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CORRESPONDENCE MEMORANDUM

DATE: March 6, 2014
TO: Employee Trust Funds Board
FROM: David H. Nispel, General Counsel
SUBJECT: Status of County Jailers Appeals

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

This memo is an update regarding the status of the large number of appeals that have been filed on behalf of county jailers who have been reclassified by their employers from “protective occupation participants” to general employees for Wisconsin Retirement System (WRS) purposes. Appeals of this nature, where an employee appeals an employer’s action (rather than a department determination by ETF) directly to an administrative law judge, are referred to as “direct appeals.” Appeals such as these that deal with an employer’s classification of an employee are heard by the ETF Board pursuant to Wis. Stat. §§ 40.03(1)(j) and 40.06(e).

As of this date, 320 jailers from eleven counties have appealed their reclassifications. It is possible more will be filed. The eleven counties are: Bayfield, Brown, Buffalo, Chippewa, Clark, Dunn, Fond du Lac, Kewaunee, Marquette, Ozaukee, and Taylor. Nine of the counties are represented by the same private attorney, while one county is represented by its Human Resources Director and the other county is represented by its Corporation Counsel.

ETF’s Special Consultant to the Deputy Secretary met with the attorneys for the counties and appellants in late April 2013, and they initially agreed that ETF would send one case from each county to the Division of Hearings and Appeals for a hearing before an Administrative Law Judge. Since then, attorneys for the appellants have been considering which cases will be sent for hearing. Earlier this month, the parties agreed to forward five cases, which are representative of the employment position categories, to the Administrative Law Judge. Until the parties begin litigating, ETF does not know for certain what the issues will be, but at this time it appears that the primary issue will be whether the appellant’s “principal duties” in a given county are within the scope of

Reviewed and approved by Robert J. Marchant, Deputy Secretary

Electronically signed 3/10/14

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“active law enforcement” as required by the statutory definition of “protective occupation participant” found at Wis. Stat. § 40.02(48)(a).

The eleven counties mentioned above are reclassifying their jailers as general employees with ETF and no longer considering them “protective.” In these appeals, the jailers are appealing the counties’ action by claiming they meet the definition of “protective occupation participant.” Reclassifying the jailers will have the effect of toughening the rules for retirement, such as raising the minimum retirement age from age 50 to 55. It could possibly also make it easier to argue that they should not be considered deputy sheriffs under the Municipal Employment Relations Act.

I will be available at the March 27, 2014, Board meeting to answer questions.