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Correspondence Memorandum

Date: February 22, 2018
To: Employee Trust Funds Board
From: Diana M. Felsmann, Attorney
David H. Nispel, General Counsel
Subject: Update on City of Madison Stagehands and County Jailers Appeals

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

This memo provides an update on the status of the Department of Employee Trust Funds (ETF) two largest administrative appeals: (1) those filed by or on behalf of the City of Madison stagehands regarding their status as Wisconsin Retirement System (WRS) participating employees; and (2) those filed by or on behalf of county jailers who were reclassified by their employers from 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." The ETF Board hears appeals that deal with WRS participating employee status and with an employer's classification of an employee pursuant to Wis. Stat. §§ 40.03(1)(j) and 40.06(e).

City of Madison Stagehands Appeals

In total, 77 stagehands filed formal ETF administrative appeals with respect to whether the City of Madison should have reported them as WRS participating employees. On March 11, 2013, the ETF Board issued a final decision concerning a group of six stagehands, concluding that each of the six should have been reported as WRS participating employees. On October 24, 2016, the Board issued a second decision concerning a group of 15 additional stagehands, again concluding that each of the 15 should have been reported to the WRS.

Just prior to that second Board decision, on October 4, 2016, ETF entered into an agreement with the City of Madison in which the City committed to making quarterly payments to the WRS through the end of 2018 to pay the WRS contributions for all

Reviewed and approved by Robert J. Conlin, Secretary

Electronically Signed 3/13/17

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eligible stagehands. ETF and the City of Madison have been working together to consistently ensure those payments have been made.

Based on that agreement, as of this date, only seven stagehands appeals remain open. ETF anticipates that these remaining seven appeals will be closed by the end of 2018 when the City of Madison has finished making its quarterly payments.

County Jailers Appeals

A total of 335 jailers from twelve counties appealed their employers' reclassification of their positions from protective occupation participants to general category employees. The twelve counties were: Bayfield, Brown, Buffalo, Chippewa, Clark, Dunn, Fond du Lac, Iron, Kewaunee, Marquette, Ozaukee, and Taylor.

The ETF Board considered five of these appeals at the March 24, 2016 meeting. In its written decision issued on July 5, 2016, 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.

After that board decision, 330 jailer appeals remained. 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, in November of 2016, OLS mailed letters to the jailers with open appeals requesting they 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.

OLS follow-up has succeeded in closing more of the jailers appeals, leaving the number of open appeals at 234, the majority of whom are not represented by counsel. OLS continues its efforts to engage in ongoing communication with the jailers to determine the appropriate next steps toward a resolution of the remaining cases.

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