

**CITY OF FLINT EMPLOYEES' RETIREMENT SYSTEM**  
**Board of Trustees Regular Meeting – Retirement Board Minutes**  
**Tuesday, November 17, 2009**

A regular meeting of the Board of Trustees of the City of Flint Employees' Retirement System was held on **Tuesday, November 17, 2009** at 1:00 p.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* Michael Townsend – Interim Vice Chairperson, Denise Bingaman, Mary Bland, Debra Bridges, Robert Erlenbeck, Janice Kehoe, Duane Kelley, Michelle Kirkwood, Mark Stratman, Cass Wisniewski

*ABSENT* Douglas Bingaman, Greg Eason, John Erwin, Sherry Murphy

*ALSO PRESENT* Suzi Bye, Retirement & Benefits Manager  
Ivory Day, Gray & Co., Consultants  
I'Lanta Robbins, Assistant City Attorney/Attorney for Retirement Board  
Julie Sadler, Assistant to FERS

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

Interim Vice Chair Michael Townsend called the meeting to order at 1:04 p.m.

**2. ROLL CALL (Attendance)**

Roll was called and members were present or absent as noted 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**

**Motion by Cass Wisniewski, supported by Robert Erlenbeck, to approve the agenda, as presented at the meeting. The motion carried unanimously.**

**5. APPOINTMENT OF BOARD CHAIR & VICE CHAIR**

**Motion by Robert Erlenbeck, supported by Cass Wisniewski, to table the issue of appointing a permanent Chair or Vice Chair. The motion carried unanimously.**

**6. APPROVAL OF MINUTES – October 20, 2009 Regular Board Meeting**

**Motion made by Cass Wisniewski, supported by Robert Erlenbeck, to approve the minutes of the October 20, 2009 Regular Board Meeting, as presented. The motion carried 7-1 (Mary Bland dissented).**

**7. APPLICATIONS FOR VOLUNTARY RETIREMENT – *See Attached***

**Motion by Robert Erlenbeck, supported by Mary Bland, to separate Lorraine Cameron and Eddie Mack for discussion and consideration later in the agenda. The motion carried unanimously.**

**Motion by Robert Erlenbeck, supported by Mary Bland, to approve the November 17, 2009 Applications for Voluntary Retirement – Service, Final Average Compensation, Accumulated Contributions and Effective Date of Retirement – for Russell Angell, Linda Gillis, William Newson, and Elaine Shelton, and the Treasurer of the City of Flint Employees' Retirement System be authorized and directed to pay a monthly pension, as indicated, for life or until such chosen option shall require. The motion carried unanimously.**

**8. APPLICATIONS FOR DEFERRED RETIREMENT – *See Attached***

**Motion by Cass Wisniewski, supported by Mark Stratman, to approve the November 17, 2009 Application for Deferred Retirement for April Tew. The motion carried unanimously.**

**9. APPROVAL OF DISABILITY PENSIONS – *NONE***

**10. APPROVAL OF PENSIONS PREVIOUSLY REPORTED – *See Attached***

**Motion made by Mark Stratman, supported by Denise Bingaman, to approve the Revisions to Pensions Previously Reported for Hurley Retirees, as a result of updated payroll reports – Sheryl Rowell, Karen Scanlon, William Skelton, Jr., Maria-Victoria Smith, Carrie Sykes, Dianne Tesnar, Sandra Thurman, Yvonne Vaughn, Mary Wagner, William Walsh, Carrie Watson, Susan White, Harriet Williams, and Marvin Woodward. The motion carried unanimously.**

**11. OPTIONS PICKED BY DEFERRED RETIREES – *See Attached***

**Motion by Robert Erlenbeck, supported by Debra Bridges, to approve the Option Picked by Deferred Retiree Evaett Webb. Motion carried unanimously.**

**12. INFORMATIONAL CHANGES TO PENSIONS – *NONE***

**13. UPCOMING CONFERENCES**

*(Placed on file in the Secretary's office and available for Board review.)*

13.1 NCPERS 2010 Legislative Conference, Washington, D.C., February 7-9, 2010.

**14. COMMUNICATIONS RECEIVED** *(Placed on file in the Secretary's office and available for Board review; \*if noted, copy included with Agenda packets.)*

14.1 Norbert B. Leonard, Attorney, James Maxwell Hearing - Brief, September 22, 2009. \*

14.2 Michael VanOverbeke, Attorney, Period Certain Benefit Opinion (Cynthia Fent), October 29, 2009. \*

14.3 Veronica Simon, E-Mail Requesting Hearing, November 2, 2009.

**15. COMMUNICATIONS SENT** *(Placed on file in the Secretary's office and available for Board review or copy may be requested; \*if noted, copy included with Agenda packets.)*

15.1 Bingaman/Townsend, Letter to Northern Trust re: November 1, 2009 Pension Payroll, October 20, 2009.

- 15.2 Bingaman/Townsend, Letter to Northern Trust re: Closing Accounts, October 26, 2009.
- 15.3 Robert Erlenbeck, Actuarial RFP & Listing, November 12, 2009. \*
- 15.4 Retirement Office, Letter to Catherine Allan re Overpayment of Pension, November 9, 2009. \*

**16. REPORTS RECEIVED** *(Placed on file in the Secretary's office and available for Board review or copy may be requested; \*if noted, copy included with Agenda packets.)*

- 16.1 Globalt Investments, FERS Quarterly Report, September 30, 2009.
- 16.2 Wentworth, Hauser and Violich, FERS Quarterly Appraisal, September 30, 2009.
- 16.3 LSV Asset Management, FERS Quarterly Investment Report, September 30, 2009.
- 16.4 Magna Securities Corp., FERS Commission Recapture Report, September 2009.
- 16.5 LJR Recapture Services, FERS Trading & Commission Summaries, January-Sept 2009.
- 16.6 Coughlin Stoia Geller Rudman & Robbins, 4<sup>th</sup> Qtr Corporate Governance Bulletin.
- 16.7 Dodge & Cox, FERS Third Quarter Portfolio Summary, September 30, 2009.
- 16.8 ICON Advisers, Inc., FERS Third Quarter Statement & Portfolio Update, September 30, 2009.
- 16.9 ICON Advisers, Inc., ICON Portfolio Update-November 2009.
- 16.10 Keeley Asset Management Corp., FERS Third Quarter Report, September 30, 2009.
- 16.11 Piedmont Investment Advisors, FERS Third Quarter Reports, September 30, 2009.
- 16.12 Wellington Management, FERS Third Quarter Reports, September 30, 2009.
- 16.13 Gray & Co., FERS Quarterly Performance Report, September 30, 2009. \*

**A motion was made by Robert Erlenbeck, and supported by Cass Wisniewski, to receive and place on file all documents listed in Agenda Item #s 13, 14, 15, 16. The motion carried unanimously.** *(Certain items will be discussed where appropriate in the Agenda.)*

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

	<u>2007</u>	<u>2008</u>	<u>2009 YTD</u>
Number Retired	3,037	3,065	2,847
Annualized Payroll	\$68,251,822* <i>*includes 13<sup>th</sup> check</i>	\$66,402,468	\$59,784,776

**21. LEGAL COUNSEL UPDATES**

**Attorney P'lanta Robbins reported on the following legal issues:**

- ◆ **Take Two Interactive Lawsuit** – nothing new to report.
- ◆ **FAC Calculation Policy** – under legal review.
- ◆ **Capital BidCo** – Shareholders' representatives have drafted a letter to the officials at Capital BidCo requesting additional financial information.
- ◆ **Pension Calculation Errors Lawsuits – Cherwinski/Tereau/Kelly**
- ◆ **Pension Calculation Errors Lawsuits - Burns/Wiggins/Doerr**
- ◆ **Susan Jarema - Purchase of Time**  
Mediation scheduled on November 28<sup>th</sup>.
- ◆ **James Maxwell – Duty Disability Pension** *(Agenda Item #14.1)*
  - ◆ **Rescheduled Hearing to December 15 at 10:00 a.m.**  
A brief was received from his attorney and distributed to Board Members.  
Attorney Robbins will also issue a brief prior to the hearing.
- ◆ **Linda Winfrey** – A Settlement Agreement required the City to pay her a lump sum of money. Attorney Robbins will review Ms. Winfrey's files to find out what the payment was for and the parameters used to calculate the amount, in order to determine whether or not the amount should have been included in her FAC.

**Michael VanOverbeke joined the meeting by conference call.**

- ◆ **Cynthia Fent** – *Agenda Item #14.2 – A Legal Opinion regarding Option "A" (Ten Year Certain) written by Attorney Michael VanOverbeke, Special Counsel for the Board, at the request of Attorney Robbins.*

**Summary of Issues:** Ms. Cynthia Fent began employment with Hurley Medical Center on April 17, 1978. Ms. Fent retired from Hurley with a non-duty disability retirement benefit on February 19, 2002 electing an Option A “Ten Year Certain” benefit; however, she passed away on June 15, 2004. Her beneficiary (spouse), Jack D. Fent, then began receiving her pension benefit. Mr. Fent named Michelle Leigh Jones (Hundley), his niece, as his “residual beneficiary” on June 29, 2004. Mr. Fent passed away before the end of the Option A ten-year period. Attorney Robbins referred this issue to Special Counsel Michael VanOverbeke for an opinion as to who should receive the remainder of the ten-year pension – Ms. Fent’s estate, Mr. Fent’s estate or Ms. Jones (Hundley). The Ordinance language is silent on this issue.

Mr. VanOverbeke discussed the issue with the Trustees (by conference call) and stated his opinion that Ms. Jones (Hundley) should be considered Mr. Fent’s designated beneficiary and receive the remainder of the ten-year certain pension payments. He also recommended that the ordinance be amended to address and clarify such issues in the future. The Board discussed the past practice of naming beneficiaries and “residual” beneficiaries.

**A motion was made by Mary Bland, supported by Janice Kehoe, that Michelle Jones Hundley should receive the remainder of the ten-year certain pension payments owed by the System for Ms. Cynthia Fent and Mr. Jack Fent’s (a lump sum to bring the payments up to date, with future payments to be made monthly) until the ten years is completed. Motion carried unanimously.**

- ◆ **Eddie Mack and Lorraine Cameron – Settlement Agreements** – *Previously referred to Legal Counsel for review. Attorney Robbins consulted with Special Counsel Michael VanOverbeke, who participated in the Board’s deliberations via conference call.*

**Summary of Issues** – The Settlement Agreements for Ms. Cameron and Mr. Mack were entered into between the City and the Union and grant pension benefits payable to the two individuals that were not authorized under the existing plan documents, allowing these employees to retire earlier than the normal age requirement of 55 years. The Board has questioned whether they are obligated to approve the resulting additional costs to the Retirement System (approximately \$125,000) or if they can require the City to pre-fund, and how Public Act 728 should be applied. Also, under PA 728, is a lawsuit settlement treated differently than a settlement negotiated between the City and a Union?

**Summary of Attorney VanOverbeke’s Opinion** – The Plan Document is the Ordinance, as amended by applicable negotiated collective bargaining agreements (CBAs). Under State law, specifically the Public Employee Retirement Act (PERA), CBAs take precedence over any provisions that may be in the Retirement Ordinance, constituting applicable, valid plan amendments. For purposes of actuarial valuation, the

funding for those amendments is derived from the normal actuarial process whereby the actuary is informed of all pension benefit changes. When the actuary calculates the next annual actuarial valuation report, all changes should be included as part of an increased increment in the normal cost, as well as any unfunded accrued liability.

In the case of Memorandums of Understanding, Letters of Understanding, Grievance Settlement Agreements, etc. whereby both the Union and the Employer sign and agree to specific provisions to be given to an individual(s), or an entire bargaining unit, those agreements rise to the level of CBAs and receive the same protections under PERA as valid Plan Amendments. In the case of a court-entered order or a Settlement Agreement entered between an individual and the Employer, as the result of a lawsuit, that document does not receive the protection of a CBA under PERA or rise to the level of a plan amendment, even if entered by a Judge/ Court. If the document does not comply with the Plan provisions, it cannot be implemented.

**Public Act 728 (of 2002)** requires that, before there can be any pension benefit changes made, whether for a union group, all employees, or an individual(s), there must be a supplemental actuarial analysis done to determine the cost of that change to the System. That analysis must be provided to the decision-making bodies (in this case, the City and the Union) at least seven days prior to the effective date of the agreement (usually the signing date). PA 728 also requires an informational copy of the supplemental actuarial study to be provided to the Board of Trustees to show that the agreement is in compliance with PA 728 and ensure that, when updated data is provided to the actuary for the next annual valuation, those changes will be part of the census data and plan data provided to the actuary to make sure the agreements are ultimately funded. The law does not give the Board the ability to approve or disapprove of the benefit granted by the agreement. The Board's responsibility is to make sure no applicable laws are violated, including PA 728, and, if not, to implement and grant the benefits authorized by the Plan document, as amended. In this instance, the supplemental actuarial analysis was not performed until some time after the agreement was entered into. The Board's position should be that PA 728 requires that analysis because the letters of agreement provide for increased retirement benefits. Because the agreements were not entered into in compliance with this applicable State law, they cannot be implemented in their current form, as they do not operate to amend the plan provisions.

The Board may express to the Employer its displeasure that employee issues are being resolved by using the Retirement System and its assets. The Board can also request City Council approval of an amendment to the Ordinance which requires that, in the event any settlement agreement is arrived at between the Union and the Employer, with regards to one or two individuals, it must be fully funded prior to implementation. However, if a CBA provision grants additional benefits and states that prior funding is not required, the CBA trumps the Ordinance, by State law. If a CBA is silent on the pre-funding aspect;

i.e., no provision conflicting with an Ordinance pre-funding provision, but includes only a provision granting benefits, there is no competing language and the Ordinance would require pre-funding. The State constitution provides, in terms of funding, that any increases in normal costs must be fully funded in every year per Article 9, Section 24. Public Act 314 says that anything "...that adds to the unfunded, accrued liability...a portion must be funded and an amortization period selected by the Board, but over a period no more than 30 years." Discussion followed.

**Motion by Robert Erlenbeck, supported by Mary Bland, that the Retirement Board issue a letter to the Human Resources Department informing them of the fact that, according to Public Act 728, an actuarial study was not obtained prior to them entering into a settlement agreement for Eddie Mack and Lorraine Cameron and, therefore, they must address the violation of Public Act 728 because those settlement agreements are not currently enforceable. Motion carried unanimously.**

## **18. GRAY & COMPANY - REPORT/RECOMMENDATIONS**

- ◆ **Asset Allocation & Investment Performance Management Review – To be held on November 24 @ 1:00 p.m.**
- ◆ **Schedule of Asset Classes, Manager Allocation & Re-Balancing**
- ◆ **3<sup>rd</sup> Quarter Performance Report – September 30, 2009 (Agenda Item #16.13)**

Ivory Day presented and reviewed the Third Quarter Performance Report and the Fund's cash flow, asset allocation and rebalancing schedule. He noted that the reports will be reviewed in more detail at the special meeting on November 24<sup>th</sup> which will include a presentation and discussion regarding the Board's asset allocation policy and investment performance management review policy. Mr. Day noted that the drawdown account will need to be replenished soon and he recommends that the funds be taken from Wellington, Northern Trust MSCI, LSV, Fisher, Wentworth Hauser & Violich, JP Morgan Chase, and the Northern Trust World Government accounts.

**Motion by Robert Erlenbeck, supported by Mary Bland, authorizing Ivory Day, the Board's Consultant at Gray & Company, to rebalance the asset allocation as outlined on their report and take the recommended funds from the companies identified to replenish the drawdown account for payment of future pensions. Motion carried unanimously.**

*Interim Vice Chair Michael Townsend adjourned for a recess at 2:42 p.m.*

*The Meeting was called back to Order at 2:52 p.m.*



## 19. APPROVAL OF THE DECEMBER 1, 2009 PENSION PAYROLL TRANSFER

**A motion was made by Mary Bland, and supported by Cass Wisniewski, to approve a transfer of \$2,093,900 for payment of the December 1, 2009 pension payroll (total estimated payroll - \$5,008,763), from the Northern Trust Flint – Drawdown Account #26-19617 to Citizens Bank. The motion carried unanimously.**

## 20. ACTUARIAL ISSUES

- ◆ **GRS FY 2008 Actuarial Valuation Status** – *Information has been provided by the City. The Valuation is in process and should be completed by the December or January meeting.*

## 22. PROFESSIONAL SERVICES COMMITTEE

Robert Erlenbeck reported on the following issues:

- ◆ **Actuary RFP & Listing** (*Agenda Item #15.3*) – RFPs have been mailed and responses are due back before the December Retirement Board Meeting.
- ◆ **Claude Miller Pension Revisions – Requests for Review per Judge Yuille’s Order** - Discussion regarding an audit of pension files when retirees request a review and recalculation of their FAC. Past motions, minutes, etc. will be researched and given to the Board for review at the next meeting.
- ◆ **Retirement Service Credit – Temp Time – Ordinance #3201** – *New/Referred to PSC*
- ◆ **Harland Verrill – Overpayment** – *New/Referred to PSC*
- ◆ **Hurley #1603 - Vacation Fold-Ins** – *New/Referred to PSC*
- ◆ **Veronica Simon – Contributions to be Paid – Request for Hearing** (*Agenda Item #14.3*)

**Motion made by Mark Stratman, supported by Robert Erlenbeck, to set a hearing date/time of December 15th at 12:00 noon for Veronica Simon. The motion carried unanimously.**

- ◆ **David Williams – Deceased Police Officer – Beneficiary Issue** – *Per Attorney Robbins, pending hearing.*

## 22.1 DISABILITY RETIREMENT APPLICATIONS

- ◆ **Duty – No applications pending**
- ◆ **Non-Duty – Two applications pending**
  
- ◆ **Rechanda Abron / City/#1600 / Non-Duty**
  - Age: 43
  - Service: 12 years, 5 months

The Medical Report and Summary of Disability Determination dated September 29, 2009, from Dr. Victor Roth, Medical Director, at MES Solutions, does certify that Rechanda Abron is totally and permanently disabled and recommends approval of a non-duty disability retirement.

Mr. Erlenbeck reported that the Professional Services Committee reviewed Dr. Roth's report and concurred with his recommendation that she be certified as totally and permanently disabled and approved for a non-duty disability retirement.

**Motion made by Mary Bland, supported by Robert Erlenbeck, to approve a non-duty disability pension for Rechanda Abron. Motion carried unanimously.**

## 22.2 STATUS OF RETIREE SELECTION OF CORRECTION OPTION FOR OVERPAYMENT

- ◆ **David Plewes** - *IR is reviewing information he provided.*
- ◆ **Catherine Allen** – *Reference Agenda Item #15.4.*
- ◆ **Stephen Colonna** – *No response.*

## 23. FINANCE/INVESTMENT COMMITTEE – *No Report*

- ◆ **IRS Tax Determination Letter** - *Pending w/Attorney Michael VanOverbeke*

## 24. RETIREMENT ORDINANCE REVISION COMMITTEE (of-the-Whole)

- ◆ **§35-16.4 “13th Check” SUBCOMMITTEE** – *Michelle Kirkwood, Chair – No report.*
  - Issues under discussion -**
    - **Five-Year Rolling Average**
    - **Percentage Funded**
    - **Age Requirements**
    - **Contributory/Non-contributory**

- **Deferred**
  - **Straight Life Pension Factor**
  - **Beneficiaries – Spouses, Parents, Children, Others**
  - **Alternative Option; i.e., Cost of Living, etc.**
  - **Other Retirement Systems**
- 
- ◆ **§35-17 / §35-19 Hurley Medical Center - Purchase of Time – *Under Legal review***
  - ◆ **§35-8 Alternates - *Language & letter of recommendation to be sent to City Council***
  - ◆ **§35-10 Alternates Ascending to Trustee Position when Vacated – *Under Legal review***
  - ◆ **§35-31/31.1/32/32.1 Firefighters/Police Officers – Death in the Line of Duty – *Under Legal review***

The Chair tabled discussion of Ordinance changes.

## **25. OTHER BOARD BUSINESS**

None.

## **26. ADJOURNMENT**

### *Upcoming Board Meeting Schedule*

*Gray & Co. – Asset Allocation/Investment Performance – Tuesday, November 24, 1:00 p.m.*

*Hearing for James Maxwell – Tuesday, December 15, 2009, 10:00 a.m.*

*Hearing for Veronica Simon – Tuesday, December 15, 2009, 12:00 p.m.*

*Regular Board Meeting – Tuesday, December 15, 2009, 1:00 p.m.*

**A motion was made to adjourn at 3:27 p.m. by Mark Stratman, supported by Mary Bland. The motion carried unanimously.**

**Respectfully submitted,**

**Michael Townsend**  
**Secretary**