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

URSULA WHITE, BRUCE N. REITER, and
MARGARET RETZ,

Plaintiffs,

v.

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,

v.

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

Case No. 0404-04118

PLAINTIFFS' MOTION FOR ORDER
STRIKING DECLARATIONS OF
SHARON RUDNICK

Case No. 0411-11848

1 BOARD, and ROGUE RIVER VALLEY)
IRRIGATION,)
2)
Intervenors.)
3

4 Oral Argument Requested: Yes.

5 Court Reporting Service Requested: No.

6 Estimated Time for Argument: 5 minutes.

7 Plaintiffs move the court for an order striking paragraph 3 and paragraph 10 of the
8 June 5, 2008 Declaration of Sharon Rudnick and the June 20, 2008 Supplemental Declaration
9 of Sharon Rudnick. Plaintiffs rely upon the points and authorities stated herein.

10 POINTS AND AUTHORITIES

11 ORCP 47D provides that summary judgment affidavits and declarations shall be made
12 on personal knowledge, and shall set forth facts as would be admissible in evidence.

13 Paragraph 3 of the Rudnick declaration is not a statement of facts, but rather legal argument.

14 Paragraph 3 states:

15 "3. Prior to the settlement agreement, the *City of Eugene* petitioners
16 were entitled both to have PERB reallocate 1999 Fund earnings
17 according to the *City of Eugene* judgment, thereby reducing the
18 amount of 1999 Fund earnings credited to Tier One members' regular
19 accounts to 11.33 percent, and to have PERB implement the
20 provisions of the 2003 PERS Reform Legislation affecting the
21 crediting of the guaranteed interest rate to those accounts and
suspending retiree cost of living adjustments ("COLAS"). In the
settlement agreement, the petitioners agreed to accept either the
reallocation of 1999 Fund earnings required by the *City of Eugene*
judgment, or the implementation of the provisions of the 2003 PERS
Reform Legislation intended to correct for the over-crediting of 1999
earnings."

22 Ms. Rudnick's statement is one of opinion, not fact, and should be stricken from the summary
23 judgment record.

24 The court should also strike paragraph 10 of the June 5, 2008 Declaration and
25 paragraphs 2 and 3 of the June 20, 2008 Supplemental Declaration. Local governments claim
26 they incurred fees and costs in the amount of \$1,006,049.60 for the *City of Eugene* case.

1 However, local governments refuse to produce their time and billing records from which this
2 court can determine:

3 1) whether the amount claimed included costs and services unrelated to the *City of*
4 *Eugene* case, such as work on legislative matters and advocating for the public employers
5 before PERB;

6 2) whether any effort was made to allocate the amount claimed between successful
7 and unsuccessful claims brought in the *City of Eugene* case.

8 3) the extent to which the claim for costs included items not recoverable under
9 ORCP 68.

10 Dated this 7 day of July, 2008.

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12 
13 _____
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18 Of Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PLAINTIFFS' MOTION FOR ORDER STRIKING DECLARATIONS OF SHARON RUDNICK upon the following persons at the following addresses:

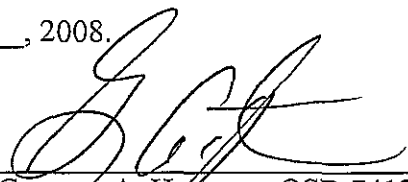
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Of Attorneys for Intervenor State

- by the following indicated method or methods:
- by **mailing** a copy thereof in a sealed, first-class postage-paid envelope, addressed to the attorney(s) listed above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
 - by **hand delivering** a copy thereof to the attorney(s) listed above, on the date set forth below.
 - by **sending via overnight courier** a copy thereof in a sealed, postage-paid envelope, addressed to the attorney(s) listed above, on the date set forth below.
 - by **faxing** a copy thereof to the attorney(s) at the fax number(s) shown above, on the date set forth below.

Dated this 7 day of July, 2008.



Gregory A. Hartman, OSB 74128
Aruna A. Masih, OSB 97324
Of Attorneys for Plaintiffs

CERTIFICATE OF SERVICE