



STATE OF WISCONSIN
Department of Employee Trust Funds
Robert J. Conlin
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931
1-877-533-5020 (toll free)
Fax (608) 267-4549
<http://etf.wi.gov>

CORRESPONDENCE MEMORANDUM

DATE: February 13, 2012
TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board
FROM: David H. Nispel, General Counsel
SUBJECT: Status of Pending Legal Case

This memo is for informational purposes only. No Board action is required.

This memorandum is presented quarterly to inform Board members about the status of pending legal cases involving the Department of Employee Trust Funds (ETF) and the various Retirement Boards. In order to maintain confidentiality regarding our Wisconsin Retirement System members, the names of the parties and case numbers are not identified in this memorandum.

The sole purpose of this memorandum is to inform Board members of litigation in which the Boards and ETF are parties, not to provide legal advice concerning the cases listed. The case listed below is being handled by an Assistant Attorney General from the Department of Justice. If you have any questions, I will be able to provide you with the name of the attorney handling the case.

As of February 13, 2012, there is only one case involving any of the Retirement Boards:

Circuit Court Case (1)
Employee Trust Funds Board is a Party 1

Reviewed and approved by Robert J. Conlin, Secretary

Signature _____ Date 2/15/12

Board	Mtg Date	Item #
Jl	3.8.12	4F

CIRCUIT COURT CASE

Case No. 1: ETF Board is a Party

Issue – The ETF Board affirmed ETF's determination concluding that a \$25,000 payment made to the Plaintiff was not earnings and the \$25,000, even if it was earnings, should not be attributed to the 2004-2005 fiscal year.

Summary – Plaintiff asserts that the Board's final decision:

- Erroneously interpreted a provision of law in finding that the \$25,000 paid to Plaintiff did not constitute earnings under Wis. Stats. § 40.02(22); and in finding that the payment was excluded under Wis. Stats. § 40.02(22)(b)8. and Wis. Stats. § 40.02(22)(10).
- Erroneously interpreted a provision of law in concluding that, under Wis. Stats. § 40.02(22)(a), bonus payments are reported as received in the year in which they are awarded.
- Finding that the contractual language in the Amended Contract indicated that the \$25,000 payment to the Plaintiff was not a bonus or raise is not supported by substantial evidence in the record and is contrary to the uncontroverted admissible evidence of record.

Status – On December 2, 2011, a Decision and Order was issued by the Circuit Court. The decision of the Board was affirmed. The deadline to file an appeal to the Court of Appeals is March 1, 2012.

Attorney – DOJ attorney

I will be available at the March 8, 2012, Board meeting to answer any questions you may have.