



Patrick Dello Russo 
Richard Pitts 

John O'Brien 
JP O'Neil 

Michael Lyle  94

**Melrose Retirement Board Meeting
August 26, 2009**

The Regular Meeting of the Melrose Retirement Board duly posted to be held in the Retirement Office, City Hall, Melrose, MA on the above date was called to order at 9:00 AM by Chairman Dello Russo with Board Members O'Brien; Lyle; Pitts and O'Neil in attendance. Also in attendance are Michael Pasquariello, Jeff McCarthy, Danny McCarthy, Ed Collina and Paul Grover.

New Business:

Rosemary Guillette from Segal Advisors presented the second quarter 2009 investment report. A hard copy of the report was distributed to each Board Member and the Executive Director. A copy is maintained in the retirement office.

On a motion made by Board Member O'Neil and seconded by Board Member Lyle it was unanimously VOTED to approve the regular minutes of July 29, 2009 and sign them into record.

On a motion made by Board Member Lyle and seconded by Board Member O'Neil it was unanimously VOTED to have the Board sign the Retirement Allowance Certificates for the following new retirees:

Certificate # 284 Willaim Trudeau
Certificate # 148 Neal Jones
Certificare # 285 Roberta Retos
Certificate # 313 Ann Molk

On a motion made by Board Member O'Brien and seconded by Board Member Pitts it was unanimously VOTED to issue payment for Retirement Expense Voucher # 45-2009, and Retirement Payroll Allowance Paid Voucher for August 2009 on Voucher # 46.

On a motion made by Board Member O'Neil and seconded by Board Member O'Brien it was unanimously VOTED to include for membership in the Melrose Retirement System:

- Certificate # 2796, Kathryn Sim, Paraprofessional-School System, hired 9-1-2009, group 1.
- Certificate # 2797, Paul Allwood, Paraprofessional-School System, hired 9-1-2009, group 1.

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On a motion made by Board Member O'Brien and seconded by Board Member Lyle it was VOTED by the Board to amend the April 29, 2009 Board Meeting minutes in accordance with the July 31, 2009 memo from Patrick Dello Russo. The vote was four to one with Board member O'Neil opposed. Board Member O'Neil objected, stating that four months had lapsed and believed the (April 29, 2009) vote was four to one. He also stated "I will take this to PERAC".

Attorney Danny McCarthy stated he was legally representing Jeff McCarthy in his appeal to be reimbursed for his July 2009 retirement benefit paycheck. Chairman Dello Russo opened the floor to Danny McCarthy to address the Board on this matter. Danny McCarthy stated that "PERAC confirmed that Jeff McCarthy is now in compliance and that his non compliance amounted to the failure and inability to file two W-2's. Chapter 91 as I read it is really addressed to the issue of whether or not a retiree's pension will be adjusted as a result of that retirees earned income. I do not think any of those facts pertain to Jeffrey. He does not have another profession. He is a person with a long history of difficulties of different kinds. In July one of those things caught up with him, he was in a domestic dispute but because of his past history he was incarcerated with an unbailable bail. He could not get himself out. All of his efforts to comply sort of ground to a halt until he was available to address them. He did address it as soon as he was available. Whether or not that constitutes good cause I can not really say because the term is not clearly identified in the section. The only notice I think he has received is the July 23, 2009 notice from PERAC". The Executive Director stated that there was various correspondence sent from PERAC directly to Jeff during April, May and June. Danny McCarthy "did not dispute that fact but stated the July 23, 2009 letter is the only one I have". Danny McCarthy stated "this one does not recite as I think the statute would require that your pension rights have been terminated after written notice and hearing, after written notice and an opportunity at a hearing then the benefits will be terminated. It appears the (statute) language is pretty unclear and this one is a little vague. His transgression really does not rise to the level or address the issue set forth in Section 91A. His disability relates to different kinds of problems that are not necessarily physical, but in other areas as he does not address these things quite as expeditiously as he might as something that could be construed as good cause for these purposes". Danny McCarthy also stated "the deprivation of a month pension is a significant hardship for him and something that would be extremely difficult for him to recover from".

Jeff McCarthy stated that "when I first got the notice from PERAC, I then mailed them everything I had and that PERAC claimed they never received that".

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Chairman Dello Russo asked the Board to address this, to make a motion and act upon this today. He also stated Mr. McCarthy would have another opportunity to follow up and he opened up the Board for a discussion.

Board Member O'Neil stated that "this is the third year in a row and asked Jeff McCarthy where is the deterrent that it will not happen again" ? Danny McCarthy responded that "the deterrent, the real impact occurred on July 31, 2009 when he did not receive a paycheck which he was desperate to receive. I am reluctant to involve myself prospectively but I will try to help him with this when we get to April 2010". Board Member O'Neil asked Danny McCarthy "if we are to give him his check back are you guaranteeing he will comply next year in a timely fashion under the rules of PERAC" ? Danny McCarthy would not guarantee but would "make my best effort to see that he complies". Board Member O'Neil stated that "this Board should not even have to deal with this, it is ridiculous, absolutely ridiculous and when we have the same individual three years in a row" ? Danny McCarthy stated "I do not dispute your view of the nature of this".

Board Member Pitts stated that he feels the "same way" as Board Member O'Neil. "The history is such that, unless we can be guaranteed some how, this is expensive not only to our time as Board Members but to other pensioners". Board Member Pitts asked if it is only one month (July 2009) that is in question. Chairman Dello Russo explained that it is in the Board's discretion if they desire to go back to April 16, 2009 through June 30, 2009 and require reimbursement from Jeff McCarthy for the time period he was out of compliance. Mr. Pitts also stated the Board "has gone back after others" in situations.

Board Member O'Brien asked for the dates Jeff McCarthy came into compliance in the previous years. The Executive Director stated that for 2006 he became in compliance on September 27, 2007, for 2007 on July 7, 2008 and for 2008 on August 21, 2009. Board Member O'Brien asked the Executive Director if the Board could prorate the month of August also, based on research with PERAC ? The Executive Director replied "yes, they said legally until he is in compliance, it states that right in the 91A, the law. PERAC said you can prorate from April 16, 2009 or from August 21, 2009 when he became in compliance because he has not been in compliance from April 16, 2009 through August 20, 2009". Board Member O'Brien read from the rules and regulations booklet he received from PERAC "if by failing to comply with our fiduciary duty we enable another co-fiduciary to breach of duty we may be subject to personal liability".

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Board Member Lyle directly asked Jeff McCarthy "in 2006 what was your rationale, what was your reasoning why you did not comply"? Jeff responded "to tell you the truth Mike, I really can not remember. I don't know. I moved around a bunch of times. I did not get letters until late sometimes. This time here I mailed it in, in good faith. I made sure of doing it". Board Member Lyle stated "we are trying to help you here" and asked if he "filed for an extension on any one of these years"? Jeff McCarthy replied, "I can not remember to tell you the truth". The Executive Director stated "PERAC said that there were no extensions filed". Jeff stated that he verbally asked PERAC this year for an extension on July 13, 2009. He requested a two week extension.

Board Member O'Brien reminded Jeff that the Board paid him enough in July in order for him to keep his health benefits.

Chairman Dello Russo stated that "I am very concerned. First of all this is three strikes in my opinion. We have a fiduciary responsibility here not only to you but to every single member of the system. If we get into the practice of allowing this type of negligence, in my opinion, to permeate then we are going lose control of the whole system. As Chairman that is my concern is that we have to contain, have control of the policies and procedures and quite frankly follow the law that we have been given. We do not have options on certain things. Quite often we are faced with situations where we may not like the outcome but it is by law that we have to comply. This is a situation of compliance in my opinion. The name on the piece of paper is irrelevant. The person is either in compliance or not. If it is a repeat situation it should cause a concern to everyone here because it causes us to have to act and take up time and energy that we do not disperse to every other member on an equal basis".

Board Member O'Neil offered the following resolution: "If this Board was to give you your check, would you be willing next year if you are not in compliance, you lose the money, and in any future year after that, signed"? Jeff McCarthy replied "yes". The Executive Director noted that we do not need a document signed for him to not get paid in the future for non-compliance in a timely fashion. Board Member O'Neil stated "we have heard the BS before, Jeff".

Board Member Pitts stated that "where we have the authority to go back and request payment back since April 16, 2009 legally and we are only asking that he give up one month pay, he has a damn good deal, by losing one month. Board Member O'Brien suggested "rather than go back to April 16, 2009 and request reimbursement, the date he came in compliance, August 21, 2009, he should be placed back on the payroll. My opinion is that the month of August be prorated".

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Chairman Dello Russo asked "how about the month of July, any thoughts" ? Board Member Pitts stated "he should give up the month of July". He also referenced the numerous communication letters that PERAC sent to Jeff McCarthy between the months of February and the end of June. Board Member Pitts also stated "I do not think it is a bad deal paying one and a half months when it could have been four and a half months, which we have the legal right to do".

Chairman Dello Russo asked councilor Danny McCarthy and Jeff McCarthy for a final response or comments for the Board before he turned it over to the Board for a motion. Danny McCarthy stated that "the statute is not as clear as you represent it to be. It is focused on individuals with substantial earnings and whether or not their pension should be adjusted. The statute is focused on someone whose disability is so limited that they are able to go out and make a substantial income. His non-compliance is a technical matter. You have to take into account that this is an individual that for what ever reason, I certainly share the frustration of this entire board, but he has challenges, he is basically a lunk-head. Whether or not he does this volitionally I really can not say. He is constantly distracted and oppressed with all kinds of other issues. I see the term where you can go back to point where he is first not in compliance. I think that if you want to do that you need to act more expeditiously and you have not done that". The Executive Director stated that on June 29, 2009 Jeff was sent notification, certified mail return receipt, regarding the termination of disability retirement benefits meeting on July 7, 2009 where he was provided the opportunity to state his case and that he did not attend the meeting. Danny McCarthy again also stated "the statute is somewhat vague and confusing".

Chairman Dello Russo thanked Jeff and Danny McCarthy for all of their time and turned it back to the Board.

Board Member O'Neil asked Jeff McCarthy for the dates he was incarcerated. Jeff replied "July 7, 2009 through August 13, 2009".

Board Member O'Brien stated "I do not want to go back to April 16, 2009". Board Member O'Neil asked if they are aware that they have a right to an appeal with CRAB.

Board Member O'Brien made a motion that Jeff be placed back on the payroll effective August 21, 2009, August would be prorated. Board Member Pitts requested a discussion and clarification regarding the motion. Chairman Dello Russo confirmed that the motion by Board Member O'Brien is to not reimburse Jeff for July and that Jeff would receive a prorated pay for the month of August, based on the date of August 21, 2009, the date he came in compliance. Chairman Dello Russo asked if there was any further discussion from the Board Members.

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Board Member O'Neil stated that "I think one month would be much more reasonable in this situation considering the incarceration dates". Member Lyle confirmed with Jeff that he got out of jail on August 13, 2009 and that it subsequently took him one week to get in compliance.

Chairman Dello Russo asked for a vote on Board Member O'Brien's motion. The motion was passed on a VOTE of three to two. Board Members O'Neil and Lyle were opposed.

Chairman Dello Russo stated that we received the 2008 Annual Report from PERAC. Michael Pasquariello has 2 copies in the Retirement Office and Patrick Dello Russo also has a copy in his office.

Chairman Dello Russo stated that we received from PERAC the following Memorandums:

- Memo # 29/2009 (Reinstatement to Service under G.L. c. 32 105 (revised))
- Memo # 30/2009 (CD of PERAC's Publications Library)
- Memo # 31/2009 (Proposed IRS Compliance Provisions)

The date of the September meeting will be Wednesday, September 30th at 9:00 AM.

Board Member O'Neil would like to place on the agenda for September the clothing allowance issue concerning clothing allowance be considered regular compensation.

Old Business: N/A

At 10:05 AM on a motion made by Board Member Lyle and seconded by Board Member O'Brien it was unanimously voted to end the regular business of the Board and enter Executive Session.

On a motion made by Board Member Lyle and seconded by Board Member O'Neil it was unanimously VOTED to adjourn the meeting at 10:30

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Richard Pitts

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John O'Brien
JP O'Neil

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Michael Lyle

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Respectfully submitted,

[Handwritten signature: Michael Pasquariello]

Michael Pasquariello - Executive Director

[Handwritten signature: Patrick Dello Russo]

Chairman Dello Russo

[Handwritten signature: John O'Brien]

Vice Chairman O'Brien

[Handwritten signature: Michael Lyle]

Board Member Lyle

[Handwritten signature: Richard Pitts]

Board Member Pitts

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Board Member O'Neil