

**CITY OF FLINT EMPLOYEES' RETIREMENT SYSTEM**  
**Board of Trustees Special Meeting Minutes**  
**Hearing for Sheila Burns**  
**Tuesday, April 19, 2011**

A special meeting of the Board of Trustees of the City of Flint Employees' Retirement System was held on Tuesday, April 19, 2011, at 9:00 a.m. in the Committee-of-the-Whole Room, 3<sup>rd</sup> Floor, City Council Chambers, at City Hall, with the following in attendance:

*TRUSTEES & ALTERNATES* Douglas Bingaman – Chair; Denise Bingaman, Mary Bland, Debra Bridges, Gregory Eason, Robert Erlenbeck, Scott Kincaid, Mark Kovach, Sherry Murphy, Patricia Ramirez, Mark Stratman

*ABSENT* Bryan Bond, Duane Kelley, Sheldon Neeley, Michael Townsend, Cass Wisniewski

*ALSO PRESENT* I'Lanta Robbins, Attorney for Board of Trustees  
Suzi Bye, Retirement & Benefits Manager  
Julie Sadler, Staff Assistant to FERS  
L. David Lawson, Attorney for City of Flint  
Sheila Burns, Plaintiff  
Gregory T. Gibbs, Attorney for Sheila Burns  
Alec S. Gibbs, Attorney for Sheila Burns  
Claudia M. Weekly, Ripka Boroski

**1. CHAIRPERSON CALLS THE MEETING TO ORDER**

Acting Chair Douglas Bingaman called the meeting to order at 9:07 a.m., stating that the purpose of the meeting was to hold a hearing, at the request of Sheila Burns, regarding changes made to her pension.

**2. ROLL CALL (Attendance)**

Roll was called and members were present or absent as recorded above.

### **3. MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD**

There were no members of the public present who wished to address the Board.

### **4. APPROVAL OF AGENDA**

**A motion was made by Scott Kincaid, supported by Denise Bingaman and Mary Bland, to approve the agenda as presented at the meeting. The motion carried unanimously.**

### **5. HEARING – SHEILA BURNS**

**Attorney Lawson** stated that he and Attorney Gibbs had discussed some preliminary issues, for the record: 1) In the lawsuit that gave rise to the hearing were constitutional issues and equitable issues raised by Miss Burns as to why her pension should not be corrected. They agree that those constitutional and equitable issues will not be decided by the Board but rather will be decided by a Court, if necessary. 2) Who will participate in this hearing? Mr. Erlenbeck is present but will not participate as a member of the Board. Mr. Lawson also stated that he believes there may be an issue of a conflict of interest if Ms. Bland participates as a voting Board member because she is President of the United Retired Government Employees (URGE), which is a named plaintiff in the lawsuit, giving her a direct interest in the outcome of the hearing and related litigation.

**Attorney Gibbs** objected to the removal of the retiree representative, Ms. Bland, from participation as a Board Member. The City of Flint and the Board of Trustees are parties to the lawsuit, as well as URGE and Ms. Burns. The fact that they are parties to the lawsuit does not mean that they have such an interest in the outcome that they would be biased and bias would be the only reason for removal. Mr. Erlenbeck was removed because he had an actual stake in the decision-making process, with respect to the correction, since he investigated whether or not a correction in the record should be made and formed the opinion that the correction should be made. He will testify in support of his opinion and they are challenging that opinion. This makes him biased because he would have to evaluate the credibility of his own testimony when making a decision in the case.

This does not hold true with respect to Mary Bland or any other of the representatives that represent the City or the Board because they are not directly involved in the question of whether or not a correction should be made. His position is that, for that reason, Ms. Bland should not be removed.

The second reason Ms. Bland should not be removed is that she is the retirement representative on the Board. Her Alternate, Sherry Murphy, will be called as a witness to testify about practices that occurred in 1998 with respect to the interpretation of the ordinance in question. With Ms. Murphy being directly involved in the case by giving testimony and, therefore, unable to vote on the Board, and if Ms. Bland is not allowed to vote, the result would be that the retiree representative would be totally eliminated from the Board, which they believe is unnecessary, unfair and incorrect.

**Chairman Bingaman** asked Mr. Gibbs if he felt that there might be a conflict of interest since Ms. Bland is the President of URGE which retained his services to represent Miss Burns?

**Attorney Gibbs** stated that he did not, any more than that there's a conflict of interest that there are designated representatives on the Board for the City of Flint who have retained Attorney Lawson to represent their interests.

**Attorney Robbins** pointed out that the Board's responsibility is to look into whether or not a conflict of interest does exist. Under Roberts Rules of Order, it states that no member shall vote on a question to which that person has a direct or pecuniary interest. The question, then, is whether or not the President of URGE, who is a party in the lawsuit against the Board, would have a direct interest in that vote. If that's the case, then the member should not vote or participate. Otherwise, the Board would be able to make a decision as to whether or not that person does vote.

**Mary Bland** stated that she does not believe it is appropriate to remove her from voting for the hearing as there was a previous hearing for Ms. Burns at which John Balzer served on the Board and voted, even though he was Vice President of URGE, and his participation was not challenged. She questioned whether there was a direct interest on the part of Denise Bingaman and Douglas Bingaman and whether they should be allowed to vote. She stated her belief that the Judge's order was only for those that had an interest in making the decision. Although URGE funds the lawsuit, she has had no part in the lawsuit strategy, etc., and previously informed Attorney Gibbs that when she sits on the Board she must vote as a Board Member. Also, if neither she nor Sherry Murphy can sit as a voting member, 1600 retirees are denied representation in the matter.

**Attorney Gibbs** stated that Denise Bingaman was a witness in a previous case subject to his cross-examination and he was unaware that she would be sitting on the Board. He questioned whether she can participate, based on her involvement in the case.

**Attorney Lawson** stated that her participation in a different case has nothing to do with this case.

**Attorney Gibbs** asked whether Ms. Bingaman participated in any way with respect to a finding of a correction or an investigation as to whether a correction was needed in this case. If so, she should be disqualified for the same reasons that Mr. Erlenbeck would be disqualified.

**Denise Bingaman** stated that she was not involved in finding errors. Her involvement was in reviewing the records for the purpose of auditing calculations, not to render an opinion or participate in a decision-making capacity.

**Attorney Gibbs** stated that they would take the position that, because Ms. Bingaman is involved with respect to this particular case, even in that limited amount, she should not be able to sit on the Board.

**Scott Kincaid** asked Attorney Robbins, as the Board's attorney, how it was decided that Mr. Erlenbeck could not participate as a voting Board Member.

**Attorney Robbins** stated that there was litigation regarding the Oz Kelly case that went to Judge Farah and, on remand, the Judge ordered that Mr. Erlenbeck could not participate because he was a witness and a voting member of the Board at the same time. That was a separate case and doesn't necessarily mean that in every case he cannot be a participant. However, if he is going to testify, then he cannot vote.

**Scott Kincaid** stated that, if the Board rules on who can/cannot vote and holds a hearing and makes a decision in this case, the decision could be challenged before the Judge based on who the voting members were, rather than on how they voted. The Judge could then remand the case back to the Board, with different requirements as to who can/cannot vote, and a new hearing would have to be held. Therefore, he believes that the Court should be asked to determine in advance who the voting members of the Board should be, in this and other cases, and then a hearing can be held accordingly.

Discussion followed.

**Attorney Lawson** asked why the question was raised that Mr. Bingaman should be disqualified from voting, other than the fact that he is Denise Bingaman's husband.

**Douglas Bingaman** stated that he is the City Treasurer; however, his position has no responsibilities for reviewing retirement files or decision-making capacity on retirement issues.

**A motion was made by Scott Kincaid, supported by Patricia Ramirez, to have the issue regarding which Board Members can vote at hearings settled before the Court prior to moving forward with this hearing.**

**By a roll call vote, the motion carried 8 to 0:**

Mary Bland - Yes	Douglas Bingaman - Yes
Gregory Eason - Yes	Patricia Ramirez - Yes
Debra Bridges - Yes	Scott Kincaid - Yes
Denise Bingaman - Yes	Mark Stratman - Yes

**Douglas Bingaman** stated that the motion carried.

## **6. OTHER BOARD BUSINESS**

There was no other business brought before the Board.

## **7. ADJOURNMENT**

**A motion was made by Scott Kincaid, supported by Patricia Ramirez, to adjourn the meeting at 9:22 a.m. The motion carried unanimously.**

**Michael A. Townsend**  
**Secretary**