Assistant Executive Director, who provided her with several transition rule options for retirement.

Given the requirements of the laws governing retirement of teachers, Ms. McGowan will be eligible to retire with full benefits on November 29, 2020. There are no provisions in the law which would either allow her to retire at an earlier date with full pension benefits or which would allow the retirement system to pay her healthcare premiums until her full eligibility date.

This letter constitutes official notification of an administrative denial. Pursuant to Regulation No. 1.4, Rules of Practice and Procedure for Hearings of the Employees' Retirement System of Rhode Island, Section C., any member aggrieved by an administrative action may request a hearing before a Hearing Officer whose decision shall be subject to approval by the full Retirement Board. Upon such request, the matter will be deemed a contested case. Such request shall be in writing and shall be sent to the Retirement Board, 50 Service Avenue, 2nd Floor, Warwick, RI 02886, Attention: Frank J. Karpinski, Executive Director, within 60 days of date of the letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial. A request for hearing shall be signed by the member and shall contain the name of the member; date and nature of decision to be contested; a clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and a concise statement of the relief sought. Failure to strictly comply with the procedures outlined above shall be grounds to deny a request for a hearing.

Sincerely,


Frank J. Karpinski

Executive Director

Cc: Kimberly McGowan
Michael P. Robinson, Esq.

Enclosure: Regulation 1.4

Jeff Michaelson

From: Elizabeth A. Wiens <EWiens@rilaborlaw.com>
Sent: Tuesday, October 10, 2017 3:46 PM
To: Michael P. Robinson; 'Jeff Michaelson'; kcm0755@aol.com
Cc: Roxanne Donoyan (Roxanne.Donoyan@ersri.org); Allison Y. Charette; John H. McCann
Subject: RE: McGowan v. ERSRI

Sorry, I'm not sure if I responded to Jeff's e-mail (below). Ms. McGowan will be representing herself at the hearing and it is permissible to contact her directly.

Thanks,

Liz

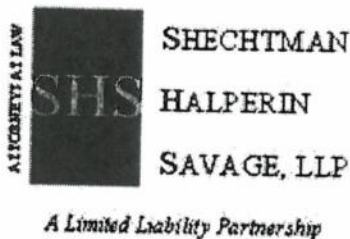
From: Michael P. Robinson [mailto:mrobinson@shslawfirm.com]
Sent: Tuesday, October 10, 2017 3:21 PM
To: 'Jeff Michaelson' <jeffmichaelson@cox.net>; Elizabeth A. Wiens <EWiens@rilaborlaw.com>; [REDACTED]
Cc: Roxanne Donoyan (Roxanne.Donoyan@ersri.org) <Roxanne.Donoyan@ersri.org>; Allison Y. Charette <acharette@shslawfirm.com>; John H. McCann <jmccann@shslawfirm.com>
Subject: RE: McGowan v. ERSRI

Good afternoon Hearing Officer Michaelson—11/6 or 11/9 at 3:15 work on this end. Please let me know once confirmed.

I am copying Roxanne Donoyan at the Retirement System so she is in the loop on scheduling. Thanks,

Mike

Michael P. Robinson
Attorney at Law
www.shslawfirm.com



1080 Main Street
Pawtucket, RI 02860
Ph: 401-272-1400
Fx: 401-272-1403

This e-mail message is confidential, intended only for the named recipient(s) above and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify sender and delete this e-mail message from your computer.

From: Jeff Michaelson [mailto:jeffmichaelson@cox.net]
Sent: Monday, September 25, 2017 9:35 AM
To: ewiens@rilaborlaw.com; [REDACTED]; Michael P. Robinson
Subject: McGowan v. ERSRI

Greetings.

A few things:

1. Ms. McGowan called me and told me that she will be representing herself at the hearing stage. Liz – can you confirm that it is ok to communicate directly with Ms. McGowan?
2. Ms. McGowan is flexible regarding the hearing dates. She gets out of work at 2:35 and would prefer to have a hearing after that if possible, which I am guessing would mean a start time around 3:15 or 3:30. The hearing will be in Warwick, at 50 Service Ave., so if that assumption is wrong, Ms. McGowan, can you let me know? I don't want to start hearing that late unless there is a reasonable prospect that we can conclude by 5:00. I don't know if we can remain in the building after 5:00 either.
3. If we can't start late, Ms. McGowan would like to start on the early side so that she only has to take a morning off, if possible. So if we can't start after 3:15, then we should try to start at 9:00 if that is convenient.
4. Ms. McGowan is flexible on dates. I have a lot of flexibility on 10/9, 10, 11, 13 and 17 and then again 11/1, 2, 3, 7 and 9.

Mike, can you let me know what you think? I don't know about availability of a conference room. I can check once you provide date(s) or if you want to check on a room when looking at dates you are available, that is fine.

Thanks all.

Jeffrey S. Michaelson
Michaelson & Michaelson
70 Romano Vineyard Way, Ste. 117
North Kingstown, R.I. 02852
(401)295-4330
(fax)295-5220

STATEMENT OF CONFIDENTIALITY

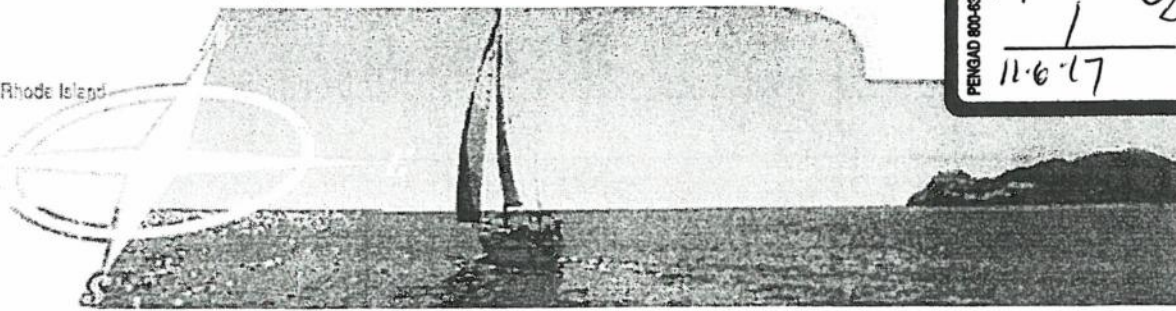
The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify Michaelson & Michaelson immediately by return email and by telephone at (401) 295-4330 and destroy all copies of this message and any attachments. Your expense for any toll call will be reimbursed.

EXHIBIT
1
11-6-17
PENGLAD 800-831-8888



Employees' Retirement System of Rhode Island

50 Service Avenue, 2nd Floor
Warwick, RI 02886-1021
Office (401) 462-7600
Fax (401) 462-7691



- My Home
- My Web profile
- My Account
- My Demographics
- My Estimates
- My Beneficiaries
- My Buybacks
- My Refund
- My Retirement

Visit the new ERSRI online information center for news, publications, forms, investment performance and other updates.

Welcome back **KIMBERLY MCGOWAN**. Today's date is **02/25/2014** and you are 58 years 7 month old. You visited us last time on 02/24/2014.

Member Account Home Page

Personal Information

- ERSRI Home
- Log Off
- Contact Us

ERSRI has created a series of online calculators to help you determine your new retirement eligibility age under the Rhode Island Retirement Security Act of 2011(RIRSA). Click here to use the new calculators.

Name : KIMBERLY MCGOWAN
 Social Security No : [REDACTED]
 Email Address : [REDACTED]
 Total years of Service as of Today : 21.0833
 Service Credit as of 09/30/2009 : 16.5000
 Service Credit as of 06/30/2012 : 19.5000
 Article 7 Date: 02/10/2016
 RIRSA Date: 12/26/2016
 Schedule Type: Schedule ABNE

An ERSRI counselor has not validated the accuracy of your account. What you see on this website remains an ESTIMATE ONLY until your account is validated for service credit and contributions. While the information provided here is a helpful tool for you to use to estimate your retirement benefit, this information has not yet been validated by a retirement analyst and should not be considered final. Accounts are validated prior to retirement, and final validation is performed when you apply for retirement. Unfortunately, accounts cannot be validated upon request. We appreciate your understanding.

Please complete a short survey of your experience with ERSRI by clicking this link.Survey

If the eligibility date displayed is beyond your full Social Security retirement age and you were an active contributing member on or after 7/1/12, you will be eligible to retire at your full Social Security retirement age when you reach at least 5 years of contributing service. Please check www.ssa.gov for your full Social Security retirement age.

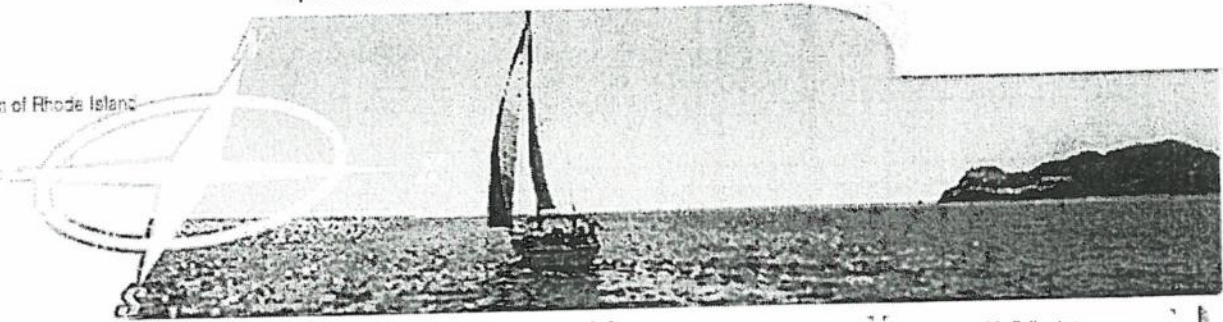
We always strive to improve our service and your input is very valuable. Thanks for your participation!





Employees' Retirement System of Rhode Island

50 Service Avenue, 2nd Floor
Warwick, RI 02886-1021
Office (401) 462-7600
Fax (401) 462-7691



My Home | My Web profile | My Account | My Estimates

Visit the new ERSRI online information center for news, publications, forms, investment performance and other updates.

Welcome back **KIMBERLY MCGOWAN**. Today's date is **11/21/2016** and you are 61 years 4 month old. You visited us last time on 10/27/2016.

Member Account Home Page

Personal Information

ERSRI Home

Log Off

Contact Us

ERSRI has created a series of online calculators to help you determine your new retirement eligibility age under the Rhode Island Retirement Security Act of 2011(RIRSA). Click here to use the new calculators.

An ERSRI counselor has not validated the accuracy of your account. What you see on this website remains an ESTIMATE ONLY until your account is validated for service credit and contributions. While the information provided here is a helpful tool for you to use to estimate your retirement benefit, this information has not yet been validated by a retirement analyst and should not be considered final. Accounts are validated prior to retirement, and final validation is performed when you apply for retirement. Unfortunately, accounts cannot be validated upon request. We appreciate your understanding.

If the eligibility date displayed is beyond your full Social Security retirement age and you were an active contributing member on or after 7/1/12, you will be eligible to retire at your full Social Security retirement age when you reach at least 5 years of contributing service. Please check www.ssa.gov for your full Social Security retirement age.

Name :	KIMBERLY MCGOWAN
Social Security No :	[REDACTED]
Email Address :	[REDACTED]
Total years of Service as of Today :	23.2944
Service Credit as of 09/30/2009 :	16.5000
Service Credit as of 06/30/2012:	19.5000
Article 7 Date:	02/10/2016
RIRSA Date:	12/26/2016
Schedule Type:	Schedule ABNE

Please complete a short survey of your experience with ERSRI by clicking this link.Survey

We always strive to improve our service and your input is very valuable. Thanks for your participation!

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Employees' Retirement System of Rhode Island

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Chair

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Thomas A. Mullaney

Claire M. Newell

Louis M. Prata

Jean Rondeau

Frank J. Karpinski
Executive Director

April 2, 2014

Ms. Kimberly McGowan
[REDACTED]
Lincoln, RI 02865

Dear Ms. McGowan:

Please accept this letter in response to your request confirming retirement eligibility in the Employees' Retirement System of Rhode Island. As part of the approved 2010 Budget, Article 7 Substitute A made changes to pension benefits for State Employees, Teachers and Judges. The new law established a minimum retirement age of 62 for all members vested prior to July 1, 2005 and not eligible to retire as of September 30, 2009. The bill did, however, provide for a proportional downward adjustment of the minimum retirement age of 62 based on the years of service credited to your account as of September 30, 2009. The passage of the Rhode Island Retirement Security Act (RIRSA) in 2011 further changed retirement benefits and contributions. Among those changes are a combined defined pension benefit and defined contribution program, a retirement age that mirrors the Social Security retirement age (with transition rules for those closer to retirement) and cost-of-living adjustments that are tied to the system's funding level and actual investment returns.

Based on your account information, you now fall under Schedule ABNE. The amount of service credit you have earned as of September 30, 2009 is 16 years and 6 months. Based on this, ERSRI has determined your earliest date of retirement to be February 9, 2016, at approximately age 60 and 6 months. Please note, if you decided to retire as of this date, you would only receive accrued benefits through June 30, 2012.

However, your estimated RIRSA eligibility date for full retirement benefits is 12/25/16 at which point you will be approximately age 61 and 5 months. If you wait until this later date, your pension will be based on your salary and service through your termination date.

For example, if you leave State service on 6/30/2014, you would be able to collect your benefit on 2/9/2016 but we can only base your pension on the salary and service credit you earned through 6/30/2012. Therefore, if your highest consecutive 5-year average salary at that time was \$76,000.00 and your service credit factor through 6/30/2012 was 34.75%, your annual pension under the Maximum Plan would be approximately \$26,410.00, with a monthly benefit of \$2,200.83.

If you leave State service on 6/30/2014 and waited until your RIRSA date of 12/25/2016 to begin collecting your pension, we would use your highest consecutive 5-year average salary through 6/30/2014 which would be approximately \$80,000.00 and your service credit factor through 6/30/2014 would be approximately 36.75%. Therefore, your annual pension under the Maximum Plan would be approximately \$29,400.00, with a monthly benefit of \$2,450.00.

Should you have any questions after reviewing this, please feel free to contact us 401-462-7600.

Sincerely,

Claudia Cardona
Retirement Benefit Analyst



KIMBERLY MCGOWAN <mcgowank@lincolnps.org>

Fwd: Workshop registration confirmation

1 message

Kimberly Mcgowan <[REDACTED]>
To: KIMBERLY MCGOWAN <[REDACTED]>

Mon, Jan 9, 2017 at 10:35 AM

Sent from my iPad

Begin forwarded message:

From: no-reply@ersri.org <no-reply@ersri.org>
Date: June 9, 2016 at 3:23:45 PM EDT
To: KIMBERLY MCGOWAN <[REDACTED]>
Subject: Workshop registration confirmation



Dear Madam,

Employees' Retirement System of Rhode Island

We are pleased to confirm your registration for the following workshop:

Teachers' Retirement Workshop

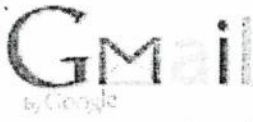
- Description:
- Site: Large Conference Room
- Site address: 50 Service Ave, 2nd Floor Warwick 02888 Rhode Island
- Scheduled start time: 10/04/2016 at 2:30 PM
- Scheduled end time: 10/04/2016 at 4:30 PM

For further information, please contact us at 401-462-7600.

Yours truly,

Employees' Retirement System of Rhode Island

**** Please do not reply to this email ****



KIMBERLY MCGOWAN <mcgowank@lincolnps.org>

Fwd: Please open-regarding your 10/4/16 Retirement appointment

1 message

Kimberly Mcgowan [REDACTED]
To: KIMBERLY MCGOWAN [REDACTED]

Mon, Jan 9, 2017 at 10:35 AM

Sent from my iPad

Begin forwarded message:

From: Cheryl Melise <CMelise@ersri.org>
Date: October 3, 2016 at 8:58:00 AM EDT
To: [REDACTED]
Subject: Please open-regarding your 10/4/16 Retirement appointment

Hello,

Please contact this office and ask for Cheryl Melise regarding your retirement eligibility and appointment currently scheduled for 10/4/16. Please call 401-462-7600 and ask for Cheryl Melise

Cheryl Melise
Senior Retirement Benefits Analyst
401-462-7600
50 Service Ave
Warwick RI 02886

Confidentiality Note: This e-mail, and any attachment to it, contains privileged and confidential information intended only for the use of the individual(s) or entity named on the e-mail. If the reader of this e-mail is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading it is strictly prohibited. If you have received this e-mail in error, please immediately return it to the sender and delete it from your system.



RHODE ISLAND
FEDERATION OF TEACHERS AND
HEALTH PROFESSIONALS ^{AFT}
AFL - CIO

December 27, 2016

Frank Karpinski
Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue
Warwick, RI 02886

RE: Kimberly McGowan

Dear Director Karpinski,

Please be advised that I represent Kimberly McGowan, a current Lincoln school teacher.

Mrs. McGowan requests a hearing, at the appropriate level, to review her retirement eligibility. Specifically, as it relates to the correspondence she received on April 2, 2014 (enclosed herein).

If you could contact me to arrange a date and time to review this matter it would be greatly appreciated.

Sincerely,

Christopher Lambert, Esq.

356 SMITH STREET PROVIDENCE, RHODE ISLAND 02908-3761 (401) 273-9800 FAX (401) 331-8815

- Francis J. Flynn President • Michael J. Mullane Field Representative • James A. Parisi Field Representative •
- Christopher Lambert Field Representative • Kenneth L. Fontaine Executive Assistant • Carol Santangini Staff Assistant •
- Colleen Callahan Director of Professional Issues • Maureen Martin Director of Political Activities •



RHODE ISLAND
FEDERATION OF TEACHERS AND
HEALTH PROFESSIONALS ^{AFT}_{AFL-CIO}

January 18, 2017

Frank Karpinski
Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue
Warwick, RI 02886

Dear Director Karpinski,

Please find attached a copy of a letter mailed to you on or about December 27, 2016.

Thank you for your attention to this matter.

Sincerely,

Christopher Lambert, Esq.

356 SMITH STREET PROVIDENCE, RHODE ISLAND 02908-3761 (401) 273-9800 FAX (401) 331-8815

- Francis J. Flynn President • Michael J. Mullane Field Representative • James A. Parisi Field Representative •
- Christopher Lambert Field Representative • Kenneth L. Fontaine Executive Assistant • Carol Santangini Staff Assistant •
- Colleen Callahan Director of Professional Issues • Maureen Martin Director of Political Activities •



Lincoln Public Schools

1624 LONSDALE AVENUE

LINCOLN, RHODE ISLAND 02865-1800

Dennis D. Flynn Ph.D.
Superintendent

Linda Newman
Assistant Superintendent

401-726-2150 • Fax 401-726-1813

Student Services Office
401-726-1292
Voice 800-745-6575
TTY 800-745-5555

January 27, 2004

Rhode Island Department of Education
Office of Teacher Certification
Shepard Building
255 Westminster Street
Providence, RI 02903-3400

RE: Kimberly McGowan
[REDACTED]

This letter will confirm that Kimberly McGowan has been an Elementary Teacher for the Lincoln School Department since 9/2/97.

Sincerely,

Maria Marcello

Maria Marcello
Personnell Department

September 13, 2017

VIA HAND-DELIVERY

Frank J. Karpinski, Executive Director
Employees' Retirement System of Rhode Island
50 Service Avenue 2nd Floor
Warwick, Rhode Island 02886

Re: **Kimberly McGowan/ERSRI**

Dear Director Karpinski:

This office represents Kimberly McGowan in her appeal of the Retirement Board's administrative denial, dated July 17, 2017.

Below this
In early 2014, Ms. McGowan logged into her ERSRI Member Account Page to determine her earliest retirement date. According to the website, Ms. McGowan could retire on February 10, 2016 with reduced benefits or December 26, 2016 with full retirement benefits. Ms. McGowan's husband had been transferred to Pennsylvania for his job. The couple needed to know Ms. McGowan's retirement date so they could 1) plan for her husband's retirement and 2) purchase a home in Delaware where they planned to retire. Before making such major life decisions, rather than relying on the ERSRI website, Ms. McGowan requested confirmation of her retirement date from ERSRI. On April 2, 2014, she received the enclosed letter from Claudia Cardona, ERSRI Retirement Benefit Analyst, which provides, in pertinent part, "Please accept this letter in response to your request confirming retirement eligibility in the Employees' Retirement System of Rhode Island ... ERSRI has determined your earliest date of retirement to be February 9, 2016," and your "RIRSA eligibility date for full retirement benefits is 12/15/16... If you wait until this later date, your pension will be based on your salary and service through your termination date."

Ms. McGowan reasonably relied on the letter in planning her retirement, and, in the process incurred expenses and damages preparing to retire and move to Delaware.

In June 2016, when Ms. McGowan scheduled a meeting with ERSRI to complete the retirement process, she was informed by Cherly Melise that the previous confirmation provided was erroneous and that Ms. McGowan could not retire with full benefits until 2020.

Ms. McGowan reasonably relied on Ms. Cardona's misrepresentations to her detriment. In *Mallette v. Children's Friend & Service*, 661 A.2d 67 (R.I. 1995), the Rhode Island Supreme Court noted the elements of negligent misrepresentation:

(1) a misrepresentation of a material fact; (2) the representor must either know of the misrepresentation, must make the misrepresentation without knowledge as to its truth or falsity or must make the representation under circumstances in which he ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting in justifiable reliance on the misrepresentation.

Id. at 69 (citations omitted). McGowan can satisfy all four of the aforementioned criteria. There is no dispute that Ms. Cardona made a misrepresentation of material fact. Ms. Cardona's job is to provide accurate information to employees regarding their retirement so that those employees can plan for retirement based on that information. That is exactly what occurred: Ms. Cardona informed Ms. McGowan, in an official document, without qualification, that McGowan could retire with full benefits effective December 25, 2016. McGowan's reliance on that information was clearly justified.

Notably, even if Ms. Cardona acted in good faith at the time she made misrepresentations to McGowan, the Retirement Board is nonetheless precluded from taking a position inconsistent with those misrepresentations. The Rhode Island Supreme Court has summarized the doctrine of estoppel as follows:

The indispensable elements of an estoppel are, first, an affirmative representation or equivalent conduct on the part of the person against whom the estoppel is claimed which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and secondly, that such representation or conduct did induce the other to act or fail to act to his injury.

Lichtenstein v. Parness, 81 R.I. 135, 138, 99 A.2d 3, 5 (1953).

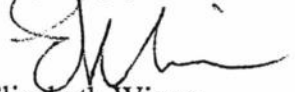
When the doctrine applies, the party who made the misrepresentation is estopped to rely on a contrary, even if true, assertion. *East Greenwich Institution for Savings v. Kenyon*, 20 R.I. 110, 37 A.632 (1897). *See also Ferrelli v. Dept. of Employment Security*, 106 R.I., 588, 261 A.2d 906 (1970); *Schiavulli, supra*. Those cases also recognize that equitable estoppel may lie against an administrative agency, as against a private party. *Jackson v. Rhode Island Dep't of Human Servs.*, No. C.A. 88-2802, 1989 WL 1110269, at *1-2 (R.I. Super. Dec. 13, 1989). In fact, an affirmative representation or equivalent conduct can be met by "[s]ilence ... where there exists a duty not to remain silent as where the circumstances require one to speak lest such silence would reasonably mislead another to rely thereon to his detriment." *Schiavulli v. School Committee of the Town of North Providence*, 114 R.I. 443, 334 A.2d 416, 419 (1975). *See also Humes Const. Co. v. Philadelphia Cas. Co.*, 32 R.I. 246, 79 A. 1, 3-4 (1911) (Appellant comes within the rule that a person is precluded from taking, merely because his interests may change, a position inconsistent with the one previously assumed by him and to the prejudice of a third person). In *Humes*, the defendant argued that the principle of estoppel cannot be applied to extend the liability of the defendant beyond the terms of the policy and to furnish indemnity to the insured for loss arising from an accident to a person not an employee. *Id.* at *4. The Supreme Court held that the doctrine of quasi estoppel is broad enough to include such a result. "It is the nature of this principle to extend liability. It is not invoked for the purpose of enforcing a true obligation or one that is clearly

defined by the terms of a contract. In this consideration it is not material what the defendant's real liability under the policy was, for by its own election of positions it is now precluded from asserting that its liability was not in accordance with its apparent admissions." *Id.*

By affirmatively informing Ms. McGowan that she was entitled to retire with full benefits as early as December 25, 2016, ERSRI, through its agent, Ms. Cardona, misled Ms. McGowan to her detriment. Accordingly, due to its agent's misrepresentation, the Retirement Board is estopped from denying Ms. McGowan the ability to retire immediately with full benefits (as promised in the April 2, 2014 letter). In the alternative, the Board is responsible to compensate Ms. McGowan for any and all damages she incurred by relying on Ms. Cardona's representations to her detriment.

Thank you for your consideration.

Very truly yours,



Elizabeth Wiens

cc: Kimberly McGowan (via regular mail only)

EXHIBIT
S
1
11-6-17
PENGAD 800-631-686

Employees Retirement System of Rhode Island
40 Fountain Street, Providence, Rhode Island 02903-1854
Telephone: (401) 277-2203 / Fax: (401) 277-2430

System Code
2017

1997 SEP -5 AM 9:06

MEMBERSHIP APPLICATION

Section A: You must complete and sign.

Name <i>Kimberly C. McGowan</i>		Social Security Number [REDACTED]	
Street Address [REDACTED]		Date of Birth [REDACTED]	<input type="checkbox"/> Male <input checked="" type="checkbox"/> Female
City, State, Zip Code <i>Lincoln RI 02865</i>		Telephone Number [REDACTED]	
Marital Status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Divorced		Employer <i>Lincoln School Dept.</i>	

Employee Status: Please check all that apply.

<input type="checkbox"/>	STATE EMPLOYEE	<input type="checkbox"/>	CORRECTIONAL OFFICER
<input checked="" type="checkbox"/>	PUBLIC SCHOOL TEACHER	<input type="checkbox"/>	POLICE AND FIRE
<input type="checkbox"/>	MUNICIPAL EMPLOYEE	<input type="checkbox"/>	OTHER _____
<input type="checkbox"/>	CITY COUNCIL	<input type="checkbox"/>	

Past Membership History

Employing Authority	From / To	Refund Taken
		yes <input type="checkbox"/> no <input type="checkbox"/>
		yes <input type="checkbox"/> no <input type="checkbox"/>
		yes <input type="checkbox"/> no <input type="checkbox"/>

Beneficiary Designation. Please read page two before designation.

Name of Beneficiary /Estate [REDACTED]	Date of Birth [REDACTED]	Sex [REDACTED]
Address [REDACTED]	Relationship to Member [REDACTED]	

Member Statement and Signature

I certify the above information to be true and correct and hereby accept ERSRI membership.


Signature *Kimberly C. McGowan* Date *8-27-97*

Section B: To be completed by Personnel Officer.

Employee Name Kimberly C. McGowan

ERSRI Membership Unit (State Agency, School District, Municipality) and your Lincoln School Department and on the reverse side of this form in the upper right hand box labeled System Code) 1824 Lonsdale Avenue
Lincoln, RI 02865

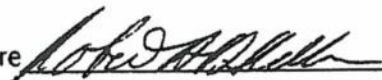
2017

Position Title	Annual Salary	Hours Per Week*
<u>Elementary teacher</u>	<u>\$29,725.00</u>	<u>30+</u>
<i>If teacher, please give certification number.</i>	<i>Date of Hire</i>	<i>Deduction (6, 7, 7.75, 8.5) %</i>
	<u>7-22-97</u>	<u>9.5</u>

* Member must be employed on a twenty (20) hour per week basis. Only elected city council members are exempted from this requirement. Do not enroll members who fail to meet this requirement. Teachers may be part of a job share program and still be eligible for membership.

Statement and Signature by Personnel Officer

I certify that the above-named individual meets the stated requirements for membership in the Employees Retirement System of Rhode Island.

Signature  Date 9/3/97

/ejf
revised 2/95



Employees Retirement System of Rhode Island

Joann E. Flaminio, Executive Director

PENGAD 800-631-8888
5 EXHIBIT
2
11-6-17
JL

40 Fountain Street
Providence, RI
02903-1854

Tel: (401) 222-2203

TDD: (401) 521-8980

Fax: (401) 222-2430

E-mail:
ersri@treasury.state.ri.us

Web Site:
www.state.ri.us/
treas/ersri.htm

11-6-17

Dear Member:

Welcome to the Employees Retirement System of Rhode Island!

In order for our member services staff to better serve you, we would appreciate if you would complete this form.

[REDACTED]	
[REDACTED]	
Kimberly C. McGowan	
<input checked="" type="checkbox"/> ACTIVE EMPLOYEE	<input type="checkbox"/> RETIREE
<input type="checkbox"/> STATE EMPLOYEE	<input checked="" type="checkbox"/> TEACHER
<input type="checkbox"/> MUNICIPAL EMPLOYEE	<input type="checkbox"/> PUBLIC SAFETY

Reason for your visit:

Buying substitute year -

Your Counselor: Jux Date of Visit: 7/21/99

Thank you for visiting the Employees Retirement System. We will make every attempt to be with you as soon as possible.

Thank you for your cooperation.

Sincerely,

Employees Retirement System
Member Services Staff

Welcome-1/99/tal

2/20/98

2000 JUL 21 11 09 AM
Please find enclosed information
about days substituted. I am
a full time teacher in Lincoln
and would like to know
about buying retirement
time.

Thank you.

Kim McGowan

Invoice



Employees Retirement System of Rhode Island
40 Fountain Street
Providence, RI 02903-1854

Telephone: (401) 222-2203 / Fax (401) 222-2430
 In-State Toll Free: (800) 752-8088
 TDD: (401) 521-8980
 Web Site: www.state.ri.us/treas/ersri.htm
 Joann E. Flaminio, Executive Director

EXHIBIT
 53
 11-6-17
 [Signature]

Checks should be made payable to
 "Employees Retirement System."

Kimberly McGowan

Lincoln RI 02865

All purchase of service credits are after-tax dollars. Interest on purchases will not be reflected in your annual statement and is not refundable.

You should include your Social Security Number on all checks and correspondence sent to this office.

[Redacted] 2017

August 25, 1999 9/25/99

Maximum Purchase Allowed**	5	0	0
Dates of Purchase	Years	Months	Days
1991-97	4	6	0
Total Time	4	6	0

**New Statutory Limitation on Purchases
 Effective January 1, 1995
 5 years is maximum can be purchased.
 Refunds/Withdrawals not included in limitation

Employees Retirement System
Accounting Dept.
Receipt
 9/23/99
 Date
 2608336 (W/L)
 Voucher No.

- 30 Prior State Service
- 31 X Prior Teaching Service
- 32 Prior Muni Participating
- 33 Prior Muni Non Participating
- 34 Military Service (limited to 4 yrs)
- 35 Leave (limited to 4 yrs)
- 38 Out-of-State Teaching (5 yrs)
- 39 Private Teaching (5 yrs)
- 40 Miscellaneous
- 41 Withdrawals (unlimited)

*If you do not provide payment by the due date, interest charges must be recomputed. ERSRI will only compute interest charges once a year, so it is advisable that you send your check by the due date to avoid a delay.

Cost to Purchase	\$3,589.74
Interest Due, if any	\$895.71
TOTAL AMOUNT DUE	\$4,485.45

Under current law, all members must have ten (10) years of contributing service to be eligible to receive a retirement allowance. Be aware that all rules and statutes governing purchases and retirement are subject to change.

This purchase will not count towards your ten (10) years of contributing service unless this purchase is a withdrawal.

Employees Retirement System of Rhode Island
 40 Fountain Street
 Providence, RI 02903-1854
 Telephone: (401) 277-2203 FAX: (401) 277-2430

EXHIBIT
 S 4A
 11-6-17
 PENGAD 800-831-8888

DEC 21 11 09 39

SUBSTITUTE TEACHER VERIFICATION

School Department Reporting: (Please give your address and telephone number)
 Lincoln School Department
 1624 Lonsdale Avenue
 Lincoln, Rhode Island 02865

A. Employee Data

Employee Name and Address	Social Security No.
Kimberly McGowan [Redacted] Lincoln, RI 02865	[Redacted]

ERSRI Substitute Teacher Policy

Substitute teachers who work a minimum of 45 days in a school year may purchase such time when they become members of the System by paying into Employees Retirement System the amount of money they would have contributed, plus interest. The number of days worked as a substitute teacher may be accumulated between different municipalities, but cannot be added between different school years. The amount of credit teachers receive upon purchase is based on the following formula:

Days Worked	Credit Received
45-66	3 months
67-90	6 months
91-134	9 months
135 or more	12 months

B. School official, please furnish us with this information.

School Year	# of Days in Your School Year	# Days Worked Per School Year	Amount Earned as Substitute Teacher
93/94	180	12	720.00
94/95	180	51	3300.00
95/96	180	58	3825.00
96/97	180	113	8025.00

C. Signature of School Official

I hereby certify the above information to be true and correct and based upon the official records of the school department.

Signature: Joanne McManus Date: 7/17/98

Note: This form must be signed and sent to the Employees Retirement System of Rhode Island in a timely manner.
 ERT-30 Revised 11/94

Employees Retirement System of Rhode Island
 40 Fountain Street
 Providence, RI 02903-1854
 Telephone: (401) 277-2203 - FAX: (401) 277-2430

EXHIBIT
 5 4B
 11-6-17
 PENGLAD 800-681-6988

SUBSTITUTE TEACHER VERIFICATION

School Department Reporting: (Please give your address and telephone number)
 Pawtucket School Department
 Park Place
 Pawtucket, Rhode Island

A. Employee Data

Employee Name and Address	Social Security No.
Kimberly McGowan [Redacted] Lincoln, Rhode Island 02865	SS# [Redacted]

ERSRI Substitute Teacher Policy

Substitute teachers who work a minimum of 45 days in a school year may purchase such time when they become members of the System by paying into Employees Retirement System the amount of money they would have contributed, plus interest. The number of days worked as a substitute teacher may be accumulated between different municipalities, but cannot be added between different school years. The amount of credit teachers receive upon purchase is based on the following formula:

Days Worked	Credit Received
45-66	3 months
67-90	6 months
91-134	9 months
135 or more	12 months

B. School official, please furnish us with this information.

School Year	# of Days in Your School Year	# Days Worked Per School Year	Amount Earned as Substitute Teacher
1995/1996	180	15	\$ 750.00
1994/1995	180	74	\$3,990.00
1993/1994	180	124	\$6,990.00
1992/1993	180	121	\$6,810.00
1991/1992	180	97	\$6,340.00
1990/1991	180	35	\$2,100.00

C. Signature of School Official

I hereby certify the above information to be true and correct and based upon the official records of the school department.

Signature: *Rosemarie Enard* Date: 06/25/98

Note: This form must be signed and sent to the Employees Retirement System of Rhode Island in a timely manner.
 ERTeachers
 ERT-30 Revised 11/94

Hearing Officer Jeffrey S. Michaelson, Esq.

Kimberly C. McGowan Memorandum Response

Please accept this as the response to Mr. Robinson's Memorandum dated 12/21/17. I would like to address some of Mr. Robinson's statements.

As stated I did consult the official website of the Retirement system as to my dates of retirement. I did not rely on this information as being accurate, so I contacted ERSRI to verify my dates. I explained that I was separated from my husband due to his job transfer and wanted to know when we could be reunited. The submitted evidence of the letter I received claimed the website dates were accurate.

Needless to say, with this written confirmation, I relied on this letter and made plans for my retirement and reunion with my husband. As Mr. Robinson's memorandum states, I made my appointment with the Retirement system in June 2016 and was given the date of October 2016 to meet to begin the retirement process. The day before that meeting was to take place I was told the dates were in error and I would have to work three more years to receive my pension. Needless to say I was devastated. Mr. Robinson states, "Ms. McGowan understood that a follow-up meeting with ERSRI was required to verify her employment data and retirement eligibility.and therefore clearly understood that a final validation was required." (p6) In fact, that was not my understanding. My understanding of that exit session was to begin the paperwork for retirement and to find out what my actual pension would be. Mr. Robinson states this again on page 8, "...that she did not rely upon the website information, and understood that a final meeting with ERSRI for validation of her information was required." The first part of this statement is correct, but not the second part.

On page 7 Mr. Robinson states, "there is nothing in the record that indicates Ms. McGowan was provided the estimate in 2014 by ERSRI for the purpose of inducing her to retire." I initiated the verification of my retirement dates for the sole purpose of being reunited with my husband who I have been separated from for eight years.

The cases cited by Mr. Robinson are not applicable to my situation. In my case, it was part of Claudia Cardona's job duties to provide me with an accurate retirement date. Her title is ERSRI Retirement Benefit Analyst. Her representation to me was not **ultra vires**. It was well within the scope of her duties. It appears her representation was just wrong. But the whole purpose of her providing retirement information is so that employees can plan their retirement. I believe a Judge will understand the difference. It is simply not fair for me to do everything I could to get an accurate retirement date so that I could plan my retirement, but have the Board now say that it is allowed to give out inaccurate information without penalty. I believe the Board has the authority to credit me the substitute hours in light of the injury caused to me by Ms. Cardona's misrepresentation. I believe I am owed some recompense for the damages I've suffered. I respectfully urge the Board to reconsider.

I respectfully submit this memorandum and hope to receive a favorable outcome to what I feel is a life altering error.

Kimberly C. McGowan

EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND

KIMBERLY MCGOWAN

v.

**Before Hearing Officer
Jeffrey S. Michaelson, Esq.**

**EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF RHODE ISLAND**

**THE EMPLOYEES' RETIRMENT SYSTEM OF THE STATE OF
RHODE ISLAND'S POST-HEARING MEMORANDUM**

Introduction

Now comes the Employees' Retirement System of the State of Rhode Island (the "Retirement System" or "ERSRI"), and hereby submits this post-hearing memorandum of law in support of the July 17, 2017 administrative determination of the Executive Director, Frank J. Karpinski, that Kimberly McGowan ("McGowan") is not presently eligible to retire with full benefits.

Background

Ms. McGowan became a member of ERSRI in August of 1997, by virtue of her employment as a school teacher in the Lincoln School Department. *See* Tr. System Ex. 1.¹ In August of 1999, Ms. McGowan was permitted to purchase 4 years and 6 months of substitute teaching credit, consisting of time when she served as a substitute teacher between 1991 and 1997. *See* Tr. System Exs. 2, 3, 4A and 4B.

In April of 2014, Ms. McGowan requested information regarding her retirement eligibility, and was advised that her earliest retirement date was estimated to be February 9, 2016. *See* Tr.

¹ Hereafter, references to exhibits to the Hearing Transcript will be in the form: Tr. Joint Ex. ____.

Member Ex. 1. She was also advised that she was estimated to be eligible for full benefits if she waited until December 25, 2016 to retire. *See id.* Ms. McGowan testified that she also reviewed ERSRI's web site, and similarly confirmed as of February 25, 2014, that she would be eligible to retire with full benefits as of December, 2016. *See* Transcript, at Pages 7-8.

Ms. McGowan further testified that she made an appointment to come to ERSRI for a retirement consultation in October of 2016, but prior to her meeting was advised of an error in the initial assessment of her retirement eligibility dates. *See* Transcript, at pages 9-10. Following an informal meeting between Ms. McGowan and representatives of ERSRI that did not resolve the dispute over Ms. McGowan's retirement eligibility, on July 17, 2017, Executive Director Frank J. Karpinski wrote to Ms. McGowan's then-counsel in order to clarify her date of retirement eligibility. *See* Tr. Hearing Officer Ex. 3; Transcript at Page 12. Director Karpinski indicated that Ms. McGowan's retirement eligibility date had been erroneously calculated in 2014 using the 4.6 years of substitute teaching time that she purchased in 1997, which is not considered contributory time. *See id.* Director Karpinski further advised Ms. McGowan that pursuant to current law, retirement eligibility was tied to whether or not she had 10 years of contributory service credit as of July 1, 2005. *See id.* Ms. McGowan was advised that she would in fact be eligible to retire with full benefits on November 29, 2020. *See id.*

Ms. McGowan requested an administrative hearing to challenge the Executive Director's determination, and on September 15, 2017, ERSRI informed Ms. McGowan's successor counsel that a Hearing Officer had been assigned. Tr. Hearing Officer Ex. 1. Subsequently, a hearing was held on November 6, 2017. *See, Tr. generally.*

Standard of Review

ERSRI's interpretation of the statutes that it is entrusted with administering is entitled to substantial deference, even if the agency's interpretation is not the only permissible interpretation that could be applied. *Lyman v. Employees ' Retirement Sys.*, 693 A.2d 1030, 1031 (R.I. 1997). The Rhode Island Supreme Court has consistently held that an administrative agency will be accorded great deference in interpreting a statute whose administration and enforcement have been entrusted to the agency. *Town of Richmond v. R.I. Dep't of Envtl. Mgmt.*, 941 A.2d 151, 157 (R.I. 2008).

In Chapter 8 of Title 36, the Legislature vested "the general administration and the responsibility for the proper operation of the retirement system" of Rhode Island in the Retirement Board. R.I.G.L. § 36-8-3. The Retirement Board has been endowed by the Legislature with a broad grant of authority over the state retirement system. *See Iselin v. Ret. Bd. of the Emples. Ret. Sys.*, R.I. Super. LEXIS 75, *aff'd* at 943 A.2d 1045 (R.I. 2008) (*quoting Perotti v. Solomon*, 657 A.2d 1045, 1047-48 (R.I. 1995)). "The retirement board [] possesses the power to 'establish rules and regulations' for the administration and transaction of the retirement system and may 'perform other such functions as are required' for the administration of the retirement system." *Perotti*, 657 A.2d at 1048. (*quoting* R.I.G.L., § 36-8-3). The Retirement System routinely interprets the statutes it has been entrusted with administering, including §16-16-12, and has been entirely reasonable in its interpretation of the statute to deny the relief sought by Ms. McGowan.

Argument

A. Ms. McGowan is not entitled to an early retirement date based on her purchase of non-contributory substitute teaching time.

As set out in detail in Executive Director Karpinski's July 17, 2017 correspondence (Tr. Hearing Officer Ex. 3), the information initially provided to Ms. McGowan in 2014, indicating that she was eligible to retire with full benefits as of December 25, 2016, was unfortunately in error. The retirement eligibility analysis was initially undertaken inadvertently using the 4.6 years of substitute teaching credit Ms. McGowan purchased in 1997, as contributory service. Ms. McGowan did not in fact contribute during the years she served as a substitute teacher from 1991-1997, however, and was not a member of ERSRI during those years.

R.I.G.L. §16-16-12 establishes the procedure for service retirement for teachers. As testified to by Executive Director Karpinski, Ms. McGowan's retirement eligibility is directly tied to whether she had at least ten (10) years of contributory service on or before July 1, 2005. See Tr. Pg. 37; §16-16-12(a). From September 1, 1997 through June 30, 2005, Ms. McGowan accrued 8 years of service credit. See Tr. Hearing Officer Ex. 3. Without including the 4.6 years of substitute teaching credit purchased in 1997, Ms. McGowan clearly does not have 10 years of contributory service prior to July 1, 2005, which will necessarily delay her eligibility for retirement with full benefits, beyond what she was estimated in 2014.

Director Karpinski testified that substitute teaching service is not considered contributory, because a substitute teacher is not "regularly employed" as a teacher sufficient to justify membership in the retirement system. See Tr. Pgs. 38, 40. See also, R.I.G.L. §16-16-1(12). Moreover, in Regulation 6.11, entitled "Regulations Regarding Rhode Island General Law (RIGL) §16-16-5(C) Concerning the Purchase by a Teacher of Substitute Teaching Time", ERSRI specifically provides in subsection (C)(1) that "substitute teaching time does not count

toward contributory service.” As she was not regularly employed as a teacher sufficient to justify membership in the system and therefore did not contribute from 1991 to 1997, and as by law and regulation substitute teaching credit, while purchasable, does not constitute contributory service, and as she does not have at least 10 years of contributory service prior to July 1, 2005, Ms. McGowan is not entitled to retire consistent with the estimate provided her in 2014. Rather, her retirement eligibility date with full benefits is November 29, 2020.²

B. Equitable estoppel does not apply where an official's representations were *ultra vires*.

Because the initial estimate provided to Ms. McGowan was both erroneous and *ultra vires*, she cannot prevail on a claim of equitable estoppel. *Waterman v. Caprio*, 983 A.2d 841, 846 (R.I. 2009); see also *Romano v. Retirement Board of the Employees' Retirement System of Rhode Island*, 767 A.2d 35, 39-40 (R.I. 2001). In *Romano*, a case notably absent from Ms. McGowan's pre-hearing position statement (Tr. Member Ex. 2), the plaintiff retired from the Department of Transportation based on an incentive package offered by the state. *Romano*, 767 A.2d at 36. However, before retiring plaintiff asked a retirement counselor if there would be any restrictions concerning his retirement if he began working for the Town of Bristol, who responded in the negative. *Id.* The then-executive director of ERSRI told the town administrator that there were no restrictions. *Id.* The information given to Mr. Romano had been erroneous because it was contradictory to state law. *Id.* As such, the Supreme Court observed that estoppel in such a case "would allow every government official to act as his own mini-legislature, cashiering those laws he or she dislikes, is ignorant of, or misinterprets, and instead

² It should also be noted that both Ms. McGowan and Executive Director Karpinski testified with regard to the fact that Ms. McGowan is entitled to retire prior to November 29, 2020, albeit with reduced benefits. See Tr. Pgs. 27-28, and 43-44. Ms. McGowan testified that the earlier retirement scenarios with reduced benefits were not palatable to her. See Tr. Pg. 28.

molding the law to be whatever the government official claims it to be." *Id.* at 43. The fact that the estimate provided to Ms. McGowan was infected by incorrect information does not make the estimate legally binding. *See, e.g. Livick v. Gillette Co.*, 524 F.3d 24, 26 (1st Cir. 2008)(pensioner was not entitled to collect erroneously quoted benefit estimates he received before retirement instead of the lesser amount he was entitled to under the plan).

To the extent Ms. McGowan contends that somehow the information provided to her constitutes an actionable misrepresentation, she cites no authority for the proposition that an estimate is legally binding. The estimate given to Ms. McGowan was clearly marked as such, and the April 2, 2014 letter she relies upon specifically states "your *estimated* RIRSA eligibility date for full retirement benefits is 12/25/16." Tr. Member Ex. 1 (Emphasis added). *Black's Law Dictionary* defines an "estimate" as: "A valuing or rating by the mind, without actually measuring, weighing, or the like. A rough or approximate calculation only." *Black's Law Dictionary* 494 (5th ed. 1979). Ms. McGowan was not entitled to rely upon the information provided in 2014, and understood that a follow-up meeting with ERSRI was required to verify her employment data and retirement benefit eligibility. She testified specifically that she contacted the retirement system in 2016 to set up her retirement exit session, and therefore clearly understood that a final validation was required. Tr. Pgs. 9 and 21.

In *Waterman*, plaintiff, who had been injured in the course of his employment, claimed that he had settled his workers' compensation claim and relinquished his accidental disability retirement benefits in exchange for ordinary disability benefits based on a representation by ERSRI's then assistant executive director that amounts received in settlement of his workers' compensation claim would not be offset against his retirement benefits pursuant to R.I.G.L. § 28-33-25.1. *Waterman*, 983 A.2d 843. In June 2000, plaintiff settled the workers' compensation

claim based on § 28-33-25.1, and the state paid him \$ 21,250.00 *Id.* In September 2000, plaintiff was notified that his retirement payments would not commence until the entire \$21,250.00 was offset against the pension benefits. *Id.* The Supreme Court, in *Waterman*, relied upon its reasoning in *Romano*, stating: "We held then, as we do now, that plaintiff's estoppel claim must fail. The statements made by the retirement system employees were not within their authority to make because they contradicted state law." *Id.* at 847. In providing Ms. McGowan with a retirement eligibility estimate in 2014, founded on incorrect factual information with regard to her years of contributory service, the ERSRI Retirement Benefit Analyst lacked either actual or implied authority to waive, modify, or ignore applicable state law that conflicted with the estimate provided to Ms. McGowan. *Id.* at 847.

The Supreme Court in *Waterman* continued, stating that an estoppel claim requires two elements: 1) an affirmative representation on the part of the person against whom the estoppel is claimed, which is directed to another for the purpose of inducing the other to act or fail to act in reliance thereon; and 2) that such representation or conduct did induce the other to act or fail to act to his injury. *Id.* (citations and quotations omitted). Here, the presentation of an estimate, by definition,³ is not an affirmative representation intended to induce reliance. What was clearly marked as an estimate cannot be deemed to have induced reliance. Further, there is nothing in the record that indicates that Ms. McGowan was provided the estimate in 2014 by ERSRI for the purpose of inducing her to retire. *See, id.*

To the extent that Ms. McGowan is relying upon the erroneous information that appeared on the ERSRI website regarding her retirement eligibility when she checked in February of 2014 and again in November of 2016, the website similarly contained qualifying language making

³ Black's Law Dictionary 494 (5th ed. 1979).

abundantly clear that it was an estimate only. Tr. Member Ex. 1. The website contains the following notification to members:

An ERSRI counselor has not validated the accuracy of your account. What you see on this website remains an ESTIMATE ONLY until your account is validated for service credit and contributions. While the information provided here is a helpful tool for you to use to estimate your retirement benefit, this information has not yet been validated by a retirement analyst and should not be considered final. Accounts are validated prior to retirement, and final validation is performed when you apply for retirement. Unfortunately, accounts cannot be validated upon request. We appreciate your understanding.

Id. (Emphasis in original). Ms. McGowan was clearly on notice that the website information was an estimate only, and could not have been intended to induce reliance, nor would reliance have been justified. Moreover, she acknowledged in her testimony that she did not rely upon the website information, and understood that a final meeting with ERSRI for validation of her information was required. Tr. Pgs. 20-21. Accordingly, Ms. McGowan's misrepresentation and estoppel claims must fail.

Conclusion

For all the reasons stated above, the Hearing Officer should issue a Recommendation to the Retirement Board that the decision of the Executive Director be UPHELD and AFFIRMED in all respects, and that Ms. McGowan's claim of entitlement to an earlier retirement eligibility date than is otherwise permissible by law be DENIED.

Respectfully Submitted,
ERSRI,
By its attorneys,



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CERTIFICATION

I hereby certify that on this 21st day of December, 2017, I mailed a true and accurate copy of the within post-hearing memorandum to Hearing Officer Jeffrey Michaelson, Michaelson & Michaelson, 70 Romano Vineyard Way, Ste. 117, North Kingstown, RI 02852, and I sent an electronic copy to Hearing Officer Michaelson at jeffmichaelson@cox.net and to Kimberly McGowan at [REDACTED]



In The Matter Of:
Employees Retirement System Hearing

Kimberly McGowan
November 6, 2017



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1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
 2 EMPLOYEES' RETIREMENT SYSTEM
 3
 4 IN RE: :
 5 Kimberly McGowan :
 6
 7
 8 DATE: November 6, 2017
 9 TIME: 3:15 p.m.
 10 PLACE: 50 Service Avenue
 11 Warwick, RI
 12
 13 BEFORE: JEFFREY MICHAELSON, HEARING OFFICER
 14 PRESENT:
 15 FOR THE RETIREMENT
 16 SYSTEM.....BY: MICHAEL ROBINSON, ESQUIRE
 17 ALSO PRESENT:
 18 KIMBERLY MCGOWAN
 19 FRANK KARPINSKI
 20
 21
 22
 23
 24
 25

1 (COMMENCED AT 3:50 P.M.)
 2 MR. MICHAELSON: So we're here for a
 3 hearing on an appeal by Kimberly McGowan versus the
 4 Employee Retirement System. My name is Jeffrey
 5 Michaelson. The hearing is pursuant to regulation
 6 Number 4 of the retirement system, which is the
 7 procedures.
 8 I know very little about the case. We're here
 9 today, and this is the evidentiary hearing. So
 10 whatever evidence we can put it, we will put on the
 11 record. Then the process is at the end of the hearing
 12 we'll talk about whether you want to put in memoranda.
 13 I don't really know what the issues are.
 14 Eventually I will make a decision, which is a
 15 recommendation, to the board. Then the board decides
 16 if they want to adopt that, modify it, or reject it.
 17 That's the decision that's final, I think, at this
 18 level. Then the case could go up eventually to the
 19 Superior Court or the Supreme Court.
 20 So I've given you, and we marked as exhibits
 21 pretty much everything I know about the case. Hearing
 22 Officer Exhibit 1 is the letter appointing me.
 23 Hearing Officer Exhibit 2 is the notice of hearing,
 24 which I sent out for the hearing today. Hearing
 25 Officer Exhibit 3 is what I understand to the final

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1 agency decision, which is a letter dated July 17,
 2 2017. Again, that's my understanding that is what was
 3 appealed and why we're here.
 4 I marked as Exhibit 4, Hearing Officer Exhibit 4,
 5 an e-mail from Elizabeth Wiens. The reason I did that
 6 was the member was previously at some stages
 7 represented by Attorney Wiens. She confirmed that she
 8 was not going to represent. The member is here. So I
 9 just wanted to put on the record that's why we're
 10 proceeding without her.
 11 So the process I would like to follow is the
 12 member goes first and puts on her case. Then the
 13 system, if we have any exhibits that you want to
 14 offer, and we can agree to them, we'll take them all
 15 now. We will mark them. Then you don't have to, you
 16 know, go through the process of authenticating them.
 17 If for some reason somebody, either side, wants
 18 to put in an exhibit and the other side objects, then
 19 we will let those come in through testimony, and if
 20 they're properly authenticated, they will come in
 21 during the course of the hearing.
 22 You also can both, after we deal with the
 23 exhibits, you can make an opening statement. If the
 24 system wants to defer after you make yours, they can
 25 do that at the start of their case. Then at the end

1 we can have closing arguments, or if we want to do
 2 memoranda, we can skip those. Or if you want to do
 3 closing arguments and no memo, again, I don't know how
 4 complicated this is. We can talk about that. So with
 5 that, Ms. McGowan, do you have exhibits that you want
 6 to put in?
 7 MS. MCGOWAN: I do. I was not sure who
 8 was going to be present at the meeting. I wasn't
 9 given much information, just the date of the hearing.
 10 I did know you were going to be here. I did not know
 11 you two were going to be here.
 12 You have the original copies of the original
 13 meeting I had with you last year. I only have one
 14 copy for you. This is everything that I had at the
 15 meeting -- I can't remember the date -- last spring.
 16 The only other thing I didn't make copies of is my
 17 letter to the lawyer to retain her services. I don't
 18 know if that's something you need.
 19 MR. MICHAELSON: It's up to you. You can
 20 decide what you want to put in.
 21 MS. MCGOWAN: I was just presenting the
 22 case for her. She is still on retainer for me,
 23 wherever this ends up.
 24 MR. ROBINSON: I don't have an objection
 25 to this.

1 pages. So we'll mark that as Number 2. That's
 2 without objection. Anything else?
 3 MS. MCGOWAN: I think that's it for all
 4 my paperwork.
 5 (EXHIBIT 2 MEMBER MARKED)
 6 MR. MICHAELSON: Do you have anything you
 7 want to put in at this point?
 8 MR. ROBINSON: Documents, I think maybe
 9 the best thing for me to do is to produce them as we
 10 go. We'll make a decision as to how broad or narrow
 11 the documents are going to be.
 12 MR. MICHAELSON: So if you want to make
 13 an opening statement?
 14 MS. MCGOWAN: Sure. I'll go over the
 15 history, the same as I did at the meeting. Six years
 16 ago my husband's job was transferred from Boston to
 17 Pennsylvania. At that time we had two kids in college
 18 and another one ready to go. I did not think it was
 19 going to be financially stable for us for me to go.
 20 So we made the decision to live apart. That was six
 21 years ago.
 22 Fast-forward through the pension changes, pension
 23 changes, going onto the website, which is the first
 24 paper of my first piece of evidence, was one I printed
 25 out of the web page of the account of my retirement,

1 MR. MICHAELSON: I'm going to call this
 2 M1, for Member 1. Just for the record, it's eight
 3 pages. So Ms. McGowan, this is information you say --
 4 and we'll get into it in testimony -- that you brought
 5 with you to a meeting that you had with the system?
 6 MS. MCGOWAN: Yes.
 7 (EXHIBIT 1 MEMBER MARKED)
 8 MR. MICHAELSON: Okay. As far as the
 9 letter and what you wrote, if you want to put it in,
 10 or if that's really the outline of your argument, you
 11 can make the argument, and it will be transcribed.
 12 MS. MCGOWAN: Then you don't have the
 13 letter from my lawyer to Mr. Karpinski?
 14 MR. MICHAELSON: Not unless I gave it to
 15 you.
 16 MS. MCGOWAN: No. So we would need to
 17 get a copy of this. Again, I'm sorry if I'm not
 18 prepared.
 19 MR. ROBINSON: I have my own copy of
 20 that.
 21 MS. MCGOWAN: It would just be a letter
 22 for you.
 23 MR. MICHAELSON: We'll make sure everyone
 24 has copies. This is a letter dated September 13, 2017
 25 from Elizabeth Wiens to Frank Karpinski. It's three

1 the retirement system -- this is not the first one.
 2 This is just one that I printed out. It's dated
 3 2/25/14.
 4 It gives my service credit and my Article 7 date
 5 and my RISA date. The pension changes, those were the
 6 new dates you were supposed to go by with all the
 7 baggage that came with it. My first RISA date was
 8 12/26/16.
 9 MR. MICHAELSON: RISA, that's the date
 10 under the new statute?
 11 MS. MCGOWAN: Yes. Okay. Like I said, I
 12 know it's dated 2/25/2014, but there were
 13 additional -- I had gone on it before this. This was
 14 just the one I printed out. It was on there before.
 15 The same information did not change. So at that
 16 point, 2014, I said, you know, I don't think I should
 17 rely on this. So I did contact the retirement
 18 board and was asking them to verify that this is
 19 accurate, because I wanted to find out when I could,
 20 obviously, retire and reunite with my husband. So I
 21 did write -- I called and talked to someone, explained
 22 my situation.
 23 You will see the letter dated April 2, 2014. It
 24 says, Please accept this letter in response to your
 25 request confirming retirement eligibility in the

1 Employees' Retirement System of Rhode Island. It
 2 verifies those dates that were on the account, on the
 3 web.
 4 MR. MICHAELSON: Should I be focusing on
 5 the RISA date?
 6 MS. MCGOWAN: Yes. That was the date I
 7 was going to retire. Not the Article 7 date.
 8 MR. MICHAELSON: What is the Article 7
 9 date?
 10 MS. MCGOWAN: It's a little earlier. You
 11 will be penalized.
 12 MR. MICHAELSON: I'm focussing on RISA.
 13 MS. MCGOWAN: Actually, that was not when
 14 I would retire. I would wait until the end of the
 15 school year, which was June 2017, which was last year.
 16 I wouldn't have retired in the middle of the year.
 17 That is my calculated RISA date.
 18 You'll also notice the second page. I just want
 19 to note of the evidence, I printed out again this web
 20 account, my account on 11/21/2016. So this was even
 21 after I had been notified that, you know -- so it was
 22 still up there in November, which I just wanted to
 23 note.
 24 If you continue, going by this letter, which I
 25 took as accurate, I made my appointment in the spring

1 e-mail came to me, which was the day before I was
 2 supposed to come down and sign my retirement papers.
 3 They said, Please call. Apparently that was the date
 4 they saw the error.
 5 MR. MICHAELSON: So you called, and
 6 that's when they said you made a mistake? You can
 7 retire in 2020?
 8 MS. MCGOWAN: Yes, November 2020. Over
 9 three years later. So obviously, quite upset. One
 10 year, I might have been able to handle. When they
 11 said over three, I was very upset.
 12 MR. MICHAELSON: Okay.
 13 MS. MCGOWAN: Because I had this letter.
 14 I did meet. They told me some of the different
 15 scenarios if I retired. You know, if I collected, I
 16 would be penalized, if I didn't collect. So I did get
 17 that information.
 18 So I knew I couldn't do anything at that point.
 19 I wanted to have a meeting with the retirement board,
 20 which I thought was with the retirement board.
 21 Apparently that does not happen. I don't know.
 22 I asked our union lawyer, Chris Lambert, to
 23 please try to set up a meeting to discuss this. I
 24 thought this was more than just an oops. This really
 25 changed my husband's and my life. So Chris Lambert

1 of 2016, because you make your appointment for your
 2 retirement. You can make that final appointment. If
 3 you look at the evidence again, I was given a date
 4 of -- so I called in June on 2016 and made my date for
 5 October 4, 2016 where you come down, fill out the
 6 paperwork, have the meeting for retirement and all
 7 that.
 8 So if you go to the next page, the day before I
 9 was to come down here to sign my retirement papers, I
 10 get this e-mail on October 3, which, ironically, is my
 11 wedding anniversary, Please contact this office and
 12 ask for Cheryl regarding retirement eligibility. I
 13 called. Over the phone they told me, Whoops, sorry.
 14 We made a mistake. You have three more years you have
 15 to work. You cannot retire this year.
 16 This was October. My plan was to retire that
 17 June based on this letter. They did say I could come
 18 in; they would give me a bunch of information. I did
 19 meet, I think her name was --
 20 MR. MICHAELSON: Sorry. I just want to
 21 make sure I'm looking -- the page I have, it's an
 22 e-mail from Cheryl Malise. It says, Please contact
 23 the office. So on the phone they told you that the
 24 date was different?
 25 MS. MCGOWAN: Right. On October 3, this

1 contacted your office to set up a meeting. He had to
 2 call a couple of times to set it up. We kept waiting
 3 and waiting.
 4 It just so happened that I ran into Roger
 5 Beaudry, who I happen to have taught with in Lincoln,
 6 and mentioned to him I've been waiting to hear about a
 7 meeting. The next day I got a call, so I don't know
 8 what magic he did. I got a call to set up the
 9 meeting. I'm afraid I don't remember the date of that
 10 meeting last spring.
 11 MR. MICHAELSON: Spring of 2017?
 12 MS. MCGOWAN: Yes. So we did come in. I
 13 presented the same case that I'm presenting to you
 14 right now. I was told they would investigate it and
 15 look into it. I would be hearing from them. So I
 16 didn't hear anything. I didn't hear anything. I was
 17 in Pennsylvania for the summer.
 18 I finally called Mr. Karpinski's office. I got
 19 his administrative aide. I said, I'm still waiting to
 20 hear a judgment, or whatever, out of that meeting in
 21 the spring. That's when I finally, a couple of days
 22 later, got the letter rejecting my request.
 23 MR. MICHAELSON: July 17 letter, 2017?
 24 MS. MCGOWAN: Yes. Because I was told by
 25 Chris Lambert I could not do anything until I had this

1 officially in writing to take it to my lawyer, because
 2 he could not represent me after that point. He just
 3 was trying to get me in to meet.
 4 That's when I did talk to Liz and retained her
 5 services when I got back in the fall, because I was
 6 away for the whole summer down in Pennsylvania. So I
 7 mean, my discussion with Liz is the fact that, you
 8 know, for the past two and-a-half years my husband and
 9 I have been planning to retire. He was planning to
 10 retire also in June of 2017 from his job.
 11 MR. MICHAELSON: Last how many years?
 12 You said for the last how many years?
 13 MS. MCGOWAN: Two and-a-half years.
 14 Before 2017. Based on this letter, we had planned our
 15 retirement together for 2017. For almost three years
 16 we had been looking for land to build in Delaware.
 17 You know, relying on, you know, selling our home and
 18 then reuniting and being in our retirement home.
 19 We actually did find something last spring. We
 20 had hoped we could hold it. They said, No, you have
 21 to buy it. You have to build on it. We sold our home
 22 in Rhode Island. My husband decided he was going to
 23 work a little longer, and postponed his retirement
 24 because of, you know, I could not retire, or if I
 25 retire I can't collect. So he said, Well, I'll work

1 can wait and collect it. You just won't have the last
 2 whatever year or two of contributions?
 3 MS. MCGOWAN: Right, right, yes. It
 4 would end this year. Then not collect it until that
 5 November of 2020.
 6 MR. MICHAELSON: Just to go back on my
 7 notes, you said six years ago your husband's job was
 8 transferred to Pennsylvania?
 9 MS. MCGOWAN: Yes, from Boston.
 10 MR. MICHAELSON: 2011?
 11 MS. MCGOWAN: Yes. You know, I had
 12 originally -- and I know in Liz's letter there are a
 13 couple of errors. I originally asked for healthcare,
 14 at least as a minimum. I definitely was going to
 15 leave. I would work one more year. I was definitely
 16 going to leave this year. In Lincoln if you don't
 17 officially retire, you don't get the healthcare.
 18 MR. MICHAELSON: As opposed to the
 19 separation?
 20 MS. MCGOWAN: Right, but --
 21 MR. MICHAELSON: Then you get the
 22 penalty.
 23 MS. MCGOWAN: We finally negotiated this
 24 year. I've been on the committee for the past three
 25 contracts. We finally got it if you're within five

1 at least another year. We'll play it by ear.
 2 We did build the home. We're actually closing on
 3 it in November and hopefully moving into it in June.
 4 I am leaving in June regardless. I put it in today.
 5 It's not retirement. It's called a separation from
 6 service.
 7 MR. MICHAELSON: You built a home in
 8 Delaware?
 9 MS. MCGOWAN: Yes. I actually sold my
 10 house in Rhode Island last summer. I'm living with
 11 relatives right now. Everything is in storage in
 12 Lincoln waiting for the move in June.
 13 Like I said, my husband planned to not retire now
 14 and work maybe another year or two. They just had a
 15 reorganization, and he's been laid off. Now we will
 16 solely rely on our savings for the next two and-a-half
 17 years, 401s, whatever we have. With no pension. We
 18 can't collect security until we're 66.
 19 MR. MICHAELSON: What happens to your
 20 pension if you --
 21 MS. MCGOWAN: I can leave, but I cannot
 22 collect my pension until 2020. If I collect, I lose a
 23 lot of money.
 24 MR. MICHAELSON: So your understanding is
 25 you can either collect it early with penalty, or you

1 years of your RISA date, you're going to get the
 2 healthcare. Yes, I'm going to get healthcare.
 3 You have to pay a little bit, but it's like if I
 4 retired. So that was a plus. That's what I was
 5 worried about more than anything.
 6 MR. MICHAELSON: That's through Lincoln,
 7 not through the state?
 8 MS. MCGOWAN: Benefit through Lincoln.
 9 You have to officially retire and collect your
 10 pension. Until this new contract, this year we
 11 finally got it in.
 12 MR. MICHAELSON: That's not an issue
 13 here. So you're referencing the letter that you wrote
 14 to your attorney. It's not in evidence.
 15 MS. MCGOWAN: No. I just have this one
 16 copy.
 17 MR. MICHAELSON: Are you talking about
 18 the letter she wrote? Sorry. That's what you're
 19 talking about. I want to be clear.
 20 MS. MCGOWAN: That's the original. I
 21 didn't think you had it. I know they have it. I
 22 don't think you necessarily need the letter I wrote to
 23 her. She just wanted it in writing, what I'm
 24 presenting to you.
 25 MR. MICHAELSON: I got mixed up, what you

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1 were referring to.
 2 MS. MCGOWAN: They're telling me -- I
 3 know Frank actually came to see me when this happened.
 4 He was quite upset about it. You know, was trying to
 5 say that the law is the law.
 6 Do you know what? I feel damages have been done
 7 here. I relied not on the account on the website, but
 8 on verification from whom I thought was an authority
 9 to give me this verification.
 10 We've planned around this date. We are, you
 11 know, losing money already. To sustain two and-a-half
 12 years that I'm going to have to use our 401s, you
 13 know, I think puts a burden on us.
 14 MR. MICHAELSON: You must have seen this
 15 letter. She is talking about misrepresentation. I'm
 16 guessing without reading it she's mentioning reliance
 17 possibly. You don't have to repeat that. Whatever
 18 arguments she made, those are the legal principles
 19 she's asserting.
 20 MS. MCGOWAN: At the least, I worked one
 21 more year. I said, Well, I'll work one more year. At
 22 least a compromise of paying for one year of my --
 23 instead of waiting two more years. I'm looking for at
 24 least a compromise somewhere.
 25 MR. MICHAELSON: To be clear, this is

1
 2 CROSS EXAMINATION BY MR. ROBINSON
 3 Q. Just in terms of filling in some gaps in
 4 Ms. McGowan's story, Ms. McGowan, the document that's
 5 been marked as Member Exhibit 1, the member account
 6 home page that you printed both on February 25 of 2014
 7 and again on November 21 of 2016, there's text in the
 8 language on the left-hand side of the page under the
 9 heading Member Account Home Page; do you see that?
 10 A. Yes.
 11 Q. It's identical in both printouts, correct?
 12 A. Yes.
 13 Q. I would like to direct your attention
 14 specifically to the second paragraph. I'm just going
 15 to read it, and tell me if I read it inaccurately. It
 16 indicates, A RISA counselor has not validated the
 17 accuracy of your account. What you see on this
 18 website remains an estimate only -- that's in all
 19 caps -- unless your account is validated for service
 20 credit and contributions.
 21 While information provided here is a helpful tool
 22 for you to estimate your retirement benefits, this
 23 information has not yet been validated by a retirement
 24 analyst and should not be considered final. Accounts
 25 are validated prior to retirement.

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1 evidentiary. People will make their arguments. I'm
 2 not in a position to compromise. I have to call it
 3 like I see it. If you want compromise, that will
 4 happen outside of this process. I think this is the
 5 evidence that established what happened, so I get
 6 that.
 7 Okay. You can put on whatever evidence you want.
 8 I mean, I get the picture; that you were relying on
 9 this is your testimony. You made some plans. For
 10 lack of a better rule, the rules were changed, you
 11 feel. I know they're going to tell me that the rules
 12 are the legislators' rules. Anything else at this
 13 point?
 14 MS. MCGOWAN: I don't think so. I mean,
 15 my plan is, you know, I'm going forward with this in
 16 some way, shape or form. I think it's more than an
 17 oops. I don't know if other people are impacted with
 18 these kinds of errors, that they're working longer
 19 than they should be. I don't know. The reliance is
 20 on the retirement board to give us the correct
 21 information, as far as I'm concerned, especially with
 22 verification.
 23 MR. MICHAELSON: We're pretty informal.
 24 They'll put on their evidence. If you have rebuttal
 25 evidence, you can respond.

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1 Did I read that accurately?
 2 A. Yes. I know that.
 3 Q. Did you have occasion to read that when you
 4 viewed it in February 2014 and again in November of
 5 2016?
 6 A. That's why I wrote the letter, why I asked
 7 for verification, because I was not relying on this.
 8 I knew that.
 9 Q. You understood that was simply an estimate?
 10 A. Right. Where it says, Accounts are validated
 11 prior to retirement and a final validation performed
 12 when you apply for retirement, well, didn't I apply
 13 for retirement in the spring when I asked for the
 14 appointment?
 15 MR. MICHAELSON: It's going to be easier
 16 if you answer his questions and then afterwards, if
 17 you want to add things. It's as if you're a witness
 18 on the stand. He will ask the questions. I think it
 19 will move it more quickly.
 20 MS. MCGOWAN: All right.
 21 Q. Just to be clear, you did view the text that I
 22 just read in February of 2014 and November of 2016?
 23 A. Yes.
 24 Q. You were not relying on the information that was
 25 contained on the website at that time, correct?

1 A. Exactly. Well, definitely not the second
 2 one. That was after I was told my new retirement
 3 date, November 1. That's after I was contacted that
 4 it was -- I just happened to print it. I'm saying
 5 here they're telling me I can. It's still up that I
 6 can.
 7 Q. You didn't apply to retire until 2016, correct?
 8 I take that back. You didn't contact the retirement
 9 system to set up your retirement exit session until
 10 2016, correct?
 11 A. Correct.
 12 Q. So in the interim, in 2014, the information that
 13 you were relying upon, the sole information that you
 14 were relying upon was the April 2, 2014 letter from
 15 the retirement system, correct?
 16 A. Well, this website and the letter. The
 17 letter more so, yes.
 18 Q. Because you understood that it was purely an
 19 estimate as set forth on the website?
 20 A. Yes.
 21 Q. Just so the stenographer can take down everything
 22 that is being said, I would ask if you could let me
 23 finish my question before you answer, even if you can
 24 reasonably anticipate what the question is.
 25 A. Okay.

1 (EXHIBIT 1 SYSTEM MARKED)
 2 Q. Now, prior to becoming a member of the retirement
 3 system in August of 1993, you had for a number of
 4 years worked in Lincoln and in Pawtucket as a
 5 substitute teacher, correct?
 6 A. Yes.
 7 Q. During the time that you worked as a substitute
 8 teacher, you did not contribute to the retirement
 9 system; is that correct?
 10 A. I don't think so, no.
 11 Q. That's because you were not a member of the
 12 retirement system until 1997 when you got the
 13 full-time job in Lincoln, correct?
 14 A. I think so, yes.
 15 Q. And is it true, Ms. McGowan, in July of 1998 you
 16 contacted the retirement system to discuss purchasing
 17 several years of substitute teaching time when you had
 18 substitute taught both in Lincoln and Pawtucket prior
 19 to becoming a member of the retirement system?
 20 A. Yes.
 21 Q. Did you have that meeting with the retirement
 22 system?
 23 A. I think so. I thought so. I'm assuming I
 24 did.
 25 Q. Let me show you a copy of a letter from the

1 Q. It will just make it clearer when this is reduced
 2 to a transcript. You applied to become a member of
 3 the retirement system, Ms. McGowan, back in August of
 4 1997; would that be fair?
 5 A. Yes.
 6 Q. At that time you became a full-time teacher with
 7 the Lincoln School Department?
 8 A. Yes.
 9 Q. Prior to that time, prior to August of 1997, you
 10 were not a member of the retirement system; is that
 11 correct?
 12 A. I assume so, yes.
 13 Q. Let me show you a copy of your application. Do
 14 you recognize your signature on that page?
 15 A. Yes.
 16 Q. Does that look like a true copy of your
 17 membership application --
 18 A. Sure.
 19 Q. -- to the retirement system? Please let me
 20 finish my question before you respond. Your answer
 21 was?
 22 A. Yes.
 23 MR. ROBINSON: I would ask that be marked
 24 as a full exhibit.
 25 MR. MICHAELSON: That will be System 1.

1 retirement system to you, and a copy of a handwritten
 2 letter from you to the retirement system enclosing
 3 information about your substitute teaching time.
 4 A. Yes.
 5 Q. Do you recall having sent that to the retirement
 6 system?
 7 A. Yes.
 8 MR. ROBINSON: I would ask that be marked
 9 as a full exhibit.
 10 MR. MICHAELSON: That will be System 2.
 11 (EXHIBIT 2 SYSTEM MARKED)
 12 Q. Ms. McGowan, do you recall receiving an invoice
 13 from the retirement system for your substitute
 14 teaching time?
 15 A. I think so. I don't remember. It's been
 16 awhile. I know it's all been done, yes.
 17 Q. Does that document look familiar to you?
 18 A. Yes.
 19 Q. That's an invoice for \$4,485.45, correct?
 20 A. Yes.
 21 Q. That is for four years and six months of
 22 substitute teaching time; do you see that?
 23 A. Yes.
 24 Q. Is that consistent with your memory of what you
 25 were allowed to purchase?

1 A. Yes.
 2 MR. MICHAELSON: Is that based on the
 3 specific number of days that she substitute taught?
 4 MR. ROBINSON: Correct.
 5 THE WITNESS: It had to be verified by
 6 the districts.
 7 MR. ROBINSON: I ask that be marked as a
 8 full exhibit.
 9 MR. MICHAELSON: That will be S3,
 10 System 3.
 11 (EXHIBIT 3 SYSTEM MARKED)
 12 Q. So we're clear, the time that you served as a
 13 substitute teacher was prior to you becoming a member
 14 of the retirement system, correct?
 15 A. Yes.
 16 Q. You did not contribute during the time that you
 17 were serving as a substitute, correct?
 18 A. Yes.
 19 Q. Now, you testified that in October of 2016 you
 20 contacted the retirement system to discuss setting up
 21 an appointment -- strike that.
 22 You testified that in October of 2016, I think
 23 October 4, you were set to have a meeting here at the
 24 retirement system, an exit meeting with a retirement
 25 counselor, correct?

1 A. Yes. They offered when I said -- was it you?
 2 I'm trying to remember. They offered to meet with me
 3 to figure out what I could do.
 4 Q. At some point did you meet with Diane Bourne, the
 5 assistant executive director?
 6 A. Yes.
 7 Q. You had that meeting with Ms. Bourne?
 8 A. Yes.
 9 Q. Do you recall when that meeting took place?
 10 A. I didn't bring all that paperwork. She gave
 11 me the paperwork. It was relatively after that.
 12 Q. Is it a fair statement that Ms. Bourne discussed
 13 with you the fact that when you received the April
 14 2014 letter advising you of the 2016 retirement
 15 eligibility, that calculation by the retirement system
 16 at that time had incorrectly included your substitute
 17 teaching time as being counted toward your retirement
 18 eligibility?
 19 A. Yes. That's how she explained it.
 20 Q. Okay. Did she also discuss with you at that time
 21 a variety of transition rules that would have allowed
 22 you to exit or retire earlier than November of 2020
 23 but with substantially reduced retirement benefits?
 24 A. Yes, she did. She gave me printouts.
 25 Q. When you testified earlier that you can't retire,

1 A. Yes.
 2 Q. You indicated the day before October 3 you were
 3 notified that there was an issue with the calculation
 4 of your RISA date, your retirement eligibility date;
 5 is that correct?
 6 A. Yes.
 7 Q. What specifically did they tell you at that time
 8 about what the problem was?
 9 THE WITNESS: On the phone?
 10 MR. ROBINSON: Yes.
 11 A. They told me my new date, and that there had
 12 been wrong calculations.
 13 Q. Did they tell you at that time that the
 14 substitute teaching service that you had been allowed
 15 to purchase was incorrectly included for purpose of
 16 calculating your retirement eligibility the first time
 17 around?
 18 A. I don't think they told me on the phone. I
 19 think I was told that when I came in and met with her.
 20 I don't think it was on the phone. I don't think she
 21 was sure.
 22 Q. So you kept the October 4 appointment?
 23 A. No, no. They cancelled that. They told me
 24 that had to be cancelled.
 25 Q. You came back in subsequently at a later date?

1 that's not accurate. You can retire; it's just at
 2 that reduced pension benefit amount?
 3 A. Correct.
 4 Q. You understand that to be the case?
 5 A. Yes.
 6 Q. Ms. Bourne went through a variety of scenarios
 7 with you; is that correct?
 8 A. Yes. She gave me paperwork for if I retire
 9 and collected for the next few years until 2020, I
 10 think. Then she gave me if I didn't collect. She
 11 gave me the printout.
 12 Q. Okay. None of the scenarios that she gave you
 13 were palatable to you?
 14 A. Well, definitely the penalty, I was not going
 15 to collect, no, because it was a lot.
 16 Q. You would collect a pension, but it would be
 17 reduced?
 18 A. Right. So no, that was not palatable at all.
 19 Q. Have you, Ms. McGowan, at any time taken it upon
 20 yourself to look at the applicable statutes regarding
 21 the calculation of your retirement eligibility?
 22 A. To be honest, with the pension changes, and
 23 there were a few, we had a number of meetings in our
 24 district where the union tried to explain. They had
 25 people come in, and it was very confusing.

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1 It also says, even in the letter that I got --
 2 where is it? Downward adjustments based on maybe age
 3 at that time, so it was, it wasn't really clear if you
 4 fell into any of these other scenarios, to be honest
 5 with you.
 6 Q. It's certainly complicated.
 7 A. Yes.
 8 Q. Do you agree that the real issue here in this
 9 case, in terms of calculating your retirement
 10 eligibility date, is based on whether or not your
 11 purchase of substitute teaching time is allowable for
 12 purposes of calculating your eligibility?
 13 A. I think so. I know that's what the problem
 14 was.
 15 Q. Right. Did you, have you had an opportunity to
 16 review the retirement system's regulations which
 17 indicate that substitute teaching time does not count
 18 towards contributory service?
 19 A. I have since, yes.
 20 Q. So you're aware of that?
 21 A. No. I'm aware that that is true.
 22 Q. You're aware that is the issue in this case in
 23 terms of calculating your eligibility?
 24 A. Exactly.
 25 MR. ROBINSON: I don't have anything else

1 you didn't get to say in response to those questions?
 2 MS. MCGOWAN: No. Just referring to that
 3 piece where, you know, there were adjustments of
 4 minimum retirement age, you know, I was not sure if I
 5 was into that, in one of those cases when I got this
 6 letter.
 7 MR. MICHAELSON: Okay.
 8 MS. MCGOWAN: Okay. I wasn't even
 9 thinking about the contributory service of a sub. It
 10 was I must have fallen into a different category
 11 either because of my age -- that's what people tell
 12 you. Well, it could be different because of your age.
 13 It doesn't really go by number of years anymore. I
 14 just happen to think that I fell into something
 15 because of my age.
 16 MR. MICHAELSON: Okay.
 17 MS. MCGOWAN: I understand what you're
 18 talking about, the sub is not going towards the
 19 contributory service. I do understand that.
 20 MR. MICHAELSON: If I'm anticipating your
 21 argument, it's notwithstanding the fact that legally
 22 they may be right, there are reasons because of the
 23 circumstances that you should get what was in that
 24 letter.
 25 MS. MCGOWAN: Right. Shouldn't this

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1 by way of cross examination.
 2 MR. MICHAELSON: ERSRI regulations
 3 provide that substitute teaching time is not
 4 includable for purpose of this RISA date?
 5 MR. ROBINSON: Does not count towards
 6 contributory service. I would anticipate a request to
 7 argue in closing by way of a memorandum that
 8 eligibility is a statutory determination. The statute
 9 uses the term contributory service. In order to be
 10 contractual, you actually have to be engaged in
 11 working and contributing for it to count.
 12 MR. MICHAELSON: If you have the minimum
 13 contributory service, but you have additional service
 14 credit that you purchased, does that increase your
 15 monthly payment?
 16 MR. ROBINSON: It does. It increases the
 17 accrual. You can increase your pension benefit by
 18 purchasing certain time that is not contributory, but
 19 it does not count toward your eligibility.
 20 MR. MICHAELSON: We've seen that before
 21 with military service?
 22 MR. ROBINSON: Exactly, right.
 23 MR. MICHAELSON: As if you were a witness
 24 not representing yourself, based on those questions, I
 25 cut you off earlier, did you want to add anything that

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1 person have known if I should know it? Shouldn't this
 2 person know it?
 3 MR. MICHAELSON: That is the question I
 4 will have to decide. You don't have any other
 5 evidence?
 6 MS. MCGOWAN: I don't think so.
 7 MR. ROBINSON: I want to present some
 8 very brief testimony from the executive director.
 9 MR. MICHAELSON: Ms. McGowan, everything
 10 you said was the truth, the whole truth, and nothing
 11 but the truth, so help you God?
 12 MS. MCGOWAN: Yes.
 13 FRANK KARPINSKI
 14 Being duly sworn, testifies as follows:
 15 DIRECT EXAMINATION BY MR. ROBINSON
 16 Q. Mr. Karpinski, you are the executive director of
 17 the retirement system, correct?
 18 A. Yes.
 19 Q. As part of your duties, is it your responsibility
 20 to review legal issues and make determinations,
 21 administrative determinations when someone challenges
 22 a decision of a counselor?
 23 A. Yes.
 24 Q. You made such a determination in this case,
 25 correct, that Ms. McGowan's grievance did not justify

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1 changing her, making any changes to her retirement
 2 eligibility, correct?
 3 A. Correct.
 4 Q. That prompted this letter, correct?
 5 A. Yes.
 6 Q. Have you had an opportunity in preparation for
 7 today's hearing to review Ms. McGowan's file here at
 8 the retirement system?
 9 A. Yes.
 10 Q. You reviewed the issues that she has raised in
 11 this appeal?
 12 A. Yes.
 13 Q. You reviewed the various documents that have been
 14 submitted as exhibits here today, correct?
 15 A. I have.
 16 Q. I'm going to show you the April 2, 2014 letter
 17 that Ms. McGowan submitted as part of Member
 18 Exhibit 1. Can you take a look at that?
 19 A. Okay.
 20 Q. Are you familiar with that letter?
 21 A. I am.
 22 Q. Understanding that an advanced degree may be
 23 needed in order to correctly navigate all the various
 24 statutes that affect one's ultimate pension benefit in
 25 this area, can you describe for the Hearing Officer

1 particular dates, and then try to navigate through
 2 different kinds of purchases, because they all get
 3 treated differently. There is roughly about 26
 4 different types that fit into different blocks of when
 5 they can be used.
 6 Q. You're aware, are you not, that in 2016 the
 7 retirement system advised Ms. McGowan that the 2014
 8 information she had been provided was in error?
 9 A. Correct, yes.
 10 Q. What is your understanding of the nature of the
 11 error and how it occurred?
 12 A. So as I mentioned earlier, it depends on
 13 where you were at certain points. You know, you
 14 needed to have -- there are two schedules in the
 15 system. Originally there was a Schedule A and then in
 16 2005 there was a Schedule B. Schedule B was a longer
 17 eligibility. It had a different accrual rating.
 18 So, if you will, the party kind of starts there.
 19 That particular provision, you had to have at least
 20 ten years as a contributing member. As of July 1 of
 21 2005 -- and a contributing member is, in the statute
 22 we look at as an active member.
 23 Active member is somebody from whom you receive
 24 regular contributions. Those are anything from a
 25 state employee to a teacher who teaches 180 days.

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1 what gave rise to that letter?
 2 A. Okay. So in its simplistic terms, when I got
 3 here 20 years ago there were four benefit structures.
 4 With this, there are now 38. It has a very specific,
 5 where you were when you were hired, where you were in
 6 2005, where you were in 2009, and where you were in
 7 2012. They all kind of build upon each other.
 8 So in the time that RISA, the Rhode Island
 9 Security Act, went into effect, we were doing
 10 necessary configurations to our system to accommodate
 11 all these changes. There was kind of a window of time
 12 when our website may have not had all the data it
 13 needed yet based on all these new calculations and
 14 testing.
 15 So what is a normal practice with our counseling
 16 team, which again, at the time was trying to navigate
 17 through all these changes and where people were at
 18 varying times, when somebody had requested a letter,
 19 or a phone call, or what have you, they would prepare
 20 an analysis of an account. Again, sometimes they're
 21 very easy to go through. But right now they're really
 22 not. There is a lot of effort involved.
 23 They're estimating what they believe the
 24 eligibility to be based on your years of service, who
 25 your employers were, where you were on all these

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1 That's what is considered contributory services. You
 2 are on the job. It is considered vesting. It just so
 3 happens --
 4 MR. MICHAELSON: It's considered vesting?
 5 A. Vesting, yes, yes. You needed to have an, in
 6 '05 you needed to have ten years of contributory
 7 service to be vesting. Meaning you could not buy five
 8 years of some kind of service and work five years and
 9 say, Okay, now I have ten. You actually had to be a
 10 contributing member. You had to have, if you will, a
 11 full-time job regardless of whether it's a teacher at
 12 180, or a state employee, or municipal employee.
 13 So that kind of started the entire process. You
 14 had these Schedule As and Schedule Bs. Then some
 15 people were As and Bs, because they had, a little bit
 16 of their accruals were As and a little bit of their
 17 accruals were Bs. When Article 7 was enacted, a
 18 budget article enacted in 2009, that particular
 19 provision, the law used to be for teachers was 60 and
 20 10, or 28 years, any age.
 21 MR. MICHAELSON: Sixty and ten? Age
 22 sixty, ten years?
 23 THE WITNESS: Correct, correct. I have a
 24 tendency to talk fast.
 25 MR. MICHAELSON: Or 28 years at any age?

1 THE WITNESS: 28 at any age. 28, right,
 2 right.
 3 MR. MICHAELSON: That was prior to 2009?
 4 THE WITNESS: Correct, correct.
 5 Actually, prior to 2005.
 6 Q. Just to focus a little bit, what specifically did
 7 you understand the issue to be with regard to
 8 Ms. McGowan's eligibility date?
 9 A. Okay, so Article 7 -- which there was
 10 Schedule A. There was Schedule B in '05. Then
 11 Article 7 comes in in '09. It says well, we're going
 12 to change the eligibility age to be 62, but the way
 13 the statute was written, you had to know where you
 14 were at certain points.
 15 So we had to make a determination of, did you
 16 have ten years of contributory service as of '05?
 17 Because that would have shifted you from an A/B to a
 18 B. In this particular case, Claudia inadvertently --
 19 Q. Claudia is the author of the April 2014 letter?
 20 A. Correct, correct. Cardonia. In doing the
 21 calculation, she took those four years of substitute
 22 teaching time and inadvertently added them into the
 23 calculation, which then suddenly made Ms. McGowan be a
 24 Schedule A/B person, because she would have
 25 technically had the ten years of contributory service

1 Q. That is Regulation 6.11; are you familiar with
 2 that?
 3 A. Yes.
 4 Q. Substitute teaching time is not contributory; why
 5 is substitute teaching time not contributory?
 6 A. Substitute teaching can be anything from
 7 day-to-day subs. They could be a couple of days,
 8 couple of weeks. The statute talks to what is
 9 considered sometimes casual.
 10 For state employees it's casual and seasonal.
 11 There is a definition in addition of casual. For a
 12 teacher, they earn credit at 180 days. They're
 13 generally scenarios with the school committees kind
 14 of, you know, you get on a list. They go through a
 15 formal process.
 16 In the same way that when you terminate, you go
 17 through a school committee and they go through their
 18 routine. Substitute teaching is a day-to-day job.
 19 That's why we have to go back when people buy it -- as
 20 a matter of fact, back when Ms. McGowan bought, we
 21 didn't actually have to look at, Well, you need to
 22 know the days. But back then you had to have at least
 23 45 days, because you earned it in quarters. So you
 24 got 45 days, then you got 60 days and 90 days. After
 25 135 days, you had a full year of service credit.

1 as of July 1 of '05.
 2 Then from that point forward, the calculation
 3 just kind of, they kind of build on each other. So it
 4 kind of depends where you were in '05, where you were
 5 in '09, and where you were in '12. There's a lot of
 6 pro rata calculations. But it kind of starts with
 7 that first calculation; it starts there first. It's
 8 either A or B. To be an A, you had to have at least
 9 ten years of contributory service as of July 1, '05.
 10 MR. MICHAELSON: 2009 depends on A or B
 11 status?
 12 THE WITNESS: Exactly. They all depend
 13 on each other. If the mistake is made here, it traces
 14 its way through to the very end.
 15 Q. Is substitute teaching time considered as
 16 contributory?
 17 A. It is not. It is not.
 18 MR. MICHAELSON: Has that been true since
 19 1997?
 20 THE WITNESS: Yes.
 21 MR. MICHAELSON: That's never changed?
 22 THE WITNESS: Yes, yes.
 23 Q. In fact, the retirement system has a regulation
 24 on that issue, correct?
 25 A. We do.

1 Q. Even though members are allowed to purchase
 2 substitute teaching time, is substitute teaching time
 3 in and of itself sufficient to justify membership in
 4 the system?
 5 A. It is not. You must be a regularly -- and
 6 the term that we always adhere to that we actually get
 7 from the teachers' side of the fence as well, is what
 8 is considered regularly employed? You have got the
 9 position. The school committee has, you know, gone
 10 through a formal, These are the teachers on the roster
 11 for this year.
 12 Substitute teaching, the statute does talk to it.
 13 You can substitute teach at 39 different schools. We
 14 can add it up. Say you had 45 days, but if you're a
 15 teacher, you know, a contributory teacher, you have to
 16 be the 180-day position.
 17 Q. Just to sort of complete the, round out the
 18 analysis, I'm showing you copies of substitute teacher
 19 verification forms from Pawtucket and Lincoln. Have
 20 you seen those forms before?
 21 A. I have.
 22 Q. Are those retirement system forms?
 23 A. They are.
 24 Q. Would those forms have been received by the
 25 retirement system in connection with Ms. McGowan's

1 purchase of her substitute teaching time?
 2 A. Yes.
 3 Q. Are these true and accurate copies of the forms
 4 maintained in ERSRI files?
 5 A. Yes.
 6 MR. ROBINSON: I ask those be marked as a
 7 full exhibit.
 8 MR. MICHAELSON: Why don't I do System 4,
 9 4A and 4B.
 10 MR. ROBINSON: Fine.
 11 (EXHIBITS 4A & 4B SYSTEM MARKED)
 12 Q. I'll just ask one final question. Mr. Karpinski,
 13 have you had --
 14 MR. MICHAELSON: Let me cut you off.
 15 This is the roster or the substitutes?
 16 THE WITNESS: They're called day
 17 accounts. The staff will go ask -- generally a member
 18 will say, Oh, I taught in multiple schools, and we'll
 19 get those.
 20 MR. MICHAELSON: That is what generated
 21 the invoice?
 22 THE WITNESS: That's correct.
 23 MR. MICHAELSON: That's the backup.
 24 While I'm interrupting, back to the April 2, 2014
 25 letter, the second paragraph says, Based on your

1 letter?
 2 A. Yes.
 3 Q. Did you author that letter?
 4 A. I did.
 5 Q. You'll see in the second full paragraph at the
 6 end, it indicates that with the correction of the
 7 error that was initially made in 2014, Ms. McGowan's
 8 actual retirement eligibility date is November 29 of
 9 2020?
 10 A. Right. That's full eligibility. That is an
 11 unreduced benefit, or the industry might call that
 12 normal retirement.
 13 Q. You've had occasion to review and recalculate
 14 Ms. McGowan's retirement eligibility age based on all
 15 of the informations -- eligibility date, rather, based
 16 on all the information available to you?
 17 A. Yes.
 18 Q. Is the information contained in that letter
 19 correct?
 20 A. It is.
 21 Q. You're aware, by the way, that Diane Bourne, the
 22 former assistant executive director, did have a
 23 meeting with Ms. McGowan?
 24 A. She did.
 25 Q. She went through a variety of transition rules

1 account information, the amount of service credit
 2 you've earned as of September 30, 2009 is 16 years,
 3 6 months. So for contributory service, you're saying
 4 that was actually 12 years?
 5 THE WITNESS: Correct.
 6 MR. MICHAELSON: Added to that was the
 7 four years, six months?
 8 THE WITNESS: We would have done the
 9 eligibility calculation on the 12 years and said it
 10 was this date. The four years would be included in
 11 the amount of the benefit. The way the statute was
 12 drafted, when they shut the door it was on that day,
 13 but it had to be contributory.
 14 MR. MICHAELSON: If there was no mistake,
 15 as we've been calling it, that would have referenced
 16 12 years, then that would have triggered a bunch of
 17 different calculations?
 18 THE WITNESS: Correct, correct.
 19 MR. MICHAELSON: Earliest retirement date
 20 of February 9, 2016, that would actually, if I'm
 21 understanding you, been sometime in 2020?
 22 THE WITNESS: Yes, yes. Which is what it
 23 is now.
 24 Q. Mr. Karpinski, I'm showing you what was marked as
 25 Hearing Officer Exhibit 3; do you recognize that

1 that would -- and tell me if I'm wrong -- that would
 2 allow Ms. McGowan to retire prior to November 29 of
 3 2020, but with certain statutory reductions?
 4 A. Correct, yes.
 5 Q. Could she retire now if she wanted to?
 6 A. I believe she could.
 7 MR. ROBINSON: I don't have anything else
 8 of this witness.
 9 MR. MICHAELSON: You can cross examine.
 10 CROSS EXAMINATION BY MS. MCGOWAN
 11 Q. I just wanted to ask, was 2009 the final pension?
 12 A. We wish.
 13 Q. I mean as of right now.
 14 A. No.
 15 Q. Pension change, I mean.
 16 A. That was actually the second change. That
 17 was Article 7; that was the budget article. There was
 18 actually one more afterwards. Well, seven is a bad
 19 number for us.
 20 Article 7 was 2005; that created Schedule B.
 21 Then they created Article 7 again -- it may have been
 22 luck -- for 2009. There was Article 16 in 2010; that
 23 adjusted COLA, then RISRA was 2012. Then after RISRA
 24 was litigated, there was a mediated settlement that
 25 took place in 2015, which made a few other kind of

1 adjustments.
 2 It's seven and five. Seven from 2009. Sixteen
 3 in 2010, and then RISRA, which was a special session
 4 in November of 2011. It became effective in June of
 5 2012.
 6 Q. You alluded to the fact that it was complicated?
 7 A. Yes, very complicated.
 8 MS. MCGOWAN: You know, in terms of a
 9 layperson trying to understand the complication,
 10 reliance on who were supposed to be experts, I would
 11 think -- also, that was 2012. This letter is 2014.
 12 They had two years kind of to sort it all out. That's
 13 why I would think this would have been accurate two
 14 years after everything changed.
 15 So that when you talk about how complicated it is
 16 with A, and now there's 38 and all of that, it wasn't
 17 2012 that I asked for this letter, or 2009. It was
 18 two years later. Again, that's another reliance I had
 19 that it would be accurate, because there was now two
 20 years that they gotten used to everything.
 21 I'm not debating the contract. I understand
 22 that. I really don't -- it still leaves me burdened,
 23 I think, unnecessarily burdened.
 24 MR. MICHAELSON: I don't want to
 25 interrupt you. When we make a copy, I want to note on

1 this witness. That's it.
 2 MR. MICHAELSON: We're done with the
 3 evidence part. Do you have any other evidence?
 4 MS. MCGOWAN: No.
 5 MR. MICHAELSON: We'll close the
 6 evidentiary part. This could really be your
 7 memorandum. You're welcome to put in a memorandum or
 8 not. This is really kind of a legal memorandum which
 9 cites cases and case law. I haven't read it
 10 carefully.
 11 I can just tell that it's, you know, trying to
 12 come up with some, for lack of a better word, legal
 13 term, equitable arguments that even though the law
 14 says one thing, you should get something different. I
 15 don't know offhand whether or not in this context I
 16 have the authority to make those equitable judgments.
 17 I'll have to look at it and read the cases. I think
 18 the evidence is really clear. You're going to want to
 19 put in a memorandum?
 20 MR. ROBINSON: As a practical matter, I
 21 have reviewed Attorney Wiens' letter. I have
 22 reviewed. I think noticeably absent from the case
 23 that she cites is the Ramoano decision which is a very
 24 posit to the case that is presently before you. I
 25 think I would like an opportunity to respond to her

1 this Number 2 you had said there were a couple of
 2 little errors?
 3 MS. MCGOWAN: I think I wrote them in
 4 pencil there.
 5 MR. MICHAELSON: That's what I was going
 6 to say. The pencils are where you're just clarifying
 7 a couple of points. For example, it says in early
 8 2014 you logged into your member account page. You
 9 wrote before this. So that's, those corrections are
 10 going to be there.
 11 MR. ROBINSON: I don't have that version.
 12 MR. MICHAELSON: That's why I'm telling
 13 you. We're going to copy this. I'm just looking at
 14 this. A lot of these I think -- but I don't know that
 15 there is really no dispute kind of about what
 16 happened. I don't think there is a dispute about what
 17 the regulations say or what the legislation says.
 18 I think the question is, is legally does it make
 19 a difference that you got that letter, and does that
 20 mean that you're entitled to benefits? That may be
 21 different than what the regulation says. So I have
 22 the letter from Attorney Wiens who kind of sets out
 23 what I think is probably your legal argument. Are you
 24 done with your --
 25 MR. ROBINSON: I have nothing else of

1 letter. It will be fairly brief, another two or three
 2 pages.
 3 MR. MICHAELSON: I think what I would
 4 like to do, you are representing yourself. What makes
 5 the most sense to me is at this point, you know, I
 6 don't know, I'm not going to cut anyone off. If you
 7 want to make a closing argument, it's fine. I tried
 8 to give you my sense of what I think the issue is.
 9 If this really serves as your legal memorandum at
 10 this point, I don't know if you want to put another
 11 one in. What I would suggest is the system puts in a
 12 memorandum. Then you have some time to go over that
 13 with your lawyer, if you want. Then, you know, if you
 14 and Attorney Wiens want to put together something that
 15 responds to those points, I think that's fair.
 16 MS. MCGOWAN: I'm not sure what you mean
 17 by a memorandum.
 18 MR. MICHAELSON: No, not today. They
 19 will have a certain amount of time to put in a
 20 memorandum making their legal arguments. I think you
 21 know just the way it's shaking out. I think you
 22 should have a chance to review that with Attorney
 23 Wiens, and then if she wants to draft something up for
 24 you to submit, you would have the last word.
 25 MS. MCGOWAN: Okay.

1 MR. MICHAELSON: I suppose if they raised
2 a whole new area, then Mr. Robinson might say I'd like
3 to respond. I anticipate that he would put in a memo.
4 You would have a period of time to put in a response
5 to that, if you want. Then the way it works is this:
6 The transcript actually comes to the system. Then
7 they distribute it to me. I don't know how it works
8 with you.

9 MR. ROBINSON: Regulation requires the
10 member to purchase the transcript at their own cost if
11 they want one.

12 MR. MICHAELSON: But they send it to me.
13 Once I get that and the memoranda, then I'm in a
14 position to write that decision up, which I try to get
15 to.

16 MS. MCGOWAN: That's not sent to my
17 lawyer? I have to get it for her?

18 MR. MICHAELSON: I think that's the way
19 it works. I don't know if at some point it becomes
20 part of the case file. I mean, if you were going to
21 go into Superior Court, it probably would be
22 accessible. I get it. It comes to me. It's magic.
23 I think, like I said, I don't think the evidence
24 here and the facts are at issue. I don't know if the
25 transcript is going to be super critical. It's very

1 working on the decision. In other words, you will
2 have 30 days from when you get the system's memorandum
3 to put in a memorandum. The sooner -- in other words,
4 I don't want to stretch it out. The sooner you get
5 the memorandum in, or if you decide, No, we're not
6 going to bother replying, let me know that, and I will
7 start working on the decision rather than waiting the
8 whole 30 days out.

9 MS. MCGOWAN: Okay. What am I looking
10 for from here?

11 MR. MICHAELSON: You're going to get from
12 Mr. Robinson a memorandum. Once you get that, you're
13 going to decide whether you want to reply to it or
14 not.

15 MS. MCGOWAN: Through my lawyer?

16 MR. MICHAELSON: Whoever. If you want to
17 reply, you have 30 days. If you're not going to reply
18 and know that on day one or two, let me know. I won't
19 wait around another four weeks before I start working
20 on it. That way you get a decision sooner.
21 After me, it has to be scheduled with the board.
22 I think -- is that it? Are we ready to close the
23 hearing? Thank you. We'll close the hearing.

(HEARING CLOSED AT 4:33 P.M.)

25

1 helpful to me. But in terms of making the argument, I
2 don't know how much time you need for a memo.

3 MR. ROBINSON: I wouldn't ordinarily need
4 very much time on this at all, except I'm going to be
5 traveling a bit the next couple of weeks. At least
6 three weeks, preferably 30 days.

7 MR. MICHAELSON: That's fine. Doesn't
8 seem unreasonable. Today is November 6.

9 MR. ROBINSON: Can we do that from the
10 receipt of the transcript?

11 MR. MICHAELSON: Yes, if you want to. I
12 don't know how long the transcript takes. Why don't
13 we say 30 days from receipt of the transcript, or
14 12/17, whichever is earlier just in case the
15 transcript -- I don't want it to go on forever.

16 MR. ROBINSON: I'll do my best to try to
17 get it turned around quickly.

18 MR. MICHAELSON: That's up to you. I
19 think December 17 is okay. If that's a problem, you
20 can let us know. Then I don't want to put any heat on
21 your lawyer. So I'll say 30 days from whenever we get
22 that, that you have that long to put in a memorandum,
23 if you want.

24 However, if after a day you say, I'm not going to
25 put in a memorandum, then let me know. I will start

C-E-R-T-I-F-I-C-A-T-E

1
2
3 I, ELIZABETH GREELEY, a Notary Public, do hereby
4 certify that I am expressly approved as a person
5 qualified and authorized to take depositions pursuant
6 to Rules of Civil Procedure of the Superior Court,
7 especially, but without restriction thereto, under
8 Rule 28 of said Rules; that the transcript contains a
9 true record of the proceedings.

10
11
12 Reading and signing of the transcript was not
13 requested by the deponent or any parties involved upon
14 completion of the deposition.

15
16 IN WITNESS WHEREOF, I have hereunto set my hand this
17 17th day of November, 2017.

Elizabeth Greeley
Notary Public

18
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21
22
23
24
25
ELIZABETH GREELEY, NOTARY PUBLIC
CERTIFIED COURT REPORTER
MY COMMISSION EXPIRES: 04/07/2018

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Employees' Retirement System of Rhode Island

ERSRI Board: July 17, 2017

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Rhode Island Federation of Teachers and Health Professionals
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Providence, RI 02908

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RE: Kimberly McGowan

Brian M. Daniels

Dear Attorney Lambert:

Michael DiBiase

Paul L. Dion

We write to provide clarification regarding Ms. McGowan's date of eligibility to retire. Thank you for meeting with us regarding this matter. It is our understanding that Ms. McGowan is requesting that the retirement system permit her to retire now at her full pension benefit or that the retirement system pay for her healthcare benefits until her retirement eligibility date. We are unable to grant her request.

Thomas M. Lambert

John P. Maguire

Marianne F. Monte

Thomas A. Mullaney

Claire M. Newell

Marcia B. Reback

Jean Rondeau

Laura Shawhughes

Ms. McGowan was originally informed in April 2014 that her retirement eligibility date was December 25, 2016. Subsequently, at the time she contacted our office about retiring in 2016, she was notified that the date provided was calculated erroneously using service credit that she purchased in 1997 (4.6 years of substitute teaching) as that service credit was not considered contributory time. That meant she was not a Schedule ABNE member as originally calculated, but rather pursuant to the law, a Schedule B1NE member, adjusting her retirement date to November 29, 2020.

Frank J. Karpinski
Executive Director

From September 1, 1997 through June 30, 2005, Ms. McGowan accrued 8 years of service credit. Rhode Island General Law (RIGL) §16-16-12 was revised in 2005 to provide that a member with 10 years of contributory service before July 1, 2005 could continue to retire at age 60 with 10 years of service credit or at any age with 28 years of service credit, 10 of those years must be contributory service on or before July 1, 2005. With the changes to retirement laws in 2009 and 2011, eligibility was advanced to 62 and 67 respectively. Those eligibility dates would be adjusted downward predicated on whether a member had or had not accrued 10 years of contributory service credit as of July 1, 2005. Although she had purchased 4 years 6 months of substitute

teaching time, that time is not considered contributory time pursuant to the Employees' Retirement System of Rhode Island Rules and Regulations, Regulation 1.6.11. Therefore, she had less than 10 years of the required contributory service at July 1, 2005, which determines her eligibility under current law.

Ms. McGowan met with Diane Bourne, the Assistant Executive Director, who provided her with several transition rule options for retirement.

Given the requirements of the laws governing retirement of teachers, Ms. McGowan will be eligible to retire with full benefits on November 29, 2020. There are no provisions in the law which would either allow her to retire at an earlier date with full pension benefits or which would allow the retirement system to pay her healthcare premiums until her full eligibility date.

This letter constitutes official notification of an administrative denial. Pursuant to Regulation No. 1.4, Rules of Practice and Procedure for Hearings of the Employees' Retirement System of Rhode Island, Section C., any member aggrieved by an administrative action may request a hearing before a Hearing Officer whose decision shall be subject to approval by the full Retirement Board. Upon such request, the matter will be deemed a contested case. Such request shall be in writing and shall be sent to the Retirement Board, 50 Service Avenue, 2nd Floor, Warwick, RI 02886, Attention: Frank J. Karpinski, Executive Director, within 60 days of date of the letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial. A request for hearing shall be signed by the member and shall contain the name of the member; date and nature of decision to be contested; a clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and a concise statement of the relief sought. Failure to strictly comply with the procedures outlined above shall be grounds to deny a request for a hearing.

Sincerely,


Frank J. Karpinski
Executive Director

Cc: Kimberly McGowan
Michael P. Robinson, Esq.

Enclosure: Regulation 1.4

1.4 Rules of Practice and Procedure for Hearings in Contested Cases

A. Introduction

1. These Rules of Practice and Procedure are promulgated pursuant to R.I. General Laws Section 36-8-3. The Rules shall be in effect during any hearing on a contested case before the Retirement Board or its duly authorized representatives.

B. Definitions

1. The definitions set forth in R.I. General Laws Sections 36-8-1, 45-21-2, 45-21.2-2 and 16-16-1, and as further set forth in Regulations promulgated by the Retirement Board, are specifically incorporated by reference herein.
 - a. "Contested case" means a matter for which a member requests a hearing because he or she is aggrieved by an administrative action other than a Disability decision. The term shall apply to hearings conducted before Hearing Officers, and thereafter in proceedings before the full Retirement Board.
 - b. "Party" means any member, beneficiary, Retirement System, or such other person or organization deemed by the Hearing Officer to have standing.
 - c. "Hearing Officer" means an individual appointed by the Retirement Board to hear and decide a contested case.

C. Request for Hearing and Appearance

1. Any member aggrieved by an administrative action other than a Disability decision, may request a hearing of such grievance. Upon such request, the matter will be deemed a contested case. The procedure for Disability decisions and appeals therefrom shall be governed by the procedures set forth in Section 1.9, Rules Pertaining to the Application to Receive an Ordinary or Accidental Disability Pension.
2. Such request shall be in writing and shall be sent to the Retirement Board within sixty (60) days of the date of a letter from the Executive Director or Assistant Executive Director constituting a formal administrative denial.
3. A request for hearing shall be signed by the member and shall contain the following information:
 - a. Name of member;
 - b. Date and nature of decision being contested;

- c. A clear statement of the objection to the decision which must include the reasons the member feels he or she is entitled to relief; and
 - d. A concise statement of the relief sought.
 4. Requests for hearing should be sent to the Retirement Board at 50 Service Avenue, 2nd Floor, Warwick, RI 02886-1021.
 5. Failure to strictly comply with the procedures outlined in this Section shall be grounds to deny any request for a hearing.
- D. Contested Cases – Notice of Hearing
 1. Upon receipt of a request for hearing in matters other than Disability decisions and appeals therefrom, the Retirement Board or its designee shall appoint a Hearing Officer. The appointed Hearing Officer shall hear the matter, find facts and offer conclusions of law to the Retirement Board. The decision of a Hearing Officer shall be subject to approval by the full Retirement Board. The Retirement System's action shall not be deemed final until such time as the Hearing Officer's recommendation has been voted upon by the Retirement Board.
 2. Within forty-five (45) days after receipt by the Retirement Board of a request for hearing, the Retirement Board shall give notice that the matter has been assigned to a Hearing Officer for consideration.
 3. In any contested case, all parties shall be afforded an opportunity to be heard after reasonable notice.
 4. The notice described in subsection (2), above, shall include:
 - a. A statement of the time, place, and nature of the hearing;
 - b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - c. A reference to the particular sections of the statutes and rules involved;
 - d. The name, official title and mailing address of the Hearing Officer, if any;
 - e. A statement of the issues involved and, to the extent known, of the matters asserted by the parties; and
 - f. A statement that a party who fails to attend or participate in the hearing may be held to be in default and have his or her appeal dismissed.

5. The notice may include any other matters the Hearing Officer or the Retirement Board considers desirable to expedite the proceedings.

E. Contested Cases – Hearings in General

1. All parties shall be afforded an opportunity to respond and present evidence and argument on all issues involved.
2. Members must appear at hearings either personally, or by appearance of legal counsel. Members may represent themselves or be represented by legal counsel at their own expense. Consistent with RIGL §11-27-2 entitled, "Practice of law", any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island) cannot represent the member in the hearing.
3. Continuances and postponements may be granted by the Hearing Officer or the Retirement Board at their discretion.
4. Disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
5. Should the Hearing Officer or Retirement Board determine that written memoranda are required, the member will be notified by the Hearing Officer or the Retirement Board of the need to file a written document which discusses the issues of the case. Memoranda of law may always be offered in support of arguments offered by the member or the representative of the retirement systems.
6. The Executive Director may, when he or she deems appropriate, retain independent legal counsel to prosecute any contested case.
7. A recording of each hearing shall be made. Any party may request a transcript or copy of the tape at their own expense.

F. Contested Cases - Conduct of Hearings before Hearing Officers

1. Hearings shall be conducted by the Hearing Officer who shall have authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence.
2. The Hearing shall be convened by the Hearing Officer. Appearances shall be noted and any motions or preliminary matters shall be taken up. Each party shall have the opportunity to present its case generally on an issue by issue basis, by calling and examining witnesses and introducing written evidence.
3. The Member shall first present his or her case followed by presentation of the Retirement System's case.

4. The Hearing Officer shall have the authority to continue or recess any hearing and to keep the record open for the submission of additional evidence.
5. If for any reason a Hearing Officer cannot continue on a case, another Hearing Officer will be appointed who will become familiar with the record and perform any function remaining to be performed without the necessity of repeating any previous proceedings in the case.
6. Each party shall have the opportunity to examine witnesses and cross-examine opposing witnesses on any matter relevant to the issues in the case.
7. Any objections to testimony or evidence and the basis for the objection shall be made at the time the testimony or evidence is offered.
8. The Hearing Officer may question any party or any witness for the purpose of clarifying their understanding or to clarify the record.
9. The scope of hearing shall be limited to those matters specifically outlined in the request for hearing.
10. Written evidence will be marked for identification. If the original is not readily available, written evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original.
11. Findings of fact shall be based solely on the evidence and matters officially noticed.
12. If a member fails to attend or participate in the hearing as requested, the Hearing Officer may default such member and dismiss his or her appeal with prejudice.

G. Contested Cases – Record of Proceedings before Hearing Officers

1. The record in a contested case shall include:
 - a. All pleadings, motions, intermediate rulings;
 - b. Evidence received or considered;
 - c. A statement of matters officially noticed;
 - d. Questions and offers of proof and rulings thereon;
 - e. Proposed findings and exceptions;

- f. Any decision, opinion, or report by the Hearing Officer at the hearing; and
 - g. All staff memoranda or data submitted to the Hearing Officer in connection with their consideration of the case.
 - H. Ex Parte Communications (Communications by one party)
 - 1. There shall be no communications between the Hearing Officer and either a member, the Retirement System or the Retirement Board, or any of their representatives regarding any issue of fact or law in a case, without notice and opportunity for all parties to participate. There shall be no written communications by any party that are not transmitted at the same time to all parties.
 - I. Rules of Evidence in Contested Cases:
 - 1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed. Evidence not usually admitted under the rules of evidence for civil cases may be admitted where it is shown that such evidence is necessary to ascertain facts not capable of being proved otherwise. The Hearing Officer and the Retirement Board shall give effect to the rules of privilege (such as attorney/client privilege) recognized by law. Objections to evidence may be made and shall be noted in the record. Any part of the evidence may be received in written form when a hearing needs to be expedited and the interests of the parties will not be hurt substantially.
 - J. Final Decision and Member Right of Appeal
 - 1. Within twenty-five (25) days after receipt of the Hearing Officer's recommendation, a copy thereof shall be served upon all parties to the proceeding and each party shall be notified of the time and place when the matter shall be considered by the Retirement Board. Each party to the proceeding shall be given the right to make exceptions, to file briefs and to make oral arguments before the Retirement Board. No additional evidence will be considered by the Retirement Board once the Hearing Officer has issued a recommendation. A party wishing to file a brief or make exceptions to the recommendation of the Hearing Officer shall be required to submit the same to the Executive Director not later than ten (10) days prior to the date when the Retirement Board is scheduled to hear and act upon the recommendation of the Hearing Officer. The aggrieved party and his or her representative shall have the right to appear before the Retirement Board and make oral argument at the time of such hearing. No new testimony will be taken, or evidence considered at this time. Consistent with RIGL §11-27-2 entitled, "Practice of law" any person accompanying the member who is not a lawyer (certified member of the bar of the State of Rhode Island), cannot represent the member before the Retirement Board. After consideration of

the decision of the Hearing Officer and such other argument as shall be presented by any party to the proceeding, the Retirement Board shall vote on the recommendation of the Hearing Officer.

2. In the event of a tie vote of a quorum present and voting on a contested matter, the matter will automatically be placed on the agenda of the next Retirement Board meeting.

In the event of a tie vote of a quorum present and voting on a contested matter rescheduled from a prior meeting, the Retirement Board may vote to postpone and re-consider the matter at a subsequent hearing, when a larger number of voting members may be present. If no such vote to postpone and re-consider is taken, or if a vote to postpone and re-consider the matter at a later date fails, the underlying action appealed from will be deemed affirmed

K. Requests for Rehearing

1. A request for rehearing which is submitted prior to the issuance of the Hearing Officer's recommendation should be made in writing. The request must detail the substance of any additional evidence to be offered, and the reason for the failure of the party to offer it at the prior proceedings.
2. A rehearing will be denied if the evidence does not bear on any issue in contest in the original proceedings, will not likely affect the final recommendation, or if the request appears to be merely for purposes of delaying a final decision. A second request for rehearing after the granting or denial of a prior request for rehearing will not be permitted.

1.5 Rules of Elections to Employees Retirement Board

1.5.1 Regular Elections

A. Date of Election.

1. Regular elections will be held in the January preceding the expiration of the elected members' term of office.

B. Notice of Election.

1. A notice of intent to hold elections to seat members of the state employees, teacher, municipal employee and retiree groups shall be sent by regular mail to each member of the system by September 15th of the year preceding the election. Additional notices will be made available for posting in various state and municipal agencies, schools, and related public offices. Each such mailing shall be made to the last known address of the member, as provided by the member's employer or the member's data file at the retirement system.

C. Eligibility to Vote and Candidacy.