



**EMERGENCY MANAGER
CITY OF FLINT
GENESEE COUNTY MICHIGAN**

ORDER No. 34

**FLINT POLICE OFFICERS ASSOCIATION UNION
CONTRACT PROVISION MODIFICATION/TERMINATION -
TRANSFER TO THE MUNICIPAL EMPLOYEES'
RETIREMENT SYSTEM OF MICHIGAN**

BY THE POWER AND AUTHORITY VESTED IN THE EMERGENCY MANAGER ("EMERGENCY MANAGER) FOR THE CITY OF FLINT, MICHIGAN ("CITY") PURSUANT TO MICHIGAN'S PUBLIC ACT 4 OF 2011, THE LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT, ("PA 4"); MICHAEL BROWN, THE EMERGENCY MANAGER, ISSUES THE FOLLOWING ORDER:

On or about March 16, 2011, the Local Government and School District Fiscal Accountability Act, Public Act 4 of 2011, ("Public Act 4") was enacted to safeguard and assure the fiscal accountability of units of local government; to preserve the capacity of units of local government to provide or cause to be provided necessary services essential to the public health, safety and welfare of citizens; and

Governor Rick Snyder appointed Michael Brown as the Emergency Manager for the City of Flint effective December 1, 2011; and

Pursuant to Public Act 4, the Emergency Manager has broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the City of Flint and its capacity to provide or cause to be provided necessary services essential to the public health, safety and welfare; and

Pursuant to Public Act 4, the Emergency Manager acts in place of local officials, specifically the Mayor and City Council, unless the Emergency Manager delegates specific authority; and

Pursuant to Public Act 4, the Emergency Manager may exercise any power or authority of any officer, employee, department, board, commission, or similar entity of local government, whether elected or appointed, relating to the operation of local government. The power of the Emergency Manager shall be superior to and supersede the power of any of the foregoing officers or entities.

Public Act 4 empowers the Emergency Manager to issue the orders the Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local officials or employees to whom they are issued. **Section 19(1)** provides that an Emergency Manager may take on one or more additional actions with respect to a local government in receivership: **(g)** Make, approve or disapprove any appropriation, contract, expenditure...; **(k)** After meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and the state treasurer determine that all of the following conditions are satisfied...; **(l)** Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement; **(ee)** Take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities...; and **19(2)** ...the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the Emergency Manager.

As part of my efforts steps to reduce the cost associated with the administration of employee benefits, my staff evaluated the potential of transitioning the Flint Employees' Retirement System (FERS) to the Michigan Municipal Employees' Retirement System (MERS). This review, in part, was conducted by one of the Advisory Committees I established to assist in the financial restructuring of the City. That Committee met at least twice for the purpose of reviewing information on the City's pension system. Following that review, the Committee recommended that the city retirement system be moved to MERS.

Pursuant to Flint City Code §35-46.6, on July 19, 2012 the Flint Employees' Retirement Board adopted the attached resolution authorizing the transfer of the Retirement System, and any of the related plans, programs, and funds provided for in Flint City Code Chapter 35, Personnel, Article II, Retirement System, to the Municipal Employees' Retirement System of Michigan

On July 11, 2012, members of my staff along with labor attorney John Clark met with representatives of all of the City's local bargaining units, including representatives of the FPOA

to discuss the transfer of the City's retirement system to MERS. During that meeting, representatives of MERS were present to provide information and answer questions. Within days of that meeting, Mr. Clark presented to each of the public safety units a proposed Memorandum of Understanding (MOU) which provided for the transfer of the City's pension system to MERS. Recently, we received executed copies of the proposed MOU from the City's fire union, its sergeants' union as well as its lieutenants' and captains' union. Copies of those executed MOU's are enclosed for your review. Despite our repeated contacts with the representatives of the FPOA, the union has refused to sign the proposed MOU.

In my sole discretion and judgment, as Emergency Manager, after meeting and conferring with the Union and its representatives on July 11, 2012, a prompt and satisfactory resolution is unlikely to be obtained. I determine that all the following conditions of Section 19(1)(k) have been satisfied to modify the parties' collective bargaining agreement as set forth above:

- (i) The financial emergency in a local government has created a circumstance into which it is reasonable and necessary for the State to intercede to serve a significant and legitimate public purpose.**

As a part of addressing the financial emergency in the City, a review has been conducted to determine the cost savings associated with transferring the City's pension system to MERS. In that regard, it was determined that the City could potentially save approximately \$1,504,000 annually and reduce management and administrative fees. Moreover, based on MERS prior investment performance, had the City made this transfer earlier, it would have potentially realized in excess of \$22,000,000 in increased investments over the last five years.

The intercession of the State serves a significant and legitimate public purpose concerning this transition as part of an overall plan to address the financial emergency of the City.

- (ii) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with the broad, generalized economic problem.**

The projected accumulated deficit for the FY-12 fiscal year is \$18,000,000. Should the requested transfer of the pension system as set forth herein be effectuated, the deficit will decrease by approximately \$1,504,000. The plan to transfer the pension system to MERS is reasonable and necessary to deal with the City's economic problems.

- (iii) Any plan involving the rejection, modification, or termination of one or more terms of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.**

The proposal to transfer the administration of the local pension system from FERS to MERS would not only reduce cost, but would also insure that the City's retirees receive better service

and a better return on retirement funds. The Plan is directly related to, and designed to address, the City's financial emergency for the benefit of the public as a whole.

- (iv) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.**

The proposed contract modification as discussed above is temporary in nature in that the City, through a vote of its residence, could vote to transfer the administration of the pension system from MERS to another entity (including back to a FERS-like system). There is no question that any effort to place such a matter on the ballot and convince a majority of voters to approve such a transfer would be an involved endeavor. However, MERS has informed us that at least three communities have been directed by a vote of their residents to transfer out of MERS. Moreover, this proposed transfer does not target any specific group of employees. Rather, it concerns all employees and retirees of the City and is applicable to all non-union employees.

On August 1, 2012, I requested that the State Treasurer concur in my determination under Section 19(k) of the Local Government and School District Fiscal Accountability Act, Public Act 4 of 2011 (Act) to allow the modification of the above referenced sections of the Collective Bargaining Agreement with the FPOA, as discussed below.

As stated in the August 1, 2012 correspondence to the State Treasurer, in my sole discretion and judgment, and after conferring with the FPOA and its representatives, a prompt and satisfactory resolution of outstanding issues is unlikely to be obtained. Therefore, I determined that the four conditions of Section 19(k) of the Act had been satisfied.

On August 3, 2012, the State Treasurer concurred with my determination and made his separate determination (see attached) that the four conditions of Section 19(k) of the Act had been satisfied.

It is hereby ordered:

By operation of law, as provided in Section 19(k) of the Act, pursuant to the determinations made by me and the State Treasurer, certain sections of the Collective Bargaining Agreement with the City and FPOA have been modified or terminated, as set forth in the attached modified collective bargaining agreement.

The Human Resources Director shall immediately implement the contract changes set forth above and incorporate those into the collective bargaining agreement between the City of Flint and FPOA, providing that the Flint retirement system, and any of the related plans, programs, and funds provided for in Flint City Code Chapter 35, Personnel, Article II, Retirement System, shall be transferred to the Municipal Employees' Retirement System of Michigan.

This Order is effective immediately.

This Order may be amended, modified, repealed or terminated by any subsequent order issued by the Emergency Manager.

Dated: August 8, 2012

By: 

Michael K. Brown
Emergency Manager
City of Flint

xc: State of Michigan Department of Treasury
Mayor Dayne Walling
Flint City Council
Inez Brown, City Clerk

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