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## *Correspondence Memorandum*

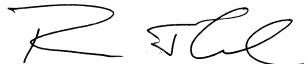
**Date:** May 30, 2017  
**To:** Employee Trust Funds Board  
**From:** Diana M. Felsmann, Attorney  
 David H. Nispel, General Counsel  
**Subject:** Status of County Jailers Appeals

**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 filed by or on behalf of county jailers who were reclassified by their employers from Wisconsin Retirement System (WRS) protective occupation participants to general category 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. 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.

In March 2014, the parties agreed to forward five cases, chosen to represent the various duties of employees coming under the position title of “jailer,” to the Administrative Law Judge for hearing. The parties agreed that the issue in this case was whether the appellants’ job duties were 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. 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

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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 did not appeal the ETF Board decision to the Dane County circuit court by the August 4, 2016 deadline, thereby ending those five appeals.

With respect to the remaining 330 jailer appeals, ETF's Office of Legal Services (OLS) provided a status update of actions taken to resolve those appeals to the ETF Board at the December 15, 2016, meeting. Those actions included posting a [Frequently Asked Questions](#) document on the ETF website offering a background of the jailer appeals and a link to a redacted copy of the July 5 [ETF Board decision](#).

In addition, OLS has been in communication with the 330 remaining jailers, either through their attorneys, or directly with those unrepresented by counsel. Specifically, OLS requested the jailers either: (1) contact OLS with information describing how their positions might meet the definition of protective occupation participant in state law; or (2) indicate that they no longer wished to pursue an appeal of their employment category change.

Of the jailers represented by counsel, 64 have decided to waive their appeals. Of the unrepresented jailers, 31 have chosen to waive their appeals. As a result, a total of 235 jailer appeals remain active. OLS continues its efforts to engage in ongoing communication with the jailers and the attorneys to determine the appropriate next steps toward a resolution of the remaining cases.

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