

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, September 13, 2005, at 1:00 p.m. at City Hall, City Council Committee-of-the-Whole Room, with the following in attendance:

TRUSTEES & ALTERNATES Daniel Hall – Chairperson, Douglas Bingaman, Daniel Coffield, Peter Dobrzeniecki, Robert Erlenbeck, Janice Kehoe, Sandra Kidd, Alvern Lock, Donald Phillips, Robert Rosenberger, Georgia Steinhoff, Edward Taylor, Cass Wisniewski

ABSENT Peggy Cook, Mark Horrigan, Amy Lindman

ALSO PRESENT Habib Ghattas, Attorney for the Retirement Board
Joseph Esuchanko, Actuary, Actuarial Services Company
Meg Hunter, Special Tax Counsel (via conference call)
Larry Langer, Actuary, Gabriel, Roeder, Smith & Company
Doyle O'Connor, Attorney (representing HMC unions)
Wanda Twitty, Retirement Supervisor
Trachelle Young, City Attorney
I'Lanta Robbins, Assistant City Attorney

1. CHAIRPERSON CALLS THE MEETING TO ORDER

Chairman Daniel Hall called the meeting to order at 1:25 p.m. He stated that this special board meeting was scheduled for the purpose of further discussion regarding the proposed transfer of funds from FERS to MERS for certain bargaining units at Hurley Medical Center (HMC).

2. MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD

Joyce Lanckton, HMC Retiree, presented a letter to the Board of Trustees requesting a hearing regarding her retirement benefit which, she believes, was calculated incorrectly.

Chairman Daniel Hall stated that the Board recognizes that she is requesting a hearing and a hearing date and time will be set by the Board.

Bernice Calvin, President, Local #825 LPN Union at HMC, stated that Local #825 voted to transfer to MERS; however, they believe there is a violation of their Letter of Understanding with HMC, which stated that until there is a satisfactory agreement between HMC and the City, they would remain with FERS. Their members are being told they must now retire through MERS. She presented a letter to the Chairman requesting a choice between FERS and MERS as they retire. Chairman Hall acknowledged receipt of the letter and stated that he would arrange for copies to be forwarded to the attorneys and Trustees.

Pam Grieve, President, Local #826 at HMC, introduced Attorney Doyle O'Connor, who is present as the legal representative for AFSCME Locals #814, #1973, #2056, the Medical Technologists, Registered Nurses & Registered Pharmacists, and Nurse Managers.

Chairman Hall asked that other board business be discussed at this time.

4. OTHER BOARD BUSINESS

Regarding Joyce Lanckton's request for a hearing, Attorney Habeeb Ghattas stated that the City's Retirement Ordinance, Section 35-44, along with the Board's rules and procedures regarding hearings, set up the conditions under which a member is entitled to a hearing. The hearing rules specifically require that a member (or other affected individual) may request a hearing before the Board of Trustees to resolve a particular question or concern he or she may have with regard to Plan benefits. Under the Board's rules, the request must be made in writing and include a statement of the issues the Board is being asked to decide. Attorney Ghattas noted that Ms. Lanckton's letter does not indicate her reasons for requesting a hearing. Attorney Ghattas also noted that the decision to schedule a hearing must be made in public session. His understanding of Ms. Lanckton's issue is that she is requesting an opportunity to change her pension option. Section 35-26 subsection (a) of the Ordinance provides that, prior to the effective date of retirement, *but not thereafter*, a member may elect an option. If Ms. Lanckton is raising issues that indicate she was somehow misled, or there was some confusion that was not really her fault, then she would be entitled to a hearing and the Board should review and consider her concerns. However, once the hearing has been held, and the Board has made a decision, any further review would be to the Circuit Court. He has also recommended to Ms. Lanckton that she hire an attorney to review the matter with her to ensure that she fully understands her rights.

A motion was made by Georgia Steinhoff, and supported by Daniel Coffield, to set a hearing date for Ms. Lanckton at the Regular Board Meeting on September 20th, provided they receive her issues in writing by September 16th.

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

3. FERS / MERS

Chairman Daniel Hall stated that the following individuals were present at the meeting for the purpose of being involved in the discussion of the transfer from FERS to MERS: Attorney Habeeb Ghattas; Special Counsel Meg Hunter (by telephone); City Attorney Trachelle Young; Attorney Doyle O'Connor (representing HMC labor organizations); Actuary Joseph Esuchanko, Actuarial Services Company; Actuary Larry Langer, Gabriel, Roeder, Smith & Company.

City Attorney Trachelle Young addressed the issue of the Flint City Charter requirement that the City Council must approve any collective bargaining contracts before they become effective. She stated that she has researched that provision in the Charter and, as it relates to contracts that Hurley has executed, she believes that the City Council has never approved any Hurley contracts. Therefore, it is her belief that there is no basis, under that provision of the City Charter, to stop the transfer from FERS to MERS. The referenced Charter provision appears to be directed towards Labor Relations Personnel negotiating on behalf of the City regarding City-related contracts. Hurley has separate entities involved in their contract negotiations. However, Ms. Young stated that the City does have a unique relationship with Hurley, as Hurley is in existence only because of the City. Although the drafters of the City Charter intended Hurley to have some operating independence, there is still a relationship that could leave the City ultimately liable if Hurley, which is part of the FERS system, is unable to meet its retiree liabilities due to the funds being split between the two systems. Therefore, it would appear that the City would have to approve the transfer at some point, since City officials must ensure that the City is not left in a position of peril by the transfer. If Hurley were to be sued, the City would also be sued because of this unique, semi-dependent relationship.

Discussion followed.

Actuary Larry Langer stated that, under the currently proposed transfer methodology, the funded status would stay the same; i.e., if FERS were 80% funded, then the liability transferred to MERS would also be 80% funded. The actuarial valuation includes separate valuations for the four entities within the System – General, Police, Fire, Hurley Medical Center –and a determination of how well funded each entity is.

Chairman Daniel Hall read from the May 23, 2005 letter he received from Actuarial Services Company that stated, "However, if active member liabilities and assets are transferred out of FERS without proportionate transfers of inactive liabilities; i.e., the retirees and the deferreds, there will be an increase in the actuarially determined City contribution rate as a percentage of payroll if a less than proportionate share of inactive liabilities are transferred."

Discussion followed regarding concerns about the retiree and deferred retiree liability staying with FERS, while transferring a significant portion of the active employee liability to MERS, and how that would change the funded ratios in FERS, quite possibly requiring additional contributions to FERS to correct the funding status. Larry Langer noted that a correction to that situation might be to fund the retirees at 100% and fund the actives being transferred at a lower amount (which might be only 40-50%), based on the fund balance. Since the original proposal for the MERS transfer was to include the retirees and deferreds, and this now appears not to be the case, the actuarial methodology needs to be reevaluated. Another question is which system the retirees belong in who have retired since July 1, 2004.

Attorney Habib Ghattas noted that exempts, retirees and deferreds will only be allowed to transfer to MERS if an Ordinance change is adopted to allow it. At this point, the Board needs to focus on the represented members, for whom PERA is going to prevail with regard to any collective bargaining agreements as they impact the payment of benefits under the Plan. Since there has been a negotiated benefit allowing individual groups to opt out of FERS and go to MERS, the Board is obligated to recognize that benefit. The issue then pertains to applying the appropriate transfer methodologies. Consistent with the Board's due diligence, an actuarial study was requested by the System's Actuary, Larry Langer, of Gabriel, Roeder, Smith & Company. He recommended the individual liability proportion methodology. The Board retained Joseph Esuchanko, of Actuarial Services Company, to review the methodology and he and his staff agreed that it was reasonable and, in fact, was the method used in the majority of cases. However, they indicated their concerns that, if the Hurley retirees are not going to be transferred as originally intended, future contribution rates to FERS would likely increase significantly with this methodology. Attorney Ghattas stated that the Board's obligation is to implement plan provisions and protect Trust assets and make sure that both the City of Flint and Hurley Medical Center meet their funding obligations. If the actuarial valuations indicate that the employer contribution rates must be adjusted to accommodate this transfer, that is a concern that must be directed to the appropriate City and Hurley Officials.

Attorney Meg Hunter asked whether the impact on employer contributions would be confined to Hurley or impact the City divisions in some way. Larry Langer stated that the contribution rates are calculated for each separate group and made by that group's employer. He stated that he believes the contribution rate would increase if only actives are transferred; however, the total dollars needed to pay off any unfunded liability should be the same. Dan Coffield noted that about half the 2600 active employees at Hurley would be transferred to MERS. Joseph Esuchanko stated that amortizing the unfunded liability at both MERS and FERS, in total, would probably result in about the same contribution cost to Hurley; the transfer methodology would determine the asset transfer and the subsequent Hurley contribution rates for FERS and MERS.

Peter Dobrzeniecki expressed his concern regarding the cost of the transfer. In speaking with Harland Abraham at Northern Trust, Mr. Dobrzeniecki noted Mr. Abraham's concern about possible "harm" to the fund due to the cost of the conversion of approximately \$150 million to cash (MERS will not accept the transfer of securities, although MERS is also custodied at Northern Trust). Mr. Dobrzeniecki also questioned whether PERA applies in this situation because the issue is not a change in the retirement benefit, only in the administration of the pension fund, which has from its inception been under the oversight of the City Council and the Retirement Board of Trustees. It is difficult to believe that the Hurley Board of Managers and the Hurley unions could negotiate a change in the administration of the funds without the approval of the City Council and the Retirement Board of Trustees, who are charged with the administration of the Fund.

Attorney Doyle O'Connor stated that the union groups negotiated contracts with Hurley, under the collective bargaining process, to terminate participation in FERS and move their retirement assets to MERS; they can only negotiate on behalf of current employees, they have no authority to negotiate on behalf of retirees. He also noted that the Emergency Financial Manager, who had full legal authority to act on behalf of the City and the City Council, authorized Hurley's collective bargaining agreements in a Resolution dated April 14, 2004. The Unions acted in reliance on that approval. Also, Mr. O'Connor believes that, under PERA, the law is clear that the employer and the union have the unfettered, unrestricted right to negotiate over the terms of the pension plan, including who's going to handle the money, who's going to invest the money, how it's going to be invested, changing vendors and financial managers, etc. He stated that a lawsuit would be filed "if one party tries to back out of a contract after it's already ratified." He also stated that MERS is taking on the liabilities, and the assets necessary to pay them, in a contract with the hospital, and they are now responsible for making ongoing pension payments for anyone who retired after July 1st. Additionally, he assumes that the plan is either fully funded or "as darn close to fully funded as possible, because otherwise the Plan is in violation of the Michigan Constitution, which is a whole separate problem."

Ed Taylor reminded the Board that the Emergency Financial Manager did not have jurisdiction over a separate body such as the Retirement Board, which administers the Retirement Trust. In fact, the Retirement Board sued regarding that issue and won. State of Michigan Law requires that, if a city's retirement system is in financial difficulty, an emergency financial manager can be appointed to oversee it; however, if that city also has an emergency financial manager, the same person cannot serve in both capacities.

Attorney Habeeb Ghattas noted that the Emergency Financial Manager had issued a number of directives that impacted the operation of the Board of Trustees. The Board sued so as to enjoin and set aside certain of his directives. The Circuit Court's opinion was that the authority of the EFM did not extend to the operation of the Retirement Trust, for which the Board of Trustees is responsible under City Code.

Attorney Doyle O'Connor reiterated his belief that there is a binding collective bargaining agreement with the unions authorizing the transfer of active employees from FERS to MERS. Since the Board has no authority over this issue, regardless of their opinions, delaying the transfer will lead to litigation. He will seek a writ of mandamus compelling the release and transfer of the funds, plus damages to cover anything untoward that occurs in the meantime, including the waste of funds and resisting the transfer. Although the unions understand the concerns, and believe they are legitimate, they believe that the transfer of the assets to MERS for payment of the liabilities MERS is now responsible for, is a foregone conclusion. It is not an issue for debate; it is only a question of when it occurs and how much it will cost. Mr. O'Connor cited case law regarding the City of Detroit and the City of Pontiac, and stated that the Michigan Supreme Court ruled that the collective bargaining agreements prevailed. The unions request that the Board take all steps necessary, in an orderly fashion, to transfer the assets.

Attorney Habeeb Ghattas responded that the Board, in the course of its due diligence, has been doing exactly what it needs to do; since this is a complex process, the Board has certain responsibilities as Trustees of the assets of the System. If the Board is comfortable with the proposed methodologies and wishes to move forward, it is clearly within their discretion. If they feel, based upon good cause, that additional time is needed to review the matter, that also is clearly within their discretion. He cautioned the Trustees that any threats of litigation should be considered in light of their Trust responsibilities.

Peter Dobrzeniecki asked Attorney Ghattas to comment on the definition of "benefits" under PERA; i.e., how can a body appointed by the City Council (Hurley Board of Managers) negotiate with their unions to change the ordinance as to how pension funds are to be administered without the City Council, the Mayor or the Retirement Board's input or agreement? If they are allowed to do that under PERA, why is there a Board of Trustees to administer the Plan?

Attorney Ghattas stated that the responsibility of the Board of Trustees, under the Ordinance, is to construe and make effective the provisions of the City of Flint Employees' Retirement System, defined as "The Plan." The Public Employee Relations Act (PERA) provides that any contract in the public sector that is negotiated between a public employer and recognized bargaining units, representing individual public employees, is going to supercede any conflicting provision in the local charter or in the ordinance when those conflicts affect wages, hours and conditions of employment. The Hurley unions have negotiated, as public employee groups (which Mr. O'Connor represents), with Hurley Medical Center the opportunity to separate or to transfer their participation from FERS to MERS. His understanding of PERA gives them the right to do that. The Board, as Trustees of the assets of the System, has a responsibility to make sure that those assets are protected, ensuring that the Plan Sponsors (Hurley and the City) meet their funding obligations. In this case, the Board must make sure that the transfer methodologies satisfy any funding concerns or obligations, and that all Hurley members who are transferring get what they are entitled to, nothing more and nothing less. The Board must ensure that they do not approve transfer methodologies that could negatively impact some of the members. The bargaining units do have the right to negotiate the opportunity to opt out of FERS. However, it's not as simple as saying, "cut the check." The Board then has responsibilities to the operation of the System to make sure that the assets are being transferred in accordance with sound actuarial principles. That is why the two actuarial firms are involved. As a result of the actuaries' involvement, several questions have been raised, including the obligation to administer the Plan in accordance with tax law provisions of the Internal Revenue Code, which is why Attorney Meg Hunter is involved. The bottom line is, under the authority of PERA, Hurley and its Unions have the right to transfer their participation to a different system. It is the Board's responsibility, however, to make a determination as to the methodologies that allow the transfer of those assets from FERS, which they are holding in trust, to MERS. The Board has many legitimate concerns. It is his opinion that the Hurley officials negotiated significant changes in the administration of the retirement benefit without involving the Retirement Board as to implementation issues. That is the reason for the delay – the Board must engage in proper due diligence or risk additional problems.

Peter Dobrzeniecki stated that, as City Finance Director and a Board Trustee, he is very concerned that the Board has been placed in a position where someone else is dictating how the funds are to be administered even though the City of Flint is ultimately responsible. If MERS cannot make the payments, if Hurley cannot make their contributions, ultimately the City of Flint would be responsible for Hurley's pension liability.

Discussion followed regarding Hurley's contribution rates to MERS and FERS, which will be based on the unfunded liability in each, based upon the assets that are transferred.

Further discussion surrounded the issue of MERS requiring the conversion of assets to cash, which will incur significant expenses and fees. Who will be liable for paying those costs – FERS, MERS, Hurley, or the Hurley portion of FERS? The greater the assets to be transferred, the greater the expense.

Chairman Daniel Hall distributed a copy of the initial draft language for the Ordinance changes allowing the transfer from FERS to MERS. Attorney Trachelle Young stated that the proposed language came from Hurley and she has many concerns about it.

Attorney Ghattas noted that the Board has been engaged in deliberations regarding the MERS issue for several months. Mr. Ghattas summarized the issues, including transfer methodology and actuarial reviews, potential increases in contribution rates, concerns with the status of the pension records at Hurley Medical Center (accuracy and completeness), the need for an audit of pension assets, etc. The issue as to whether or not the decision should be made at this meeting, based on the Board's comfort level with the status of the various issues and concerns involved, is left to the Board's discretion.

Attorney Meg Hunter recommended that the funds be transferred in installments, in light of all of the issues involved, with the final installment being a "true up."

Ed Taylor, as City Councilman and Trustee, stated that he has spent a great deal of time, both individually and in meetings, working to rewrite the draft ordinance language. The language just distributed to the Trustees was the very first draft from Hurley and does not reflect the many proposed changes that he was working on that reflect PERA requirements, etc. His understanding is that, under PERA, the employees must vote as a bargaining unit and then follow that choice. If a bargaining unit voted to transfer, or not to transfer, all members of that bargaining unit must abide by that vote.

Chairman Daniel Hall noted that there are many issues: actives, retirees, deferreds, choice, Ordinance changes, PERA, asset transfer amounts, the need for an audit, the cost of fees and penalties for liquidation and transfer, etc. Hurley has already paid about a million dollars to MERS in contributions since July 1st, which should cover their liability until some of these issues are resolved. There are also concerns regarding those employees who have retired from FERS since July 1st - are they to be given a choice whether to transfer to MERS? Since the contract actually took effect on July 1, 2004, and remains in effect until June 30, 2007, what about the retirees from July 1, 2004 to June 30, 2005? At this point, he is unwilling to proceed with authorizing the transfer.

Peter Dobrzeniecki stated his concerns that the liability, if anything happens to prevent Hurley Hospital from meeting its pension obligations, ultimately falls on the citizens of the City of Flint.

Discussion followed. Bob Erlenbeck asked the actuaries whether they have, in fact, conferred and established a dollar amount, which would allow the System to immediately transfer the bulk of that dollar amount, as has been inferred by some at this meeting? Larry Langer and Joseph Esuchanko stated that no dollar amount has been established; in fact, the methodology has not been established as to the allocation of assets between retirees and actives, which must be done before any dollar amount can be calculated.

Daniel Coffield stated that, as the Chair of the Investment Committee, he would prefer to see the funds transferred in \$20 to \$30 million increments to allow for the best timing for liquidating assets. Also, he noted that Hurley Medical Center received an investment grade bond rating from Moody's and Fitch, which would indicate that they believe Hurley Medical Center, 30 years from now, will be able to repay interest and principal on their revenue bonds.

Discussion followed regarding individual retirees who have asked to be allowed to retire from FERS instead of MERS, threatening to sue if they cannot, as well as those who have retired from FERS since the effective date of the contracts, but would have retired from MERS if the transfer had been made. Will they all be given a choice until a certain point or will the transfer be made retroactive to a certain date and all retirees since that date will be transferred to MERS also? It was noted that the agreements give MERS retirees the equivalent of any 13th check granted to FERS retirees; however, Hurley will pay those monies directly to the MERS retirees.

Daniel Coffield noted that it is the Medical Center's position that the bargaining unit contracts are binding under PERA, and being confronted with an unfair labor practice charge, they began contributing funds to MERS as of July 1st, 2005, for the seven employee groups who have opted to transfer.

Attorney O'Connor stated that the unions have the right to enforce those seven collective bargaining agreements by requiring payments from MERS to every employee covered by those agreements who retired after July 1, 2004.

Chairman Dan Hall noted that there have been problems with Hurley not sending copies of all contracts to the City Retirement Office so that the staff has the correct retirement language for each bargaining unit.

Daniel Coffield stated that, in February 2004, Letters of Understanding were signed and ratified by Hurley and all of its bargaining groups. Those Letters covered the wages and benefits in the three-year contracts for July 1, 2004 to June 30, 2007, noting the changes from the previous contracts and stating that the Letters of Understanding were to supercede all previous agreements.

Chairman Hall noted that Bernice Calvin, representing Local #825 LPNs, has stated that they are not represented by Attorney O'Connor. Attorney O'Connor responded that their contract is substantially different from the six unions that he represents.

Discussion followed regarding the authority of the Hurley Board of Managers to amend the Plan with regard to non-represented members. Also, retirees and deferreds under the previous contracts should stay with FERS. Should new hires be given a choice for a certain period of time?

A discussion followed regarding the many outstanding issues that must be addressed for the transfer to take place:

- 1) The need for the actuaries to develop a methodology for transferring only the active employees in the seven unions.
- 2) The need for an actuarial valuation within six months prior to the actual transfer date.
- 3) The ordinance language changes, noting that the contracts do not allow for individual choice within bargaining units, and the status of exempts, retirees and deferred retirees.

Daniel Coffield stated that the Board of Managers previously indicated they would support giving all employees a choice. He asked that the ordinance language allows, but does not mandate, individual choice. It was also noted that employees can move between unions, which means there could be employees transferring between FERS and MERS.

- 4) Determination of whether to transfer the funds in installments; if so, determining interest rates, setting up a payment schedule, holding a final "escrow" amount, etc.
- 5) Completion of an independent Audit of the assets of the System is needed.
- 6) Administrative/MERS Issues: MERS and Hurley have been contacting the Retirement Office for assistance with the process of retiring employees. Will the City be reimbursed for the employee time involved? Also, is MERS' liable for any errors they make on FACs?
- 7) The method and timing of the liquidation of the assets to minimize the resulting penalties and fees for liquidation, and who will pay those additional costs.
- 8) Clarification is needed regarding retirees between July 1, 2004 and July 1, 2005 and retirees since July 1, 2005.

Should the retirees between July 1st, 2004 and July 1st, 2005 stay in FERS or be transferred to MERS? Hurley sent a letter to the City stating that “Anyone beginning the process of retiring, in the affected unions, after July 1st 2005, is to be referred to MERS.” Why did the hospital’s letter give a date of July 1st, 2005, rather than the effective date of the contracts? A written definition is needed for “initiating retirement” – is it obtaining an estimate or making formal application? After discussion, the consensus among the Trustees was that it should mean making formal application.

9) PERA and its impact on the other issues.

10) Final Legal Approvals – FERS, City of Flint/City Council/Mayor, Hurley Medical Center, MERS - ?

Daniel Coffield noted that the additional costs for professional services would be borne by Hurley Medical Center.

Attorney Ghattas stated that, in terms of the expenditure of Trust assets, the Trustees of the assets of the System are obligated to implement the Plan. The Plan, with regard to the represented interests, is MERS; therefore, the current responsibility is to determine the appropriate methodology required to make the transfer. Everyone who is part of the collective bargaining process must retire under his or her own contract, per PERA. If there is no bargaining unit involved, then the Ordinance takes precedence.

Ed Taylor noted that, in the Letter of Understanding between Hurley Medical Center and AFSCME #814 concerning MERS participation, which is a part of the binding contract that all of the unions have, Article #3 states that, until final arrangements are made, eligible employees will continue to be covered by FERS. Chairman Daniel Hall stated that he asked Hurley’s attorney, Bill Smith, for clarification on that issue and Mr. Smith stated that the signed three-year contract supercedes all other documents.

Discussion followed regarding the possibility of the unions voting, at some future date, to return to FERS. Attorney Meg Hunter noted that the only way the employees could return to FERS is if FERS permitted them to come back. FERS has no legal obligation to do so. MERS agreed to accept the Hurley bargaining groups. By law, the recipient plan must agree; assets cannot be unilaterally transferred from one plan to another.

A motion was made by Robert Erlenbeck, and supported by Daniel Coffield and Robert Rosenberger, to direct Gabriel, Roeder, Smith & Company and Actuarial Services Company to work together to develop a mutually agreed-upon recommended methodology for the potential transfer of all active Hurley groups, as of an effective date of July 1, 2004, and also to take into consideration the retiree groups

in performing the separation of the assets and data to reach that methodology, with the cost to be born by Hurley Medical Center.

Discussion followed.

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

A motion was made by Daniel Coffield, and supported by Robert Erlenbeck, to direct the ad hoc Investment Committee to meet with Gray & Company to develop a proposal for a cash flow plan to fund the transfer.

Discussion followed.

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

Chairman Daniel Hall stated that the Audit Committee (himself, Peter Dobrzeniecki, Cass Wisniewski and Sandra Kidd) would be meeting soon to discuss an audit.

5. ADJOURNMENT

There being no further business to discuss, it was moved by Robert Erlenbeck, and supported by Georgia Steinhoff, to adjourn the meeting at 4:42 p.m.

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

Respectfully submitted,

Peter Dobrzeniecki, Secretary