

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALINA BOYDEN and
SHANNON ANDREWS,

Plaintiffs,

v.

Case No. 17-CV-0264

STATE OF WISCONSIN DEPARTMENT
OF EMPLOYEE TRUST FUNDS, et al.,

Defendants.

**STATE DEFENDANTS' REPLY IN SUPPORT OF ITS ADDITIONAL
PROPOSED FINDINGS OF FACT IN SUPPORT OF ITS
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

Defendants State of Wisconsin Department of Employee Trust Funds (ETF), State of Wisconsin Group Insurance Board (GIB), Robert J. Conlin, Michael S. Farrell, Stacey Rolston, Charles Grapentine, Waylon Hurburt, Theodore Neitzke, J.P. Wieske, Bob Ziegelbauer, Jennifer Stegall, Francis Sullivan, Herschel Day, and Nancy Thompson (the "State Defendants") submit the following additional proposed findings of fact in support of their supplemental motion for summary judgment. These proposed findings begin at entry 176, so that they run consecutively with State Defendants' original proposed findings (Dkt. 88) and additional proposed finding of fact (Dkt. 121), which ended at entry 175.

176. Theodore Neitzke attended the GIB's December 30, 2016, meeting by telephone and participated in a closed session with legal counsel. (Dkt. 83-13:1-3.)

Response: No dispute.

REPLY: Undisputed.

177. The closed session portion of the December 30, 2016, GIB meeting convened at 3:13 p.m. (Dkt. 83-13:3.)

Response: No dispute.

REPLY: Undisputed.

178. Neitzke departed the December 30, 2016, GIB meeting at 5:00 p.m. (Dkt. 83-13:3.)

Response: No dispute.

REPLY: Undisputed.

179. The closed session of the December 30, 2016, GIB meeting did not end until 6:24 p.m. (Dkt. 83-13:3.)

Response: No dispute.

REPLY: Undisputed.

180. After the conclusion of the closed session of the December 30, 2016, GIB meeting, the meeting went back into an open session and there was a vote by GIB to reinstate the Exclusion. (Dkt. 83-13:3.)

Response: No dispute.

REPLY: Undisputed.

181. Because he left the December 30, 2016, GIB meeting during the closed session, Neitzke was one of the two members who were absent and did not vote to reinstate the Exclusion in open session. (Dkt. 83-13:3.)

Response: No dispute that Defendant Neitzke did not cast a vote on reinstating the Exclusion in open session, but disputed that Neitzke's absence is similar to Bonnie Cyganek, the other GIB member who did not cast a vote. Ms. Cyganek did not attend the meeting at all and was not present during the closed session. In contrast, Defendant Neitzke was present during the closed session discussion. (Dkt. # 103-19:4). There is no indication in the minutes that he spoke against reinstating the Exclusion. In addition, Defendant Neitzke did articulate opposition to and cast a vote against removing the Exclusion at the May 24, 2017 GIB meeting. (Dkt. # 103-22:10; Dkt. # 68, Ellinger Dep. 152:19-22).

REPLY: Undisputed that Defendant Neitzke left the December 30, 2016, GIB meeting during the closed session, did not vote to reinstate the Exclusion in open session, and that Bonnie Cyganek, another GIB member, was absent from, and did not vote to reinstate the Exclusion at, the December 30, 2016, GIB meeting. Defendants agree that Neitzke was not absent from the entirety of the May 24, 2017, GIB meeting. The Court may accept this proposed finding of fact as amended.

Dated this 4th day of September, 2018.

Respectfully submitted,

BRAD D. SCHIMEL
Wisconsin Attorney General

s/ Colin T. Roth
COLIN T. ROTH
Assistant Attorney General
State Bar #1103985

STEVEN C. KILPATRICK
Assistant Attorney General
State Bar #1025452

JODY J. SCHMELZER
Assistant Attorney General
State Bar #1027796

Attorneys for State Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1792 (SCK)
(608) 264-6219 (CTR)
(608) 266-3094 (JJS)
(608) 267-2223 (Fax)
kilpatricksc@doj.state.wi.us
rothct@doj.state.wi.us
schmelzerjj@doj.state.wi.us