

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

URSULA WHITE, BRUCE N. REITER,
and MARGARET RETZ,)
Plaintiffs,)
vs.)
PUBLIC EMPLOYEES RETIREMENT)
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.)

Case No.
0404-04118

DEPOSITION OF MICHAEL JAY PITTMAN
Taken in Behalf of the Plaintiffs
Tuesday, December 4, 2007

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1 BE IT REMEMBERED THAT, the deposition of
2 MICHAEL JAY PITTMAN was taken before MARK D. KRASKA, a
3 Certified Shorthand Reporter for Oregon, on Tuesday,
4 December 4, 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 APPEARANCES:

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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

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1 MICHAEL JAY PITTMAN
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. Mr. Pittman, have you been deposed before?

9 A. Yes, but it was a long time ago.

10 Q. Okay. Well, let me just kind of run through the
11 procedure a little bit so that you're comfortable with
12 what we're doing.

13 I will be asking a series of questions. The
14 court reporter, obviously, takes down everything that we
15 both say, ends up getting printed up in a little booklet
16 that looks like this, and that is something that the
17 parties can use at trial or hearing or for various other
18 purposes. So it's important that you have the
19 opportunity to testify and be able to accurately answer
20 my questions, and so therefore it's very important you
21 and I communicate well. So if at any time you feel like
22 you don't fully understand my question, ask me to
23 rephrase or repeat or do whatever we need to do to make
24 sure we're communicating well.

25 Your attorney's here, if you want to take a

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Hartman Affidavit
Exhibit 26, p. 1 of 4

1 break and discuss something with him you are at liberty
2 to do so. We ask that you answer the pending question
3 unless what you want to talk to him about is an
4 attorney-client privilege issue, then it's appropriate
5 to go ahead and talk with him before completing your
6 answer.

7 And the final thing is you have to say yes
8 or no, because nods or shakes of the head are very, very
9 hard for the court reporter to keep track of. So can
10 you do that?

11 A. I can do it to the best of my ability.

12 Q. Thank you. I believe you were appointed, along
13 with an entirely new board, to the PERS board September
14 of '03; is that correct?

15 A. That was our first board meeting, September of
16 '03.

17 Q. Can you -- before we talk about the board and the
18 issues that were before the board, can you tell me just
19 a little bit about your professional background, perhaps
20 starting with current employment and just working back.
21 And I'm just looking for very general background
22 information.

23 A. I'm currently a general business consultant for
24 large employers, I focus on human resource issues such
25 as organizational design, organizational development,

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1 executive coaching. And for small employers I work on
2 really the whole myriad of issues that really impact
3 earnings improvement to operational processes, etc.

4 But most of my career was spent in a large
5 company environment. I started out in the safety and
6 health field, but I quickly moved into employee benefits
7 and compensation. Had responsibility for a number of
8 different pension plans, both in the U.S. and ultimately
9 in the UK as well, both defined benefit plans and
10 defined contribution plans, as well as the general human
11 resource functions.

12 Q. So prior to becoming a member of the PERS board
13 you had had a broad experience in terms of dealing with
14 pension issues, private sector pension issues, in a
15 variety of circumstances?

16 A. That's correct, private sector issues alone.

17 Q. Would I be correct in believing that prior to the
18 appointment to the PERS board you would not have had any
19 particular knowledge about Oregon's PERS system?

20 A. Only what I had read in the newspaper.

21 Q. And we all know how dangerous that is to rely on
22 to -- anyway, I won't go there.

23 Did you talk to the governor about accepting
24 an appointment to the PERS board, Governor Kulongsoski?

25 A. I did.

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1 Q. Did you talk with the governor about any of the
2 issues that were either before the board or would come
3 before the board if you took the appointment?

4 A. Just in a broad, general fashion.

5 Q. Can you give me some sense of the, again, the
6 broad topics that you recall being covered?

7 A. Well, the environment at the time that he was
8 asking me to consider being -- submitting my name for
9 consideration as a board member was that the reform
10 legislation I believe had just been passed, and that
11 implementing that reform legislation, along with dealing
12 with a myriad of other issues, would be, you know, the
13 primary task of the board, along with all the things
14 that the board would be expected to do in their
15 fiduciary duty, such as running the agency, managing the
16 plan, etc. So it was very -- what we talked about, that
17 it was very high level.

18 Q. Focusing for the moment on the 2003 legislation,
19 I don't think it was any surprise that either a legal
20 challenge either was pending or would be pending to that
21 reform legislation.

22 Did you have the opportunity to discuss any
23 -- or discuss with the governor whether the PERS board,
24 at least in his opinion, should take some position on
25 any litigation involving the 2003 reform legislation?

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1 A. I did not.

2 Q. Okay. The topic simply didn't come up?

3 A. Not that I recall. I mean the topic was really
4 about the governor trying to convince me to submit my
5 name for consideration.

6 Q. I've asked some others, did he tell you it was
7 only one meeting a month, it wasn't that big of deal?

8 A. I think he acknowledged it would be a challenge.

9 Q. Switching topics on you. Do you recall whether
10 Mardi Saathoff, or Saathoff I guess is the correct
11 pronunciation, ever attended a PERS board executive
12 session?

13 A. I know Mardi attended PERS board meetings, but I
14 don't recall -- I don't recall whether she attended
15 executive sessions.

16 Q. When people say they don't recall, that's
17 sometimes a little bit ambiguous. Are you telling me
18 you don't remember one way or the other or you have a
19 positive recollection that she did not attend?

20 A. I'm telling you I don't remember one way or the
21 other.

22 Q. Okay. Do you recall whether any other member of
23 the governor's staff has ever attended a PERS board
24 executive session?

25 A. Again, I don't remember whether they would attend

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1 At the end of the day that didn't
2 particularly influence my thinking.
3 BY MR. HARTMAN: (Continuing)
4 Q. When you say that you, you meaning the board,
5 when you say that the board balanced out things and
6 looked at the interest of all the stakeholders, what did
7 you perceive was the advantage to members in proceeding
8 with this settlement, City of Eugene settlement?

9 A. Well, a number of things. One is that I think
10 it's important for members to have a system that has
11 stability as well as integrity and transparency. And
12 this was an opportunity to have a situation where in
13 fact members' accounts would not be adjusted. If you
14 recall, the Lipscomb decision was going to adjust member
15 accounts.

16 I also think that for all of those
17 individuals that wanted to retire and wanted an estimate
18 about what their benefit would be, wanted some surety
19 about what the future would look like, wanted an
20 accurate estimate, wanted benefit payments that they
21 could count on, I think that there was just a number of
22 reasons why this settlement made sense to me from an
23 overall system perspective.

24 Q. One of the things that the settlement agreed to
25 do was to drop the appeal that was then pending that had

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1 been made by the PERS board, I think at that time was
2 actually in the Supreme Court, the appeal of the City of
3 Eugene case. Do you recall that as being part of the
4 settlement?

5 A. (Nods head).

6 Q. Do you have any estimate of how many dollars were
7 at issue in that appeal? In other words, had the
8 Supreme Court disagreed with Judge Lipscomb and said no,
9 we don't think you got these right and reversed his
10 opinion, do you have a sense of the dollar impact on
11 members that overturning Judge Lipscomb's decision would
12 have meant?

13 A. I'm not going to venture a guess right now.

14 Q. Okay. Was it your impression it was in excess of
15 a billion dollars? I mean if you don't know, you can
16 just tell me you don't know, but --

17 A. Yes.

18 Q. Okay. So did you feel that was a potentially
19 pretty high price for members to pay to achieve
20 stability, integrity and transparency?

21 MR. MALKIN: I'm going to object to that
22 question as argumentative.

23 BY MR. HARTMAN: (Continuing)

24 Q. You can answer if you understand it.

25 A. I have to say I don't really appreciate the way

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1 the question is phrased because I didn't view our role
2 and our obligation to do simply what all members wanted
3 us to do, nor to do what all employers wanted us to do.
4 So was it a significant decision? Yes. But I think it
5 was an appropriate decision.

6 Q. Okay. Let's turn back to Exhibit Number 5, if we
7 may. And in essence, the board minutes indicate there
8 was a settlement in principle which was voted upon and
9 then some information about the settlement was announced
10 at this particular meeting.

11 Was it your understanding, as you recall the
12 terms of the settlement agreement, that this list of the
13 things that had been agreed to was comprehensive, in
14 other words, did it contain all the items that you
15 remember being part of the settlement?

16 A. Yes, it included the major items. It didn't
17 include the implementation of all of these items. For
18 instance, the actual methodology for how some of this
19 would be accomplished was not specifically included and
20 discussed. We talked about it would be a challenge for
21 the actuary forever, for instance. However, I would say
22 that these bullet points represented the significant
23 points of the settlement.

24 Q. Okay. Was there a discussion with the PERS
25 actuary prior to January 26, 2004 about what the

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1 implications of this agreement might be from an
2 actuarial perspective?

3 A. I don't recall. You know, we had a lot of
4 actuarial data in front of us about, you know, the
5 challenges facing the agency, but I don't recall whether
6 we specifically drew Mark Johnson into this discussion
7 prior to the settlement. It would not -- again,
8 speculation, but it would not have surprised me if we
9 did not.

10 Q. Can you turn to the back of that exhibit, and
11 there's a press release, again, which describes the
12 settlement. And I don't really have any questions about
13 the substance of the press release, but do you recall
14 who prepared it?

15 A. Well, press releases have historically been
16 prepared by staff, so I suspect that's who prepared
17 this. And who on staff, I would not know.

18 Q. Okay. Once the board had agreed to this
19 agreement in principle, which is reflected in the
20 minutes of Exhibit 5, was the task of negotiating an
21 actual settlement document delegated to the subcommittee
22 consisting of Eva Kripalani and Brenda Rocklin?

23 A. It was.

24 Q. Did -- and were they also given authority to sign
25 the agreement, assuming they were able to negotiate an

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C E R T I F I C A T E

I, Mark D. Krska, a Certified Shorthand Reporter for the State of Oregon, do hereby certify that MICHAEL JAY PITTMAN 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 37, 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

