



News from the RPEA Executive Board

Hello!

As always, I am writing today on behalf of the Executive Board (Board) of the Retired Public Employees of Alaska (RPEA). Through this newsletter, I am providing a general response on the Board's behalf to letters board members have received both personally and through the RPEA office from RPEA members and other retirees who are concerned about the Board's efforts to resolve through mediation the lawsuits in which the RPEA is the plaintiff or petitioner.

RPEA members should know, in a recent development, and after consultation with Susan Orlansky, its attorney in the Dental, Vision and Audio (DVA) case, that the RPEA Executive Board has decided to attempt to settle that remanded DVA case, as well. We are combining hopeful resolution of the DVA case with the mediation already scheduled on February 11, 2022, for the Medical Diminishment (MD) case.

The Board is well aware that some members are opposed to mediation, but as I previously stated in an earlier newsletter, opting to attempt mediation does not close out the option of continuing on to trial (or returning to the superior court in the DVA case) if our efforts at a mediated settlement fail. Indeed, if the MD case mediation is not successful, please know that the MD trial is now scheduled to begin June 13, 2022.

However, via circulating misinformation, other issues have been raised regarding RPEA's mediation efforts, issues that the Board wants to address head on. I am highlighting below those areas of most significant concern.

- Both cases will be mediated by retired Judge Elaine M. Andrews, a highly respected judge who served many years as presiding judge of the Superior Court's Third Judicial District. Criticism of Judge Andrews and personal attacks against her for her willingness to attempt to help the State and RPEA reach agreement in these matters reflects poorly on retirees in general, and the RPEA, in particular. RPEA members and retirees should be aware that texts or emails to Judge Andrews cannot and will not be read as she is required to maintain her status as a neutral third party prior to and during mediation. It

would be unethical for her to review any letters, emails, or texts related to the two matters before her for mediation.

- This same precaution is noted for letters to Superior Court Judges Zeman or Morse or the Alaska Supreme Court bench: written or electronic correspondence from RPEA members or retirees will not be read.
- The purpose of mediation in each of these cases is to determine whether the State is willing to attempt to redress the diminishment in retiree benefits for which these cases were originally filed, saving each side the expense of trial and appeals (and potential remands), while attaining more immediate and certain relief for retirees rather than continuing with years of litigation with risky and uncertain outcomes. It is that simple.
- As you all know, in *Duncan v. RPEA*, 71 P.3d 882 (2003), the Alaska Supreme Court held that these constitutionally protected “retirement benefits” specifically mentioned in Article XII, Section 7 of the Alaska Constitution included health plan benefits.
- And on January 21, 2022, the Alaska Supreme Court decided in *Holland v. RPEA*, Slip Op. 7581 (the DVA case) that retired public employees’ elective benefits are also constitutionally protected from diminishment (though, as noted in our previous newsletter, the Court did remand the case to the trial court to determine whether there was any actual diminishment).
- These constitutional protections are all firmly established — and legally binding — by the language of the Alaska Constitution itself and the precedent-setting *Duncan* and *Holland* decisions of the Alaska Supreme Court.
- The important bottom line here: nothing in either the DVA or MD case, whether resolved by trial, appeal, or mediated settlement, can negate the fact that Alaska public retiree medical benefits are constitutionally protected.
- Both the medical diminishment case and the now remanded DVA case were filed by the RPEA to clarify and rectify specific diminishments of public employee retiree benefits caused by plan changes made by the State in 2014. *That remains the objective of the RPEA, whether achieved by mediated settlement or trial.*

I know there is a small group of RPEA members who are urging retirees to write to the judges in these cases, and/or the Mediator, and/or the RPEA Board, and/or legislators, and/or local newspaper editorial boards. But please know, if these letters contain the same ill-informed allegations and exaggerations contained in the letters sent recently to Board members, the misinformation in such letters will discredit the writers and negate any value RPEA Board critics may think these communications have. Further, the tone of these communications, as well as their lack of credible information, is unproductive. At this stage in these difficult negotiations, a sudden demand for transparency is very problematic for all concerned.

Please remember that the RPEA Executive Board is comprised of retired public employees and is actively working in the best interests of all retirees, current and future. We also must remind members that Sharon Hoffbeck no longer represents the RPEA nor is she empowered to speak for the RPEA. I ask that you understand that the Board is doing the very best that it can under difficult circumstances. In the meantime, please know that the Board will continue to explore mediated settlements of both the DVA and MD cases.

Thank you for your attention to this lengthy update.

Randall Burns
RPEA President
February 1, 2022