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**Correspondence Memorandum**

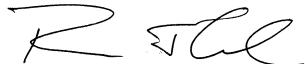
**Date:** September 1, 2016  
**To:** Employee Trust Funds Board  
**From:** Diana M. Felsmann, Attorney  
David H. Nispel, General Counsel  
**Subject:** Status of County Jailers Appeals

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

This memo provides 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. The parties agreed that the issue in this case is whether the appellants’ job duties are such that the county wrongly reclassified them out of the protective retirement category set forth in Wis. Stat. § 40.02 (48) (a). A hearing was held before an administrative law judge on May 18-21, and 28-29, 2015.

Reviewed and approved by Robert J. Conlin, Secretary  
 Electronically signed 9/12/16

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ETF	9.29.16	5B

Legal briefs were filed by the parties. A proposed decision was issued on January 6, 2016, finding that of the five appellants, three did not prove their positions met the legal definition of protective occupation participant in Wis. Stat. § 40.02 (48) (a). By contrast, the proposed decision found that the other two appellants proved their positions met the legal definition of protective occupation participant based on their principal duties as described at the hearings in May 2015.

The ETF Board considered these five appeals at the March 24, 2016 meeting, and issued a written decision on July 5. In that decision, the ETF Board concluded that the positions of all five appellants did not meet the definition of protective occupation participant in state law for three reasons:

1. The evidence did not support the conclusion that the five spent 51% or more of their time engaged in active law enforcement;
2. They offered no evidence that their work involved frequent exposure to a high degree of danger or peril; and
3. They did not offer evidence that their work required a high degree of physical conditioning.

The parties had 30 days to file an appeal to the Dane County circuit court. That deadline has passed, and no appeal was filed.

Staff will be available at the Board meeting to answer questions.