

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

URSULA WHITE, BRUCE N. REITER,
and MARGARET RETZ,)
Plaintiffs,)
vs) Case No.
PUBLIC EMPLOYEES RETIREMENT) 0404-04118
BOARD,)
Defendant,)
and)
STATE OF OREGON, LANE COUNTY,)
CITY OF EUGENE, MULTNOMAH COUNTY,)
CITY OF PORTLAND, CITY OF)
ROSEBURG, CITY OF HUNTINGTON,)
CANBY UTILITY BOARD, and ROGUE)
RIVER VALLEY IRRIGATION,)
Intervenors.)
URSULA WHITE, BRUCE N. REITER,
and MARGARET RETZ,)
Petitioners,)
vs.)
PUBLIC EMPLOYEES RETIREMENT)
BOARD,)
Respondent,)
and)
STATE OF OREGON, LANE COUNTY,)
CITY OF EUGENE, MULTNOMAH COUNTY,)
CITY OF PORTLAND, CITY OF)
ROSEBURG, CITY OF HUNTINGTON,)
CANBY UTILITY BOARD, and ROGUE)
RIVER VALLEY IRRIGATION,)
Intervenors.)

DEPOSITION OF BRENDA ROCKLIN
Taken in Behalf of the Plaintiffs
Friday, November 30, 2007

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1 BE IT REMEMBERED THAT, the deposition of
2 BRENDA ROCKLIN was taken before MARK D. KRKA, a
3 Certified Shorthand Reporter for Oregon, on Friday,
4 November 30, 2007, commencing at the hour of 2:00 p.m.,
5 in the law offices of Bennett, Hartman, Morris & Kaplan,
6 in the City of Portland, County of Multnomah, State of
7 Oregon.

8
9 APPEARANCES:

10
11 BENNETT, HARTMAN, MORRIS & KAPLAN
12 Attorneys at Law
13 By Mr. Gregory A. Hartman
14 Appearing in behalf of the Plaintiffs
15
16 ORRICK, HERRINGTON & SUTCLIFFE
17 Attorneys at Law
18 By Mr. Joseph M. Malkin and Ms. Sarah Marriott
19 Appearing in behalf of the Defendants
20
21 HARRANG, LONG, GARY, RUDNICK
22 Attorneys at Law
23 By Ms. Susan Marmaduke
24 Appearing in behalf of the Intervenors
25

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1 BRENDA ROCKLIN
2 was thereupon produced as a witness in behalf of the
3 Plaintiffs and, having been first duly sworn on oath,
4 was examined and testified as follows:
5
6 EXAMINATION
7 BY-MR. HARTMAN:
8 Q. Miss Rocklin, I know you have been deposed
9 before.
10 A. Yes, sir.
11 Q. And, of course, given your professional
12 background, I know you're very familiar with the
13 process, so I will dispense with all the usual cautions,
14 except to remind you that it's important we communicate
15 well. If at any time I ask you a question you don't
16 feel you fully understand, ask me to rephrase, repeat,
17 do whatever is necessary so that we are doing our best
18 to communicate.
19 A. Yes, sir.
20 Q. Thank you. Just for the record, could you --
21 well, let me back up.
22 My recollection is that you were appointed
23 to the PERS board about September 1st of '03. Is that
24 your recollection?
25 A. Yes, it is.

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1 Q. And just for the record, can you tell us a little
2 bit about your professional background. I know it, but
3 we need to put it on the record.

4 A. I have been a member of the Oregon State Bar
5 since 1981. I worked as a deputy district attorney in
6 Pendleton, Oregon between October 1981 through the end
7 of 2003. In January of two thousand -- I'm sorry, in
8 January of -- I've lost track now. Just a sec.

9 Q. It's easy to do.

10 A. In January of 1984 I joined the Oregon Department
11 of Justice as a lawyer. Worked there until December of
12 2002, when I was appointed director of the Oregon
13 Lottery, and was at the Oregon Lottery until August of
14 2004, when I was appointed the CEO of SAIF Corporation.

15 Q. And I take it you're still the CEO of SAIF
16 Corporation today?

17 A. Yes, sir, I am.

18 Q. During those various portions of your career, did
19 you have duties or responsibilities in areas relating to
20 pensions? Or pension law?

21 A. Not pension law, no.

22 Q. In the period of time that you were the director
23 of the lottery and the CEO of SAIF, I assume you would
24 have had some involvement with pension issues, but
25 really as a chief executive officer not dealing with

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1 them directly. Is that fair?

2 A. That's -- that's fair, dealing with PERS issues
3 related to employees, and then as a member of the system
4 since early '80s.

5 Q. And again, for the record, both the lottery and
6 SAIF are participating PERS employers, correct?

7 A. Yes, sir.

8 Q. During the time that you were employed as an
9 assistant attorney general, did you ever have occasion
10 to become involved in PERS issues of any sort?

11 A. I don't believe so, Mr. Hartman. Other than,
12 again, other than as a member of the system.

13 Q. I assume during your years with the AG you were
14 wise enough to avoid getting entangled in any of those
15 issues?

16 A. I practiced primarily criminal law during my time
17 at the Department of Justice.

18 Q. Did you speak with the governor himself about the
19 potential of being appointed to the PERS board?

20 A. Yes, sir.

21 Q. During the conversations with the governor -- and
22 its Governor Kulongoski?

23 A. Yes, sir.

24 Q. Again, for the record. Did you have any
25 discussions about any of the issues that would be

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1 pending before the PERS board should you agree and take
2 that appointment?

3 A. No.

4 Q. No discussions about the City of Eugene case?

5 A. I don't recall having any conversation with
6 Governor Kulongoski about the City of Eugene case.

7 Q. Anything about the 2003 Reform Legislation, as
8 it's been called?

9 A. Other -- the only thing I recall about that is
10 other than the 2003 Reform Legislation leading to a new
11 PERS board and would I be willing to serve on the board.
12 I, obviously, was aware that there was reform
13 legislation, but I don't recall having a specific
14 conversation with the governor about the merits.

15 Q. Did the governor give you any charge in terms of
16 what he expected of you if you accepted the appointment
17 to the PERS board?

18 A. I don't recall anything other than do your best.
19 I mean I don't recall anything specific as a charge.

20 Q. Okay. For the record, can you tell us what
21 position Mardi Saathoff held at this time, the latter
22 part of '03, beginning of '04? Was she counsel to the
23 governor at that point in time?

24 A. Just to go back, remind me of the dates again.

25 Q. Latter part of '03, beginning of '04.

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1 A. All -- all I can tell you, Mr. Hartman, I know
2 that Miss Saathoff was the governor's legal counsel at
3 the time I was appointed to the PERS board. I couldn't
4 tell you how long she served in that position after
5 that.

6 Q. Do you recall whether she ever attended any
7 executive sessions of the board?

8 A. I don't have any recollection that Miss Saathoff
9 was there during executive sessions of the board.

10 Q. Let me make sure I'm clear on your answer,
11 because sometimes when people respond the way you did
12 there's a lack of clarity.

13 Are you telling us that you know she wasn't
14 there or are you telling us you just don't know one way
15 or the other?

16 A. I don't know one way or the other.

17 Q. Thank you. Do you recall whether any other
18 members of the governor's staff ever attended a PERS
19 executive session?

20 A. I know that members of the governor's staff
21 occasionally attend PERS board meetings, I don't have
22 any specific recollection on whether they sat in on an
23 executive session.

24 Q. And the answer to my next question is probably
25 implicit in what you've already told us, but just to

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1 take a five-minute break?
 2 MR. HARTMAN: Oh, absolutely, sure.
 3 (Break taken: 3:03 to 3:08 p.m.)
 4 BY MR. HARTMAN: (Continuing)
 5 Q. You had the opportunity to -- I've handed you
 6 Exhibit 7 of the Kripalani deposition, which is the
 7 settlement agreement.
 8 I'm going to have questions only about
 9 paragraph 1.5, but feel free to read as much of it,
 10 again, as you care to.
 11 A. (Pause-referring). I've read paragraph 1.5.
 12 Q. And I want to -- my major focus will ultimately
 13 be the last sentence, but in order to have any
 14 understanding of how that fits in, let's talk a little
 15 bit about paragraph 1.5.
 16 The first part of it, the first significant
 17 part, really talks about an actuarial recalculation
 18 process.
 19 A. Yes.
 20 Q. Is that correct?
 21 And it involves the recalculation of certain
 22 employer contribution rate orders. Is that also
 23 correct?
 24 A. Yes.
 25 Q. And my recollection is that among the other

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1 challenges in the City of Eugene case were challenges to
 2 various rate orders that had been calculated by the
 3 prior board in the years indicated?
 4 A. Yes.
 5 Q. And those were going to be recalculated?
 6 A. Yes.
 7 Q. And there's a series of factors that are
 8 mentioned in terms of how that's going to be done. Is
 9 that correct?
 10 A. Well, I don't know if you'd use the word factors,
 11 but there are -- it does talk about assuming that the
 12 actuarial equivalency factors, reserving practice,
 13 employer-in-variable had been consistent with the laws
 14 interpreted and the judgment. So --
 15 Q. I guess I refer to them generally as factors, but
 16 whatever.
 17 A. Okay, it does say that.
 18 Q. All right. So all this has to do with the
 19 recalculation of orders and so forth until we get to the
 20 very last sentence. And I'd really like to focus for a
 21 moment on that. And I guess I need to back up and ask a
 22 couple questions.
 23 You know -- and let's just pick on the City
 24 of Eugene since they happen to be the named petitioner.
 25 Presumably back in '98, 2000 and 2003 the City of Eugene

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1 had certain rate orders in place that required them to
 2 make a contribution which is typically based on a
 3 percentage of payroll. Is that your understanding of
 4 what these things look like?
 5 A. Yes.
 6 Q. And as a result of these calculations, presumably
 7 some lower number was going to be calculated, perhaps it
 8 was 13 that would go to 12 and a half or whatever. Is
 9 that correct?
 10 A. Yes.
 11 Q. So you'd have a series of new rate orders which
 12 would then be derived by the actuary based on these
 13 various factors that you and I both talked about?
 14 A. Yes.
 15 Q. We're on the same page so far?
 16 Now, to the extent that the City of Eugene
 17 contributed more money in '98 and 2000 and whatever
 18 years are at issue here, what was your understanding of
 19 what was to happen to that money?
 20 A. After the actuary made the calculation?
 21 Q. Right, after the actuary had gone through this
 22 calculation.
 23 A. Well, I believe the judgment speaks to that.
 24 Q. When you say the judgment or do you mean --
 25 A. I'm sorry, the settlement document. It says that

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1 the board will treat the difference between the
 2 petitioners' contributions made pursuant to the former
 3 contribution rate orders and the corrected contribution
 4 rate orders as excess employer contributions.
 5 And then it goes on to say that each
 6 petitioner may apply the excess contributions to reduce
 7 its unfunded actuarial liability or to reduce future
 8 contribution rates.
 9 Q. So the money, whatever monies we're talking
 10 about, was already in the system as a result of
 11 contributions based on the old rate orders?
 12 A. Yes.
 13 Q. So far so good? And the money presumably went
 14 into the individual employer account of each of the
 15 employers involved in the litigation?
 16 A. Yes.
 17 Q. And basically what this says is the money is
 18 going to continue, whatever the difference is that's
 19 going to be calculated, will still be in the system and,
 20 as you point out, will be available either to reduce
 21 rates or unfunded liability. So that money isn't going
 22 anywhere, it's in the system, it's going to stay in the
 23 system, the excess?
 24 A. That's my understanding.
 25 Q. Okay. Was that your understanding of this at the

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1 A. That's really my understanding, yes, that we
2 wouldn't have been able to go back to the employers and
3 say that here's a new rate order, but it doesn't really
4 mean anything, for instance.

5 Q. So to cure this problem then PERS was going to
6 utilize funds in the contingency reserve to cover those
7 costs, so that you weren't saying to the City of Eugene
8 here's your new rate order, but too bad, you had some
9 additional costs?

10 A. I believe that's accurate.

11 Q. All right. Oh, was this paragraph -- this
12 paragraph clearly contemplates that an actuary is going
13 to do some actuary calculations, correct?

14 A. Yes, paragraph 1.5 does discuss that.

15 Q. Do you know whether this was -- this paragraph
16 was discussed with the PERS actuary or did he review it
17 prior to the execution of the settlement agreement?

18 A. I don't think I can answer that, I don't know.

19 Q. Don't know one way or the other?

20 A. I don't know.

21 Q. Let me hand what you has been marked as Exhibit 9
22 to the Kripalani deposition. And it's in three parts.
23 The first is a memo to the board from Dale Orr. As you
24 can see, it then incorporates two memos from Mark
25 Johnson. And both of them relate to paragraph 1.5.

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1 Mr. Johnson seems to be saying I'm going to do a
2 valuation and these are some assumptions I'm going to
3 make in order to do that valuation. Fair enough?

4 A. Yes, he does say that.

5 Q. Did you have any role in working with Mr. Johnson
6 to develop these assumptions?

7 A. I did not.

8 Q. Do you know whether any other member of the board
9 worked with Mr. Johnson in developing these assumptions?

10 A. I do not.

11 Q. I want to make sure I'm clear.

12 A. Okay.

13 Q. You know that none did or do you not know one way
14 or the other?

15 A. I do not know one way or the other.

16 Q. In the memo itself it talks about working with
17 PERS staff and PERS counsel. Do you know which of the
18 PERS staff members may have worked with Mr. Johnson in
19 developing these assumptions?

20 A. I do not. I don't know.

21 Q. Okay. Let's take the first assumption. And I
22 guess I should jump forward. This memo eventually --
23 and I'm happy to hand you the documents.

24 The board did eventually transfer funds from
25 the contingency reserve to the various petitioning

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1 You don't have to read the whole package. I
2 will tell you my questions are going to be -- I mean
3 feel free to read as much as you care to.

4 A. Okay.

5 Q. My questions will be focused -- I'll tell you
6 that in just a moment.

7 Does yours have all the markings on it? It
8 shouldn't.

9 A. I don't believe so, Mr. Hartman.

10 Q. Good. Because those are secret yellow markings.

11 A. Might be my vision, but I don't see yellow
12 markings.

13 Q. There's a lot of that going around. Well, that's
14 all right.

15 My questions really are going to relate to
16 this page 2 of Mark Johnson's August 31, 2004 memo. And
17 really relating to the first half of that paragraph.

18 A. All right.

19 Q. But again, read as much of it as you care to
20 before we go any further.

21 A. (Pause-referring). The entire page, is that --

22 Q. Really I'm going to stop at paragraph -- what's
23 labeled paragraph D.

24 A. Okay, I've read the top half of the page.

25 Q. And just to put these questions in context,

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1 employers' accounts based on a series of studies by
2 Mr. Johnson. I can hand you that if you want to take a
3 look at it. That's Exhibit 10 to the Kripalani
4 deposition. I think it's towards the back.

5 A. (Pause-referring). Agenda item D-2?

6 Q. I'd have to look over your shoulder. I'm really
7 more focused on the Action Based on Executive Session,
8 which appears at the end of the minutes.

9 A. Yes, I see that on page 5.

10 Q. And is it your recollection that after a series
11 of studies and a few tweaks in the numbers that the 61
12 million and some odd dollars that were transferred were
13 based on these studies done by Mr. Johnson?

14 A. I would say that the action of the board was
15 based on work by the board actuary. In terms of your
16 question in terms of tweaks here and there, I don't know
17 that I can answer that fairly.

18 Q. But at the end of the day the action was taken
19 based on an analysis done by Mr. Johnson?

20 A. Yes, it was.

21 Q. Okay. And I think we're looking at the first
22 part of this analysis when we go back to Exhibit Number
23 9.

24 Do you recall, did the board ever approve
25 the assumptions marked here as A through D?

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1 of -- I don't have a specific recollection today of
 2 talking about that particular sentence in paragraph 1.5.
 3 Q. When you voted to approve the redistribution of
 4 funds, did you believe that something else was being
 5 calculated other than the calculations necessary to
 6 carry out the requirements of paragraph 1.5?
 7 A. I don't believe so.
 8 Q. Was it your intent when you approved that
 9 redistribution that the employers would be reimbursed --
 10 now I don't have the agreement -- for the costs related
 11 to their active and retired employees, no more and no
 12 less?
 13 A. I expected that the agreement, the settlement
 14 agreement, would be followed.
 15 Q. And the purpose of Mr. Johnson's study was to
 16 implement the requirements of paragraph 1.5?
 17 MR. MALKIN: Same objection, the document
 18 speaks for itself.
 19 BY MR. HARTMAN: (Continuing)
 20 Q. I'm asking for your understanding.
 21 A. Well, certainly the document itself speaks to
 22 section 1.5. I have not had a chance today to review
 23 this carefully, but it also makes a reference to section
 24 1.2. So I think I'd want to rely on the document
 25 itself.

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1 Q. Okay. Switching to a little different question,
 2 and backing away from Mr. Johnson's analysis.
 3 Was it your belief and understanding that
 4 Mr. Gary, on behalf of his clients, was giving up
 5 something that they would otherwise have been entitled
 6 to when they entered into the settlement agreement?
 7 A. Yes. And I believe --
 8 Q. And -- go ahead.
 9 A. -- there are documents that reflect that. The
 10 employers prevailed in the Circuit Court, so they were
 11 entitled to have us implement the judgment. I know they
 12 agreed to -- in terms of the calculation of the money
 13 match formula, I know they agreed to run that
 14 prospective and not to go back in time to recalculate
 15 member accounts on that. Which kind of goes back I
 16 think to your question earlier about what did the
 17 members get from this settlement, and that would be one
 18 thing.
 19 Q. Let me stop you, if I may, right there.
 20 A. Okay.
 21 Q. When you say that he gave that up on behalf of
 22 his -- or that the petitioning employers gave that up,
 23 they in fact are fully compensated for that, they didn't
 24 give it up at all, did they?
 25 A. I'm sorry, I --

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1 Q. Let's go back to Mr. Johnson's document. I think
 2 you have it there.
 3 A. (Handing).
 4 Q. If you look at paragraph C -- and I'm handing
 5 you, just for the record, Exhibit 9 to the Kripalani
 6 deposition -- isn't it true that for purposes of
 7 calculating their -- their, I mean the petitioning
 8 employers' compensation, that they went back and imposed
 9 that as if it had been imposed on January 1st, 1998?
 10 A. In terms of the employers, but not in terms of
 11 the members, I believe, Mr. Hartman.
 12 Q. I know, but I asked what Mr. Gary gave up from
 13 his clients. I don't believe Mr. Gary was there to
 14 protect the interests of the members, I think, quite
 15 properly, he was there to protect the interest of his
 16 clients.
 17 And isn't it true that in fact on that issue
 18 he gave up nothing? Because he got the full monetary
 19 benefit of going back to 1998 for his clients in any
 20 event.
 21 A. I don't think I can answer that without relying
 22 -- saying that the document calculations by the actuary
 23 would have to reflect that. I don't know the answer to
 24 that.
 25 Q. I'm sorry?

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1 A. I'm sorry, I just said I didn't know the answer
 2 to that.
 3 Q. Okay. Is it your understanding that the
 4 petitioning employers gave up something else in order to
 5 make the settlement?
 6 A. Can I have just a --
 7 Q. Absolutely.
 8 A. -- second here? Certainly they gave up attorneys
 9 fees that are set out in the documents.
 10 Q. Since you mentioned attorneys fees, did Mr. Gary
 11 present to the board a detailed statement of his fees
 12 and expenses and time spent, and so forth and so on, to
 13 substantiate his claim for fees?
 14 A. I don't recall that the board saw that. Whether
 15 counsel did, I couldn't answer that question.
 16 Q. Go ahead, other than fees that you've told us
 17 about.
 18 A. The -- I guess I refer specifically to paragraph
 19 1.2 in terms of the employer-in-variable rule.
 20 Q. And that's the issue raised by the intervenors?
 21 A. I believe so, Mr. Hartman.
 22 Q. Did anybody appeal that issue?
 23 A. I'm sorry, did -- appeal that issue?
 24 Q. Mm-hmm (affirmative response).
 25 A. I don't know.

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C E R T I F I C A T E

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I, Mark D. Krska, a Certified Shorthand Reporter for the State of Oregon, do hereby certify that BRENDA ROCKLIN personally appeared before me at the time and place mentioned in the caption herein; that the witness was by me first duly sworn on oath, and examined upon oral interrogatories propounded by counsel; that said examination, together with the testimony of said witness, was taken down by me in stenotype and thereafter reduced to typewriting; and that the foregoing transcript, Pages 4 to 70, both inclusive, constitutes a full, true and accurate record of said examination of and testimony by said witness, and of all other oral proceedings had during the taking of said deposition, and of the whole thereof.

Dated at Portland, Oregon, this 17th day of December, 2007.

Mark D. Krska
Mark D. Krska

CSR No. 90-0215

