

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, December 19, 2006 at 9:00 a.m. in the "Old" Committee-of-the-Whole Room, 3rd Floor, City Council Chambers, at City Hall, with the following in attendance:

TRUSTEES & ALTERNATES Daniel Hall – Chairperson, Douglas Bingaman, Peter Dobrzeniecki, Robert Erlenbeck, Michelle Kirkwood, Donald Phillips, Georgia Steinhoff, Scott Sutter

ABSENT Peggy Cook, Ehren Gonzales, Janice Kehoe (attended briefly, but left due to illness before the hearings were underway), Sandra Kidd, Amy Lindman, Kerry Nelson, Robert Rosenberger, Cass Wisniewski

ALSO PRESENT Denise Bingaman, Retirement Staff
Suzi Bye, Retirement Supervisor
I'Lanta Robbins, Assistant City Attorney/Attorney for the Board
Trachelle Young, City Attorney/Attorney for the Board
Frederic Champnella, Attorney for the City of Flint
Gregory Gibbs, Attorney for Plaintiffs
Jeanmarie Miller, Attorney for Plaintiffs
Deborah Cherwinski, Plaintiff
William O. Kelly, Plaintiff
Sandra Stearns, Plaintiff
Kay Tereau, Plaintiff
Jayne Bachman, Ripka, Boroski & Associates

1. CHAIRPERSON CALLS THE MEETING TO ORDER

Chairman Daniel Hall called the meeting to order at 9:04 a.m. and noted that the purpose of the special meeting was to hold hearings concerning overpayments of pension benefits to four retirees: Ms. Sandra Stearns, Ms. Deborah Cherwinski, Ms. Kay Tereau, and Mr. William Kelly III. He also noted that the hearings would be conducted similar to a court proceeding and that a Court Reporter was present to make a transcript of the hearings. Chairman Hall asked the Board's Recording Secretary, Julie Sadler, to take roll call.

2. MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD

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

3. SPECIAL HEARING FOR KAY TERAU, DEBBIE CHERWINSKI, SANDRA STEARNS AND WILLIAM KELLY.

Chairman Hall asked the Attorney for the Retirees/Plaintiffs, Gregory Gibbs, to make his opening statement.

As part of his preliminary statements, Attorney Gibbs noted that he had previously made three requests, in writing, on behalf of the retirees/plaintiffs:

- 1) That certain board members (as members of City Administration) be disqualified from voting.
- 2) That the City Attorney be disqualified as Board Counsel.
- 3) That the City should have the burden of proof on this issue.

Chairman Hall acknowledged that Attorney Gibbs' arguments in support of those requests had been received, but that the requests had been disqualified/denied. Chairman Hall stated that the burden of proof is on the plaintiffs.

Attorney Gibbs also stated that a previous Assistant City Attorney, Edward Parker, was deposed regarding his knowledge of the settlement agreement involving Mr. Kelly and others in 1997. Mr. Parker asserted attorney/ client privilege, which Attorney Gibbs alleges puts him and his clients in a position of being unable to properly discover what actually happened. He further stated that, since the City has chosen to assert that privilege, any evidence with respect to any attorney opinions should not be allowed to be introduced as evidence.

Attorney Gibbs noted that he had not been provided with a confirmation as to what procedures would be used during the hearing process. He stated that Attorney Champnella confirmed to him, just prior to the start of these hearings, that the procedures provided by Attorney Habeeb Ghattas, who previously represented the Board, are the procedures being used for these hearings. However, Attorney Gibbs stated there was a problem with how the hearings are being conducted because of failure to give them advance notice of the procedures.

Attorney Gibbs' also stated that he had an issue related to the order from Judge Farah directing the Board to conduct a hearing on whether or not the pension benefits can be either revoked or reduced. He asked Attorney Champnella to agree that constitutional issues, equitable issues, and issues involving estoppel are beyond the realm of the Board and would have to be addressed by a Circuit Court. Attorney Champnella agreed.

Attorney Gibbs further stated that he intended to proceed with each case individually, giving an opening statement, presenting testimony and allowing for cross-examination. He also noted that he had exhibit books prepared for distribution to the Board members and attorneys. Chairman Hall stated that the Board would receive the exhibit books;

however, they should have been provided to the Board for review prior to the hearings.

Attorney Gibbs noted that he had requested that subpoenas be issued for the hearings; however, one of the individuals for whom he requested a subpoena, Lisa DeDolph, was not present. He asked that his request for subpoenas be honored.

Chairman Hall called on Attorney Frederic Champnella to make his opening remarks. Attorney Champnella stated that he represented the City of Flint as the defendant in the ongoing litigation with the four plaintiffs, who are represented by Attorney Gibbs. He referenced the Retirement Ordinance, Section 35-42 titled “Correction of Errors.” He also referenced the three-ring binders that were provided to Counsel and the Board Members in August and noted that Executive Summaries would be distributed and reviewed as part of this hearing. The Executive Summaries show the original calculations of the pension benefit amounts for each pensioner, the corrected calculations, and outline the errors found.

Attorney Champnella gave a brief overview of the “Middleton class action lawsuit,” which included plaintiff William Kelly III. He stated that the \$100,000 settlement that each member of the class received should not have been included in any pension calculations. Mr. Champnella stated that, with regard to the testimony of former Assistant City Attorney Edward Parker, the City waives any attorney/client privilege that it has. Mr. Champnella further stated that Robert Erlenbeck would present the summaries of the pension calculation errors which, if they are found to be errors according to the pension ordinance, the Pension Board has certain responsibilities (to correct).

Chairman Hall read the Retirement Ordinance, Section 35-42, “Correction of Errors in Records:”

“Should any change in the records result in any member, retirant or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as practical shall adjust the payment in such manner that the actuarial equivalent of the benefit to which the member, retirant or beneficiary was correctly entitled shall be paid.”

Chairman Hall stated that notebooks had previously been given to the Board and the attorneys that included the relevant documents for these four cases. He directed that the Executive Summaries from the City be distributed to the Trustees and attorneys.

Attorney Champnella mentioned that an opinion letter written by Attorney Habeeb Ghattas was included in the summary. This letter referred to a settlement agreement and the fact that settlement agreements amounts should not be included in the employee’s final average compensation. Also, although the Board will be following the rules previously mentioned, Attorney Champnella stated that Attorney Gibbs would be allowed

to present any information to the Board that he deems appropriate.

Attorney Gibbs objected that the Executive Summary is in the form of an argument and, under the rules that have been referenced, written arguments were to be presented ten days before the hearings. However, he stated he was willing to proceed with the hearings.

Attorney Champnella stated that the Executive Summary is only a listing of the facts that are the basis for the correction of the errors in the pensions.

Chairman Hall stated that the hearings should proceed and asked Mr. Erlenbeck to begin his presentation. Robert Erlenbeck was sworn in and began his review of the Executive Summary of the errors found in the original calculation of Ms. Sandra Stearns' pension benefit.

Attorney Gibbs stated his objection to each presentation of an Executive Summary as not being in procedural compliance with the rules, since each is a narrative statement instead of testimony.

Chairman Hall acknowledged his objection and then asked Mr. Erlenbeck to proceed. Mr. Erlenbeck reviewed the Executive Summary for Ms. Stearns, reading the relevant ordinance language and outlining the errors found during a review of her pension benefit calculations. Chairman Hall then opened the floor for questions from Board Members and Attorneys.

Attorney Gibbs asked whether his exhibit books would be allowed and Chairman Hall replied that they would be. The books were distributed to Board Members and attorneys.

Attorney Gibbs, referring to documents under "Exhibit S" in the notebooks he prepared, began questioning Mr. Erlenbeck regarding Sandra Stearns' retirement calculations. Attorney Gibbs then repeated his concern that members of City Administration who sit on the Board should not be able to vote, stating his belief that it would create credibility issues. Attorney Champnella reminded Mr. Gibbs that his objection had previously been rejected. Attorney Gibbs asked that the record reflect that he was questioning Mr. Erlenbeck as to whether or not he would be able to judge his own credibility when he votes on these issues.

Attorney Champnella then questioned Mr. Erlenbeck about the Executive Summary information for Ms. Stearns, followed by further questioning from Board Members.

Chairman Hall asked Mr. Erlenbeck to proceed with his review of the Executive Summary of the errors found in the original calculation of Ms. Deborah Cherwinski's pension benefit, which included a review of the relevant sections of the Retirement Ordinance. Mr. Erlenbeck was then questioned by members of the Board, Attorney Gibbs, and Attorney Champnella. Mr. Erlenbeck deferred to staff member Suzi Bye, Retirement Supervisor, to respond to some of Attorney Gibbs' questions. Ms. Bye was sworn in by Chairman Hall and proceeded to answer questions from Attorney Gibbs regarding the information contained in the Exhibits and Executive Summary. Chairman Hall then opened the floor for questioning of Ms. Bye by Attorney Champnella and members of the Board.

The Board recessed for a break at 10:47 a.m.

Chairman Hall called the meeting back to order at 11:02 a.m., noting that he would end the hearings no later than 12:15, as the Board had a regularly scheduled meeting scheduled at 1:00 p.m.

Chairman Hall allowed Attorney Champnella, Attorney Gibbs and Board Members to further question Mr. Erlenbeck regarding the Executive Summary information for Deborah Cherwinski.

Chairman Hall then asked Mr. Erlenbeck to review the Executive Summary of the errors found in the original calculation of Ms. Kay Tereau's pension benefit. Mr. Erlenbeck reviewed the relevant portions of the Retirement Ordinance along with the Executive Summary, followed by questions from Attorney Gibbs, Attorney Champnella and Board Members.

4. OTHER BOARD BUSINESS

There was no other business presented to the Board.

5. ADJOURNMENT (Break for lunch – Regular Board Meeting at 1:00 p.m.)

Chairman Hall adjourned the hearings at 12:06 p.m. and announced that the hearings would resume at a later date to be determined by the Board.

CITY OF FLINT EMPLOYEES' RETIREMENT SYSTEM

BOARD OF TRUSTEES REGULAR MEETING

A regular meeting of the Board of Trustees of the City of Flint Employees' Retirement System was held on Tuesday, December 19, 2006 at 1:00 p.m. in the "Old" Committee-of-the-Whole Room, 3rd Floor, City Council Chambers, at City Hall, with the following in attendance:

TRUSTEES & ALTERNATES Daniel Hall – Chairperson, Douglas Bingaman, Peter Dobrzeniecki, Robert Erlenbeck, Ehren Gonzales, Sandra Kidd, Michelle Kirkwood, Donald Phillips, Georgia Steinhoff, Scott Sutter, Cass Wisniewski

ABSENT Peggy Cook, Janice Kehoe, Amy Lindman, Kerry Nelson, Robert Rosenberger

ALSO PRESENT Suzi Bye, Retirement Supervisor
I'Lanta Robbins, Assistant City Attorney/Attorney for the Board
Trachelle Young, City Attorney/Attorney for the Board
Ivory Day, Jr., Gray & Company
Bob Hubbard, Gray & Company

6. CHAIRPERSON CALLS THE MEETING TO ORDER

Chairman Hall called the Regular Board Meeting to order at 1:05 p.m.

7. MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD

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

8. APPROVAL OF THE NOVEMBER 21, 2006 REGULAR BOARD MEETING MINUTES

It was moved by Georgia Steinhoff, and supported by Peter Dobrzeniecki, to approve the minutes of the November 21, 2006, Regular Board Meeting, as written.

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

**9. APPROVAL OF THE DECEMBER 5, 2006 SPECIAL BOARD MEETING
MINUTES – HEARING FOR SHERRIE JACKSON**

Chairman Hall noted that only the Board Members in attendance at the hearing may vote to approve the minutes. There are only six Trustees present who were in attendance at the Hearing. Therefore, they must vote unanimously to accept the minutes in order for the minutes to be approved by a quorum. Once the minutes are approved, Ms. Jackson will be notified of the Board's decision by the Board's Attorney.

It was moved by Robert Erlenbeck, and supported by Georgia Steinhoff, to approve the minutes of the December 5, 2006, Special Board Meeting, as written.

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

10. APPLICATION FOR DUTY DISABILITY RETIREMENT

Kathleen Robinson

City/FPOA

Age: 42 Years

Service: 9 Years, 3 Months

The Medical Report and Summary of Disability Determination dated November 7, 2006 from Dr. Victor Roth, Medical Director at M-Works, does certify that Kathleen Robinson is not totally and permanently disabled.

Georgia Steinhoff, Chair of the Professional Services Committee, reported that the Committee reviewed the Medical Report and Summary of Disability Determination from Dr. Victor Roth and the Committee concurs with his recommendation that Ms. Robinson is not totally and permanently disabled and recommends that her application for duty disability retirement be denied.

A motion was made by Georgia Steinhoff, and supported by Peter Dobrzeniecki, to concur with Dr. Roth's report that Kathleen Robinson is not totally and permanently disabled.

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

11. UPCOMING CONFERENCES *(Placed on file in the Retirement Office)*

- 11.1 Information Management Network, The 11th Annual Super Bowl of Indexing, December 3-6, 2006, Phoenix, AZ.
- 11.2 Trustee Educational Conference & Seminars, The 7th Annual Fire & Police Academy, January 28-31, 2006, New York, NY.
- 11.3 Financial Research Associates, The 3rd Annual Alpha-Bets, February 12-13, 2007, New York, NY.

12. COMMUNICATIONS RECEIVED *(All items were placed on file in the Retirement Office; if noted, a copy was enclosed in the Board Members' agenda packets also)*

- 12.1 Wellington Management Company, Letter to Daniel Hall re: Investment Policy Statement, November 8, 2006. *(Enclosed)*

13. COMMUNICATIONS SENT *(All documents were placed on file in the Retirement Office; if noted, a copy was enclosed in the Board Members' agenda packets also.)*

- 13.1 Letter to Northern Trust from Daniel Hall re: December 1, 2006 Pension transfer, November 21, 2006.
- 13.2 FERS' Letter to Jay Kitson from Suzi Bye re: Shirley Hart Disability Restrictions, November 22, 2006.
- 13.3 City of Flint, Letter to Phyllis Donovan from Robert Erlenbeck re: Pension Audit, November 24, 2006.

14. REPORTS RECEIVED *(All documents were placed on file in the Retirement Office; if noted, a copy was enclosed in the Board Members' agenda packets also)*

- 14.1 Fisher Investments, Third Quarter 2006 Foreign Equity Review & Outlook.
- 14.2 Fidelity Investments, Monthly Investment Update as of November 30, 2006.
- 14.3 Fidelity Investments, Capital Contribution, November 13, 2006.
- 14.4 Intercontinental Real Estate Corp., Capital Commitment, November 16, 2006.
- 14.5 Intercontinental Real Estate Corp., Letter to Daniel Hall re: Quarterly Reporting

Procedures, November 9, 2006

- 14.6 Dodge & Cox, Investment Report as of September 30, 2006.
- 14.7 Sit Investment Associates, Investment Portfolio as of September 30, 2006.
- 14.8 Franklin Portfolio Associates, Quarterly Update as of September 30, 2006.
- 14.9 Skyline Asset Management, Small Cap Value as of September 30, 2006.
- 14.10 Wentworth, Hauser & Violich, Quarterly Appraisal Report as of September 30, 2006.
- 14.11 Wentworth, Hauser & Violich, Appraisal Report as of October 31, 2006.
- 14.12 Lynch, Jones & Ryan, Trading Summary as of September 30, 2006.
- 14.13 Lynch, Jones & Ryan, Trading Summary as of October 31, 2006.
- 14.14 LSV Asset Management, 3rd Quarter 2006 Investment Report.
- 14.15 Keeley Asset Management Corp., Investment Report as of September 30, 2006.
- 14.16 Northern Trust Reports – October 2006 (*Enclosed*)
- 14.17 Retirement Fund Employee/Employer Contributions (*Enclosed*)

15. STATISTICAL REPORT OF BENEFITS (*for information only*)

	<u>2004</u>	<u>2005</u>	<u>2006</u>
Number Retired	3,002	3,032	3,027
Annualized Payroll	\$ 62,627,143	\$ 64,198,389	\$ 64,850,497

A motion was made by Georgia Steinhoff, and supported by Peter Dobrzeniecki, to receive and approve all information listed in Agenda Items #11, #12, #13, #14 and #15, and place the documents on file.

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

16. APPROVAL OF THE JANUARY 1, 2007 PENSION PAYROLL TRANSFER

Chairman Daniel Hall reported that a transfer of \$4,956,300 is needed for the payment of the January 1st, 2007 pension payroll, with funds to be taken from the Northern Trust Flint-Drawdown Account #26-19617. The balance in the Northern Trust drawdown account, as of December 18, is \$18,897,255.96.

A motion to approve the transfer of \$4,956,300 for payment of the January 1st, 2007 pension payroll, from the Northern Trust Flint - Drawdown Account #26-19617 to Citizens Bank, was made by Georgia Steinhoff, and supported by Sandra Kidd.

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

17. FINANCE COMMITTEE

Chairman Daniel Hall reported that there have been no meetings of this Committee.

18. PROFESSIONAL SERVICES COMMITTEE REPORT

Committee Chair Georgia Steinhoff reported that the Committee met on December 11th. In addition to discussing the disability report for Kathleen Robinson, they discussed the audit of pension overpayments. They also reviewed another disability application, which was referred back to Dr. Roth for revision and clarification.

19. FERS TO MERS TRANSITION

Chairman Daniel Hall reported that a meeting was held on Wednesday, December 13th, with attorneys and representatives from MERS, Hurley Medical Center and the City. Attendees included Attorneys Trachelle Young and I'Lanta Robbins, Peter Dobrzeniecki, Daniel Hall, and Robert Erlenbeck. Several legal and financial concerns were discussed at that meeting. Also, there is an actuarial report dated October 13th that superceded the October 5th report. The October 13th report will be distributed to the Trustees. Chairman Hall stated that he wanted both actuaries in attendance at the January Board Meeting to review the actuarial valuation reports with Trustees and answer questions.

Bob Erlenbeck recommended, based upon the results of the meeting, that the Board send a letter to the Hurley Board of Managers inquiring as to whether or not they are willing to pay for the transference of the funds in cash (the net conversion amount), and also for any actuarial studies that are needed for confirmation of the transfer amounts.

Chairman Hall agreed that a letter needs to be drafted by Legal from the Board to express their various financial and legal concerns regarding the MERS transfer to the Hurley Board of Managers. Discussion followed. Concerns were expressed as to whether or not the actuarial reports already done by Gabriel Roeder Smith & Company and Actuarial Services have been paid for by Hurley. Chairman Hall reported that, at the December 13th meeting, they were told that Dan Coffield was “a former employee” and that he was never authorized to obligate Hurley to pay for any actuarial studies or expenses. Mr. Hall stated that the letter to Hurley should clarify their willingness to pay for actuarial work before further work is requested.

A motion was made by Robert Erlenbeck, and supported by Ehren Gonzales, that the Board authorize the attorney for the Retirement Board to issue a letter to the Hurley Board of Managers requesting clarification of numerous issues: 1) Who will pay for any actuarial studies? 2) What actuarial studies have already been paid for? 3) Who will pay for the conversion of the assets to cash as requested by MERS? 4) Any other issues that the Board’s attorney believes should be addressed or clarified.

Discussion followed. Chairman Hall noted that the minutes of the Retirement Board Meetings for the past three years are on the City’s website, for reference.

Upon being put to a vote, the motion carried by a vote of 8 to 1.

20. RETIREMENT ORDINANCE REVISION COMMITTEE

Chairman Hall noted that the Committee has not met. A draft of ordinance language changes for the FERS to MERS transfer has not been submitted by Hurley. The final ordinance language to change the multiplier for Hurley exempts from 1.5 to 1.7 is in process at Hurley. Bob Erlenbeck and Attorney Young have provided input on the language to Hurley’s Attorney, Bill Smith. Once Hurley submits the revised ordinance language, Attorney Young will forward the document to Councilman Gonzales and the Retirement Board. If the Board approves the language, Mr. Gonzales can submit it to City Council for approval. If it is approved with the retroactive date, Mr. Erlenbeck’s staff will correct the pensions of those who retired under the lower multiplier after the effective date of the change.

21. INVESTMENT COMMITTEE REPORT

Chairman Hall stated that this ad hoc committee has not met recently. Members are Daniel Hall, Peter Dobrzeniecki, and Amy Lindman. He asked I'Lanta Robbins to attend future meetings also. Chairman Hall is working with Gray & Company, who will join the next committee meeting by conference call prior to the January Board Meeting, to discuss money managers, future presentations, the drawdown account, and other concerns.

22. GRAY & COMPANY

Chairman Hall noted that a letter was received from Wellington (reference #12.1 on the agenda) regarding proxy voting. The Board previously had a proxy voting committee of two trustees and then changed their policy to allow the managers to vote the proxies. He asked Ivory Day to review this issue in light of the Investment Policy. Chairman Hall also noted that Dodge & Cox has been taking their management fees out of the FERS account and they should be contacted by Legal with instructions to send an invoice for payment as all other managers do. Chairman Hall stated that past practice has always been that all money managers send invoices to FERS for payment by check.

A motion was made by Sandra Kidd, supported by Ehren Gonzales, to authorize Legal to contact Dodge & Cox with instructions that their fees for investment services must be paid by check from an invoice and not taken from the FERS' account with them.

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

Ivory Day stated that he had no formal presentation this month. At the next meeting, he will be presenting an investment performance report and a report on Keeley and Allegiant, the under-performing managers he has been tracking. In addition, he will report on Globalt, alternative investments, "hot" issues and trends in the investment industry, and other issues the Chair has raised.

Chairman Hall asked Mr. Day to contact Capital BidCo and report to the Investment Committee regarding FERS' current investment.

23. LEGAL COUNSEL UPDATES

Attorney I'Lanta Robbins reported that Attorney George Peck has no new information to report on the Take Two Interactive lawsuit at this time. Discovery is on hold because the Motion for Summary Disposition is scheduled to be heard on December 22.

Attorney Robbins reported that the Court of Appeals is still considering the Claude Miller case. There was a motion filed against the City and the Court's ruling on that motion, in which a proposed order was submitted in writing, has been objected to by the City. The Court will be making a decision on that objection based on the documents filed with them, and will not be holding a hearing for oral arguments.

24. DB/DC CONVERSION

Chairman Hall noted that there was no new information to report.

25. OTHER BOARD BUSINESS

The Board discussed information-sharing issues between the Retirement Office and Hurley and the problems caused by the insufficient information Hurley provides for use in calculating pension benefits for Hurley retirees.

Chairman Hall reported that three of the four Executive Summaries were reviewed at the morning's hearings. He recommended that the next hearing date be set for 9:00 a.m. on January 23rd before the Regular Board Meeting. Discussion followed. Attorney Young stated that FERS is involved in litigation with these plaintiffs and the litigation is on hold until the hearings are completed.

Chairman Hall noted that he is working with Northern Trust to set up a training session on the Passport system for reviewing FERS' accounts, as requested by the Finance Committee.

Chairman Hall announced that MAPERS is holding a one-day seminar on February 22nd entitled "A Discussion of Issues Facing Public Plans Both Today and Tomorrow." The presenter is from Alliance Bernstein and the location is the Hyatt Regency, Dearborn. There are scholarships available to cover the registration fee of \$25. He also noted that the NCPERS Legislative Conference would be held in Washington, D.C. in February. Discussion followed. Peter Dobrzeniecki stated that he would give the Board a copy of the FERS budget showing funds available for travel, etc.

A motion was made by Georgia Steinhoff, and supported by Ehren Gonzales, that anyone who wishes to attend the NCPERS Legislative Conference may attend, notwithstanding the travel policy.

Upon being put to a vote, the motion carried by a vote of 8 to 1.

26. ADJOURNED

There being no further business to discuss, it was moved by Georgia Steinhoff, and supported by Ehren Gonzales, to adjourn the meeting at 1:55 p.m.

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

Respectfully submitted,

Peter Dobrzeniecki, Secretary