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January 23, 2004

*BY EMAIL AND FIRST CLASS MAIL*

James Baker  
Orrick Herrington et al.  
400 Sansom Street  
San Francisco, CA 94111

Re: Strunk v. PERB; Consolidated Cases  
Our File No.: 5415-247

Dear Jim:

The purpose of this letter is to memorialize the several discussions we have had over the past several weeks in regard to the role that the PERS board is taking in the above litigation. The lawsuit raises the issues of whether the 2003 legislation constitutes either impairments or breaches of PERS pension contracts. No actions of the PERS board are being challenged in this case except to the extent necessary to preserve our ability to gain full relief for what we perceive to be inappropriate action by the 2003 Legislature.

One of the fundamental principles of trust law is that trustees are obligated to administer the trust consistently with the legal documents which establish that trust. In our view the PERS board has an absolute obligation to administer the PERS fund consistently with all the changes made by the 2003 Legislature unless and until a court orders otherwise. However, the PERS board has gone far beyond the task of implementing the 2003 legislative changes. Rather than taking a position of neutrality in the pending litigation, the PERS board has decided to take the aggressive posture of supporting the 2003 legislation and arguing that it is neither unconstitutional nor a breach of contract. The PERS board is utilizing trust funds to assert a position in court which is contrary to the best interests of the members. Even if the individual members of the PERS board felt that the legislation was justified or even necessary, that is not an ample reason for expending trust fund money to support the 2003 legislation. In short by assuming that position and by expending trust funds to support it I believe the board is in clear violation of its fiduciary obligation to use the assets of the fund solely and exclusively for the benefit of the members.

I note that there is a PERS board meeting set for next Monday which includes an executive session concerning the pending litigation. I would appreciate your bringing my views to the attention of the PERS board.

Yours very truly,

  
Gregory A. Hartman

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