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**CORRESPONDENCE MEMORANDUM**

**DATE:** August 27, 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. 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, 335 jailers from twelve counties have appealed their reclassifications. It is possible more will be filed. The twelve counties are: Bayfield, Brown, Buffalo, Chippewa, Clark, Dunn, Fond du Lac, Iron, Kewaunee, Marquette, Ozaukee, and Taylor. Ten 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. However, in March 2014, the parties agreed to forward five cases, which are representative of the employment position categories, to the Administrative Law Judge for hearing.

On April 2, 2014, a prehearing conference was held with the Administrative Law Judge. Since that date, the parties filed legal briefs regarding a motion to limit testimony and exclude certain witnesses from testifying at the hearing when it is scheduled. The final brief was filed in mid-July. The next step is for the Administrative Law Judge to issue a

Reviewed and approved by Robert J. Conlin, Secretary

Electronically signed 8/28/14

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decision on the motion. No deadline was established, but ETF understands that the decision may be issued this fall.

Until the parties engage in further litigation, ETF does not know for certain what the issues for hearing 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 "active law enforcement" as required by the statutory definition of "protective occupation participant" found at Wis. Stat. § 40.02(48)(a).

The twelve 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 changing 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.

Staff will be available at the September 25, 2014, Board meeting to answer questions.