

CITY OF FLINT EMPLOYEES' RETIREMENT SYSTEM

BOARD OF TRUSTEES SPECIAL MEETING

A special meeting of the Board of Trustees of the City of Flint Employees' Retirement System was held on Tuesday, May 11, 2004, in the New Committee-of-the-Whole Room, City Council Chambers, with the following in attendance.

TRUSTEES & ALTERNATES Daniel Hall – Chairperson, Daniel Coffield, Peter Dobrzeniecki, Darnell Earley, Robert Erlenbeck, James Goodin, Mark Horrigan, Janice Kehoe, Sandra Kidd, Amy Lindman, Donald Phillips, Robert Rosenberger, Edward Taylor, Cass Wisniewski

ABSENT Alvern Lock, Georgia Steinhoff

ALSO PRESENT Habeeb Ghattas, Attorney for the Retirement Board

1. CHAIRMAN CALLS THE MEETING TO ORDER

Chairman Daniel Hall called the meeting to order at 1:10 p.m. He noted that the original meeting scheduled for this date and time was a money manager review meeting; however, there were some conflicts with Wellington and Wentworth Hauser being in attendance and making presentations today. The special meeting was originally planned for 9:00 a.m., but was subsequently changed to 1:00 p.m. when the money manager review meeting was cancelled. The purpose of the special meeting is to discuss issues related to the potential transfer to MERS of certain Hurley Medical Center employees' pensions.

2. MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD

There were no members of the public wishing to address the Board.

3. TRANSITION FROM FERS TO MERS

Chairman Daniel Hall opened the floor for discussion.

Ed Taylor referenced the May 3, 2004, Gabriel, Roeder, Smith & Company (GRS) letter to Chairman Daniel Hall of FERS. The letter states that GRS hasn't received all of the data needed in order to perform the actuarial calculations requested for the potential transfers. The letter also recommends that the Board hire an independent actuary to review their numbers upon completion. He noted that he was in full agreement that these things need to be done and that the timing of the process should not be rushed, but all steps should be completed in order, so that the Retirement System is properly protected.

Dan Coffield stated that there were several issues he would like to mention:

- 1) In conferring with MERS officials they indicated that, although it is best to make a transfer at the June 30 year-end, the transfer could be made at any month end. This alleviates his concern that the transfer would have to wait a year if the June 30, 2004 year-end transfer date could not be met.
- 2) He is in agreement with Councilman Taylor's comments that the transition cannot be done until there are accurate numbers that have been verified by an independent actuary.
- 3) Larry Langer, of GRS, has indicated that he is waiting for further information from the City of Flint, from Hurley Medical Center (HMC) and from Northern Trust. Mr. Langer stated that, three weeks after all information is received, the calculations should be completed. Dan noted that it is normal for Northern Trust to provide to GRS the December 31 investment information in May. He also noted that HMC and the City are working together on the data transfer and will have it completed as soon as possible.
- 4) Before she left on vacation, Georgia Steinhoff told him that she had spoken to Sandy Rodwan, of Rodwan and Nichols. Their actuarial firm has experience with this type of actuarial review and has agreed to perform the independent review for FERS.
- 5) The resolution to transfer data was tabled at the last meeting; however, later in the meeting a second resolution passed authorizing GRS to make the calculations, once they receive the data, and then share their calculations with the FERS Board (not MERS) and an independent actuary. GRS must calculate the liability for each individual who is a member of one of the groups who wish to transfer, based on their rate of compensation and years of service. Then the liability for every person to be transferred must be added together to determine the amount of the transfer to MERS.

- 6) All potential issues related to the resolution to transfer members and funds were to be identified and placed on the record at today's meeting so they can be simultaneously addressed, instead of waiting until all of the actuarial work is done. For example, how will the money be taken from the Fund? That issue could be given to the Investment Committee to investigate. What are the tax implications? That issue would be referred to legal counsel.

Discussion followed.

Dan Coffield and Bob Erlenbeck reported that the preparation of information for the actuary is ongoing between Hurley and the City of Flint. The April 2003 payroll from Hurley wasn't recorded correctly and is being reconstructed. Bob noted that the City staff is working with Hurley to get all information needed in order to calculate service credits and to update the retirement savings program. He noted that there are three files that are sent to GRS every year for the actuarial valuations. Within a week of receiving all of the needed information from Hurley, the three files will be updated at the City and then sent to GRS. The three files: 1) City of Flint employees; 2) HMC contributory employees;

3) HMC non-contributory employees. All information must be completed and verified for accuracy through December 31, 2003, which is the date used for calculation purposes in all documents related to the transfer.

Habeeb Ghattas reported that he has been in contact with Mike Moquin, General Counsel for MERS, regarding the tax issues involved in the transfer. He also spoke last week with Meg Hunter, a tax attorney at Dykema Gossett that the Board has retained in the past to review tax qualification issues with regard to the Retirement System. However, she is concerned about the possibility of a conflict of interest: 1) one of the divisions of Dykema Gossett may have worked for MERS; 2) on tax assessment issues, Dykema Gossett deals with a number of municipalities, and she wanted to investigate whether or not the City of Flint was one of those cities. In order to agree to assist FERS with the tax review, neither of these conditions can exist. He is currently awaiting her response. If she is unavailable, he will search for another tax attorney.

Habeeb Ghattas noted that his other concern, as the legal counsel for the Board of Trustees, is the issue of the Emergency Financial Manager (EFM). He has serious reservations as to the authority of the EFM or the HMC Board of Managers to, in effect, amend the Plan so as to allow this transfer. To allow such a transfer, without a specific amendment to the Plan, he believes, is in violation of the law. Although the EFM is purporting to act on behalf of the City, the transfer deals with the assets of the retirement system. Based upon the arguments that the Board, as Plaintiff, filed with the circuit court, it has been his opinion and his advice to the Board that Mr. Kurtz, as EFM, does not have the authority to act with regard to the Retirement System. Since no decision has

been rendered by Judge Yuille to date, the Board authorized him to file a complaint in the Michigan Court of Appeals for a Writ for Superintending Control, which was filed approximately 21 days ago. An answer is expected this week. PERA authorizes a collective bargaining agreement to supercede the Ordinance. To the extent there is a conflict, however, the PERA states that the agreement, in effect, is a Plan Amendment. Although there is a resolution before the Board for their agreement to the contract amendment, there is no specific plan provision. If HMC and the unions and the exempt employees wish to move their pensions, the proper procedures must be followed and, in his opinion, based on current information, those procedures are not in place.

Discussion followed.

Dan Coffield noted the list of issues he has heard so far: a) raising the funds; b) obtaining a tax opinion; c) an amendment to the plan document is needed.

Habeeb Ghattas clarified that the plan document is the ordinance, which raises two issues: 1) The authority of the EFM regarding retirees and exempt employees. 2) The HMC Board of Managers does not have the authority to amend the plan; that responsibility belongs to the City Council. The City of Flint originally established this plan, as a defined benefit trust. If there is to be any plan amendment, it must be made by the City Council. The question, in reviewing the "letters of understanding," is do they rise to the level of a plan amendment? Referring to the discussions of the efforts of the City Council regarding the DB/DC issue, which was very specific in terms of the transfer methodology and how people were to opt out of the system, that, in effect, is a plan amendment. This letter of understanding, in his opinion, does not constitute a plan amendment; it is a statement of intent. However, the proper resolution of this issue would be to refer it to the City Council so they can make the appropriate amendments. Once those amendments are made, and they are in compliance with the law, then the Board can move forward with the transfer.

Habeeb Ghattas also stated that, until a ruling to the contrary is given by Judge Yuille, the EFM's belief (with advice from his legal counsel) is that he is empowered by the State to amend the ordinance. Without a decision from the Judge, he believes that the EFM does not have the authority to authorize the transfer of these assets or to direct an agreement authorizing the transfer of these assets. He does not have the authority to amend the plan. His authority relates to the financial affairs of the City, and his directives and rulings should be limited to the financial affairs of the City. This is a financial concern of the Retirement System, not related to active City dollars, but assets of the Retirement System. In his opinion, only the City Council can legally amend the Retirement Ordinance. Otherwise, he is unwilling to recommend that the Board approve the transfer to MERS.

Dan Coffield read to the Board the section on Page 2 of the MERS Membership Agreement (which Mr. Kurtz signed) the paragraph that stated, "Edward J. Kurtz, the City of Flint's Emergency Financial Manager, in signing this Agreement on behalf of the City of Flint, warrants that he is empowered to enter into this Membership Agreement on behalf of the City of Flint pursuant to his powers under MCL 141.1221, MCL 141.1218, and MCL 141.1219." Further, "The City of Flint hereby designates the Municipal Employees' Retirement System of Michigan as the Pension Benefits Administrator for the following City of Flint Hurley Medical Center current and former employees..." He noted that Mr. Kurtz has signed this document, which was reviewed by his attorneys, and warrants that he is empowered to sign it.

Peter Dobrzeniecki noted that the agreement is between the City and MERS, which technically has nothing to do with the Pension Board. Mr. Kurtz' position is that he can enter into contracts, with MERS or anyone else. What Mr. Ghattas is referring to is the transfer of funds from FERS to MERS, which is a change in the current pension plan. Mr. Kurtz could probably create a new pension plan, if he so chose, in order to participate in MERS. He asked Ed Taylor to comment on whether or not the City Council would be willing to approve an ordinance amendment? If the City Council would vote for it, taking it to Council would be the best way to resolve the issue.

Ed Taylor responded that there are two problems – 1) the needed change in the Retirement Ordinance, and 2) under the amended Senate Bill 773, Mr. Kurtz was given the right to change ordinances. However, does he have the right to change the ordinance that deals with the pension fund? State law says that if a city is going to go into receivership, the State will appoint a receiver to manage that city's finances. It also says that if the same city's pension fund is in danger, a separate financial manager will be appointed for the pension fund. FERS does not have a state-appointed financial manager. However, Mr. Kurtz can do what he wants to do even if the Board doesn't believe it is right. In that case, the Board must decide what to do about it; the majority of the Board has taken the stance that he does not have the right to interfere with pension affairs.

Discussion followed.

Dan Coffield stated that five of the members of the FERS Board were elected to represent either active or retired employees. Hurley employees, who were educated and informed about the issue, voted overwhelmingly either to stay in FERS or to move to MERS. The Board doesn't want to get into the politics between Mr. Kurtz and the City Council. He would hope that a multi-member body, the majority of which is elected by either active or retired employees, would choose to honor the wishes of those employees, and that the elected City Council members would do so, as well.

Mark Horrigan noted that, in his opinion, the unions weren't completely informed when

these decisions were made because the process is being done backwards. The actuarial work should have been done before the unions made a decision. They should have been informed about their assets and liabilities prior to their vote. The City Council could have been informed about the need for an ordinance change before the unions had a vote. At this point, we must proceed systematically and do what needs to be done, but it would have been a lot easier if it had been done in reverse. The unions would have had more information, specifically regarding the assets and liabilities, opinions about Ed Kurtz and City Council issues, etc. So it could be argued that the union votes were made with a certain lack of information.

A discussion followed regarding the status of the two MERS resolutions and the best format for the Board agendas until they are resolved.

Chairman Daniel Hall read to the Board a portion of the proposed letter to go to GRS authorizing the data calculations, with release to FERS and an independent actuary, and requesting additional information on the potential impact on the fund. He and Peter Dobrzeniecki will sign the letter. He noted that the letter was modified by legal counsel to include the word "proposed" before the reference to the joint agreement concerning the transfer of data. He noted that the transition from FERS to MERS will require that the Board deal with many related issues, and the two MERS resolutions should be on the agenda for each meeting, until the process is completed, in order that any new issues can be dealt with and voted on. If there is nothing to discuss at a meeting, the items can be tabled.

Discussion followed.

A motion was made by Dan Coffield, and supported by Amy Lindman, that, simultaneous to data sharing activities, identified issues related to the MERS transfer should be referred, as follows: 1) The Investment Committee is to bring a proposal to the Board regarding where the funds would be raised from and the methodology of the transfer; 2) The Audit Committee is to review the tax issues with the System's auditors, Plante & Moran and FERS Legal Counsel, Habeeb Ghattas; 3) Councilman Taylor, with the assistance of Councilman Horrigan, will work with the City Council regarding an amendment to the Retirement Ordinance to reflect the wishes of Hurley employees.

Upon being put to a roll call vote, the motion carried unanimously.

Habeeb Ghattas reminded the Board that, as Trustees of the City of Flint Employees' Retirement System, every decision must be made in the best interest of the System.

4. MAY REGULAR BOARD MEETING DATE

Chairman Daniel Hall noted that the Regular Board Meeting for the month of May was originally scheduled for May 25. However, there is a date conflict with MAPERS. He requested a motion to change the meeting to May 18th.

Motion made by Amy Lindman, supported by Don Phillips, to change the date of the May Regular Board Meeting from May 25 to May 18, at 1:00 p.m., at City Hall.

Upon being put to a vote, the motion carried unanimously.

5. OTHER BOARD BUSINESS

Don Phillips noted that there are problems with board members not receiving their mail on a timely basis and he requested mailboxes for each trustee in the Retirement office, along with a phone call when they have mail. Bob Erlenbeck stated that he would investigate options for handling board members' mail and report back to the Board.

Don Phillips reported that he will be submitting a report to the Board next month regarding his recent trip to the NCPERS Conference in California. He noted that the Board might be interested in a new investment program he heard about at NCPERS, which is backed by the U.S. Treasury Department, called Treasury Inflation Protected Securities (TIPS), which pays 2% over the inflation rate.

Chairman Dan Hall noted that he also brought some literature back from the NCPERS Trustees workshop for the Board, which he will add to the next agenda packets. Dan commended Don Phillips for his assistance in getting him elected to the National Committee for NCPERS. Don Phillips was elected to the NCPERS protective classification. Dan Hall and Ron Gracia, from Detroit, are the Michigan representatives on the national committee. Dan stated that the NCPERS conference was very valuable and he will be submitting a report to the Board also.

Peter Dobrzeniecki reported that the auditors, Plante & Moran, have completed their field work at the City and prepared a draft report. They should be sending a report to the Board of Trustees shortly. The only change they recommended to the City was that the Death Benefit Fund and the Pension Fund should not be listed on the City's books as if they are one fund.

Don Phillips noted that there was an attorney presentation at NCPERS regarding the importance of checking social security numbers on retirees who have died during the year. Peter Dobrzeniecki noted that this is a big problem for pension systems and, although they do everything they can, deaths are very difficult to catch if the survivor doesn't want to report the death and continues to collect the pension checks, particularly when they live out of state.

The Board discussed the need for a copy of the FY05 budget for the Retirement System.

6. ADJOURNMENT

A motion was made by Ed Taylor, and supported by Don Phillips, to adjourn the meeting at 2:05 p.m.

Upon being put to a vote, the motion carried unanimously.

Respectfully submitted,

Peter Dobrzeniecki
Secretary