

**CITY OF PONTIAC, MICHIGAN  
GENERAL EMPLOYEES RETIREMENT SYSTEM  
POLICE AND FIRE RETIREMENT SYSTEM  
BOARD OF TRUSTEES  
JULY 28, 2011**

**SPECIAL MEETING**

A special meeting of the Board of Trustees was held on Thursday, July 28, 2011 at the City Council Conference Room, Second Level, City Hall, 47450 Woodward Avenue, Pontiac, Michigan 48342. The meeting was called to order at 1:42 p.m.

**GERS TRUSTEES PRESENT**

Shirley Barnett

Koné Bowman

Charlie Harrison, Chairman

Leon Jukowski, Mayor

John Naglick, Secretary

Tuesday Redmond

Devin Scott

Patrice Waterman

Kevin Williams

**PFRS TRUSTEES PRESENT**

Leon Jukowski, Mayor

Brian Lee, Vice Chair

John Naglick, Secretary

Matthew Nye

Craig Storum, Chairman

**OTHERS PRESENT**

Cynthia Billings, Sullivan, Ward, Asher & Patton

Matthew Henzi, Sullivan, Ward, Asher & Patton

Chris Kuhn, Gray & Company

Ellen Zimmermann, Retirement Systems Administrator

Jane Arndt, M-Administrative Assistant

Deborah Munson, Retirement Accountant

LaJuan Craft, Retirement Coordinator

Della Finley, Retiree

Larry Marshall, Retiree

Paul Mosher, Member

Al Phillips, President Local 2002

Paul Shelton, Member

Sam Scott

Yvette Talley, Member

Linda Watson, Retiree

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**Re: Retirement Board Staffing**

Chairman Storum stated that the Boards have come together to discuss the hiring of staff changing them from City employees to Board employees. The discussion will be confined to the trustees and there will be no public comment.

Emergency Manager, Michael Stampfler indicated that he is amiable to the employees becoming Board employees in order to stop the transfer of funds and alleviate the City's cash flow issue.

He referred to the latest audit report for PFRS where the auditor has indicated that in order to insure the continuity of the Retirement Systems a plan should be put in place in the event the City goes into bankruptcy.

Trustee Waterman questioned the auditor's report regarding the possibility of the City declaring bankruptcy.

Chairman Storum said that the auditor's report suggested that a plan be put in place to insure that the staff is paid, the retiree payroll is processed and the investments are monitored in the event the City goes to payless paydays.

The Police & Fire Retirement System is looking to put the staff under the Board's jurisdiction. They would like the General Employees Retirement System to come along to enjoy the economic benefits of sharing the staff.

Trustee Waterman questioned the logistics of the Retirement Board.

Chairman Storum said that there are four Systems; the Police & Fire Retirement System; the Police & Fire VEBA; the General Employees Retirement System and the General VEBA. The four employees work for all four Systems.

Trustee Naglick stated that there are four employees, Ms. Zimmermann, Ms. Munson, Ms. Arndt and Ms. Craft who are currently City employees and are paid by the City. The City is reimbursed for this expense. He explained the process which starts with a request to Plante & Moran to look up the expenses for the four employees and prepare an invoice. The invoice is sent to the Retirement Office and they cut a check to reimburse the City. Mr. Stampfler has brought up the cash flow issues of the City and the fact that the City is out the money while they wait for the reimbursement.

Trustee Waterman questioned whether the employees are paid by the Retirement System.

Trustee Naglick confirmed that the employees are paid by the Retirement System. He also indicated that the auditors made valid points suggesting a continuity plan and the fact that based on the City's financial condition there is the chance that the City will not be able to make payroll. The auditors did not indicate how to plan for continuity but recommended a plan be put in place. He emphasized that the City's cash flow issues are acute based on the cuts to revenue sharing and property taxes, revenues are falling faster than they can cut expenses. The deficit was projected at \$3 million but because of these issues it is now projected at \$12 million. It is likely that the City will run out of cash this fiscal year.

The Emergency Manager is trying to come up with a plan. The State has indicated they will not let a municipality declare bankruptcy however, the City may run out of cash. He is working with the State but there are some real concerns that they may not be able to cover payroll.

Trustee Scott said that as an employee trustee who is voted in by the employees he feels that the employees have a right to speak. This issue is of a sensitive nature. If the employees have concerns they should be able to speak.

Trustee Waterman said that she needs to hear from the employees of the Retirement Office.

Trustee Scott said that the dynamics of the meeting have changed. He feels that the individuals that are present should have a say.

Trustee Bowman said that it is safe to assume that it will probably take another meeting to determine what is needed for continuity. He does not feel that the Boards will solve anything today beyond starting the discussion rolling. He feels that the Board should come back with their questions and not want to react out of emotion. They need to act diligently.

Chairman Harrison said that he is of the same rationale. However, this meeting was not designed as a public hearing. The meeting is being held for informational purposes. This is the first time the two Boards have met together to discuss this issue. Because this is an open meeting does not mean it was designed as a public forum.

*Al Phillips, Linda Watson and Della Finley arrived at 1:56 p.m.*

Trustee Redmond asked at what point the meeting will be opened up if people have questions. She indicated that she has not had time to review the documentation that was distributed at the start of the meeting. She has been a City employee since she was fourteen years old and she is also concerned for the other employees that are not paid out of the General Fund. She questioned what will happen to them and whether their seniority will stop.

Chairman Harrison tried to explain that the Boards are just beginning the discussion.

Trustee Redmond stated that this should be a collective discussion and they have a responsibility to more than the four Retirement Office employees.

Trustee Scott said that these Systems are the people's systems. These people came for a reason. At the end of the day everyone is affected.

Trustee Nye asked if the GERS trustees could explain their grave concerns.

Trustee Redmond said that the PFRS Board has not presented anything beyond what the Emergency Manager said. They have not explained why this is needed. They need to provide a plan in writing.

Chairman Storum said that the Boards are meeting to determine the pros and cons. The pros are that the services provided by the Retirement Office will continue including retiree payroll, the monitoring of investments and member services. The employees work at the pleasure of the Board but directly report to the City. This is a conflict of interest. Even though there is no conflict now it is possible.

Chairman Harrison stated that the meeting will be conducted in a professional manner and there will not be any direct attacks on members of the Boards. This is the first stage in the discussions. There is nothing ready to be signed, sealed or delivered. Legal counsel will research the questions that are raised and provide the answers but we are not there yet. He asked that anyone wishing to make a comment wait to proceed until they are recognized by the one of the Boards Chairmen.

Chairman Storum said that they want everyone to voice their concerns but they cannot respond to everyone's comments. The Boards meet on a monthly basis. This meeting is not just about the employees' salaries. The City would continue to supply assistance with fringe benefits and none of that will change. These things would continue status quo. The cities of Detroit and Ann Arbor are doing this. Most Boards have their own staff.

Ms. Billings provided the legal perspective. Public Act 314 gives every retirement system the authority to hire its own staff. The trustees have a fiduciary responsibility to the constituents of the System. She indicated that their personal wealth is at risk. Public Act 314 does not require use of a municipal staff. It is legal to go either way.

Trustee Naglick asked how other systems operate.

Ms. Billings said that some systems are so small that they are run by the City Clerk and the custodian. A lot of small systems move to MERS. Bigger systems like Detroit have their own staffs. The City of Ann Arbor has its own staff and office. In 1985 the Detroit System broke away. The city sued them but the Court upheld Public Act 314 stating that they have the authority to hire their own staff.

There is also the union issue because one employee on the staff is a member of the union. The law is clear that if the System takes over the employees, the System would be bound to maintain the union position based on the legal doctrine referred to as the Joint Employer Doctrine.

The Joint Employer Doctrine binds the Retirement Systems to the collective bargaining agreement. The law is clear that the employer cannot get away from the union. The Systems would be bound to maintain that.

The GERS Ordinance and the PFRS Ordinance give the Boards the authority to hire their own staff. However, there is one provision in the PFRS Ordinance that gives City Council the authority to set wages. They have been working to strike this language from the Ordinance.

The only change needed in the GERS Ordinance would be to allow for continuity of benefits for the Retirement Systems' staff so that they continue to be included them in the General Retirement System. She will provide the legal framework to the Board.

Trustee Barnett stated that she feels it is real simple. The Board would just be cutting out the middleman.

Chairman Harrison said that at the beginning of the meeting they discussed how the meeting would be conducted and only the trustees would participate in the discussion regarding the pros and cons. However, a number of the trustees on the GERS Board want to allow member participation but do not want people to go off on tangents and want them to get to the point today.

Trustee Waterman said that she would like clarification regarding the union position.

Chairman Harrison asked for a roll call vote with regard to allow participation within limits.

Trustee Scott said that he does not feel a vote is needed and should be handled like a regular meeting with public discussion.

Chairman Harrison said that the participants will be allowed two minutes to make their statements and asked them to be respectful.

Mr. Henzi suggested that the meeting be handled like a roundtable with the trustees coming up with a list of pros and cons which may help answer their questions.

Trustee Scott questioned whether the other retirement systems that have their own staffs and buildings are full time and whether they receive a salary.

Ms. Billings said that the other systems have full time staffs. Generally, trustees are not paid for serving as trustees.

Trustee Scott also asked who supervises the employees and would conduct their valuations. The job descriptions were set by the City and they report to the Finance Director.

Ms. Billings indicated that the Ordinance refers to the employees as Board employees.

Trustee Scott said that the Fund was established by the City and the unions in the 1970's. At that time the Administration provided oversight and established a Board. At that time the employees that worked in the Retirement Office were essentially City employees and did not work for the Board.

Ms. Zimmermann stated the System was established in 1946 by Ordinance.

Ms. Billings stated that there is no provision in the Ordinance that states the employees have to be City employees. Section 8 of the Ordinance reads that "The Board of Trustees may employ such professional, clerical, and other services as are required for the proper operation of the Retirement System.

The Board has the ultimate responsibility to cut the checks to the retirees, transfer funds and hire someone to take control and administer the benefits. The Board is responsible for making sure everything is done.

The Ordinance also states that the Board shall supervise the Administrator and did not delegate their authority over the position. The Ordinance states that the Administrator shall manage and administer the Retirement System under the supervision of the Finance Director. She emphasized that the Board is responsible for establishing the guidelines for the staff including job descriptions and rules and regulations.

Chairman Harrison said that the City has had a number of quasi governmental bodies including the Silverdome, Housing and DDA. The Silverdome Authority was established by the City which hired its own Executive Director with the same being true for the Retirement System. When the original documents were drawn up they created a potential for conflicts. He questioned how the Administrator can serve two masters. He provided the example of the Board directing the Administrator to do A and the City says to do B and she follows the Board's direction then she could be fired for not following B and therein lies the problem.

Ms. Billings stated that it could present a practical problem.

Trustee Lee said that this will not be a potential problem if the staff is separate.

Trustee Redmond asked about the building charges and how the 70%/30% split between the two Systems was determined. She asked who would set the pay increases. Would the Finance Director position still be part of the Board and would there be any changes that would affect the Board.

Ms. Billings explained that the Retirement System is a separate legal entity. If the City goes bankrupt it does not affect the Retirement System.

The Board would pay staff directly, determine pay raises and the Board would negotiate with the Union. They could have employment contracts as at will employees. How employees are terminated would have to be worked out.

Trustee Redmond stated that she is concerned about the 70%/30% split. She feels it should be a 50%/50% split between the Systems.

Trustee Jukowski said that is a parallel discussion that will have to occur regardless if one of the Systems feels the distribution is inequitable.

Chairman Storum said that the Police & Fire Board also had that discussion.

Trustee Redmond said she would like to know what process was used to determine the split.

Ms. Zimmermann stated that historically it was based on the proportion of the assets in the system.

Chairman Harrison asked which participants are interested in speaking.

Retiree, Larry Marshall stated that he is not sure whether Ms. Craft should speak since she is one of the employees in the Retirement Office and also the President of SAEA.

Ms. Craft stated that she would like to speak for herself. She is the Retirement Coordinator and President of SAEA. She stated that it is up to her union membership.

Chairman Storum asked legal counsel if the Board would have to sign contracts based on the Joint Employer Doctrine.

Ms. Billings said that if the Board does separate they would have to keep the union position. There is no way they could reject the union agreement. They would have to negotiate with the union going forward.

Chairman Storum said that their intentions would be to work with the union.

Retiree, Linda Watson asked what time the meeting started and why it was not posted. She checked the Retirement Office, the City Clerk's Office and the kiosk in the main lobby. She asked what type of meeting was being held.

Chairman Harrison stated that it is a joint meeting between the two Boards. He asked Ms. Arndt what the procedure is to post meeting notices.

Ms. Arndt stated that the meeting notices were posted on each floor of the building and at the Retirement Office. There was a notice posted in the kiosk in the main lobby.

Ms. Watson stated that she is concerned about the employees' fringe benefits going forward and asked if they would come out of the Retirement Fund.

Ms. Billings indicated that payment for the employees' benefits currently comes out of the Retirement Funds and that will not change.

Retiree, Debra Woods said that the situation cannot remain the same between the Union and the City. Although the law is in effect it still has to be negotiated. You just cannot shut it all down.

Ms. Billings explained that if both Boards wanted to hire their own staff they could. They could hire a third-party administrator, like Benisys. The State statute supersedes the Ordinance. If one employee is a union employee the employer cannot break away. Ms. Billings stated that she is not a labor attorney but that it appears that even if a third party firm was hired they would have to retain the union position.

Ms. Woods asked if Ms. Craft would maintain her pension and benefits.

Trustee Waterman said that no one would lose their benefits; they would not let that happen.

Ms. Billings said that the Ordinance would be amended to say that members of the Retirement Office would maintain their benefits. Health insurance would also be continued under the Humana umbrella, similar to the Housing and DDA departments.

Ms. Craft asked what the impact would be if her membership voted no.

Ms. Billings stated that they cannot stop the Retirement System from hiring their own staff. However, one position in the Retirement Office would have to be a union position.

Mr. Marshall asked if the separation only includes these employees becoming Retirement Board employees.

Chairman Harrison said that the concept is looking at where the City is going as a whole. Regardless of that they need to be concerned as a separate entity.

Trustee Naglick said that it is nothing more complicated than the Retirement Office employees becoming Board employees.

Trustee Nye said it is as simple as hiring their own employees and keeping those we have.

Mr. Marshall confirmed that the Ordinances would have to be amended to include the continuity of benefits and the PFRS Ordinance would also detract the language regarding City Council setting wages. He questioned whether the Board would have the authority to set salaries and fringe benefits. He also indicated that Ann Arbor has their own building and asked if the System could move the employees somewhere else.

Ms. Billings indicated that the Board currently has the authority to set wages and benefits. They could also move the employees now if needed.

*Chairman Storum left at 2:54 p.m.*

Mr. Marshall said that the Police & Fire Chairman indicated earlier that there are currently no problems with the day to day operations and working with John Naglick. This is simply a contingency plan if the City goes belly up.

Trustee Nye said that their Board wants the staff to work for them so there is no conflict of interest.

Mr. Marshall said that it seems the Board does not trust the system that created the system. He does not see the crisis.

*Chairman Storum returned at 2:58 p.m.*

Trustee Naglick said that currently the process runs effectively. The Board currently reviews and makes the decisions. The Boards are simply looking ahead if the City cannot pay.

*Trustee Jukowski left at 2:59 p.m.*

Member, Paul Mosher said that the System was established by the City and the Unions. If they are privatized they will not have control. It seems that things are working well so why take it out of our hands.

Chairman Harrison said that Mr. Mosher is speaking as a union representative and that the Board has responsibility for the control over the System now.

*Trustee Jukowski returned at 3:03 p.m.*

Local 2002 President, Al Phillips stated that he did not hear about this meeting and would like to be notified when they are held. He questioned whether GERS was planning to become part of PFRS and whether Police & Fire would take the assets.

Chairman Storum said that they are two separate Funds. There are four separate Funds GERS; PFRS; PFVEBA and General VEBA and they are all separate funds. The reason to separate from the City would be to allow the employees to become Board employees with all the same benefits. There would still be one union employee.

Chairman Harrison said that the meetings are posted similar to City Council special meetings. Some of the meetings have closed sessions.

Ms. Watson confirmed that this was an open meeting.

Chairman Harrison stated that an open meeting means it is open to the public but does not mean the audience is allowed to participate in the discussion.

Mr. Henzi said that the Board fully complies with the Open Meetings Act whether there is public discussion or not.

Trustee Jukowski said that he sits on both Boards and as the Mayor he has never heard any complaints regarding the staff from anyone including the Board members. He has only heard compliments.

The Boards are looking at a contingency plan in the event the City cannot make payroll. What would happen to the operations if that occurred? The trustees have a duty to take care of the retirees.

He explained that the Retirement Board is currently paying the employees. The City pays staff and then is reimbursed: from a management position they are going through steps they should not need to.

There are a number of people who are in favor of this and want to protect the employees. The Boards are more financially stable than the City.

Trustee Bowman said that he has to leave but felt he received a lot of good information.

Chairman Storum asked if the Boards would like to vote to continue looking into this issue.

Trustee Nye confirmed that they are not voting yes to do it but voting to move forward.

Chairman Harrison stated that a majority of the questions have been clarified. There are still some questions including those posed by Trustee Redmond. He is not going to push his Board to make a decision. This is their first discussion.

Trustee Jukowski suggested that the Boards move forward by submitting their remaining questions or concerns in writing to legal counsel for discussion at the next meeting.

It was determined that questions would be submitted within two weeks of this meeting.

**RESOLUTION 11-081** By Jukowski, Supported by Bowman

Resolved, That the Board would submit questions or concerns in writing by August 11, 2011 to staff who will forward them to legal counsel for answering at the next meeting of the General Employees Retirement System Board.

Yeas: 9 – Nays: 0

*Trustee Bowman left at 3:14 p.m.*

Chairman Harrison said the Board has allowed them to get more answers to more of their questions.

Trustee Scott asked if the Union has to be part of the trustee composition on the Board. If so, would they not have the same authority if the Board wants to hire their own employees.

Ms. Billings stated that the Court held that Board composition would be a mandatory subject of collective bargaining. This was done so neither the City nor the Union could have an unfair majority that decides who gets a benefit versus who does not.

Trustee Scott said that Pontiac has always been unique or a gray area.

Ms. Billings stated that this is not a gray area. The Retirement Boards would be a joint employer and could not avoid the CBA.

Trustee Scott stated that the City has their own policies and procedures as does the State, the Ordinance and the Act. In Pontiac the Ordinance language is silent regarding the Board being able to hire their own staff.

Ms. Billings said that even if that was true, Public Act 314 supersedes the Ordinance. The Ordinance language should be cleaned up but it is not necessary because it is overruled by Public Act 314.

An Ordinance amendment would allow the employees to continue in the Retirement System.

Trustee Scott said if you go back to Mr. Mosher's comments regarding the City and the Union the focus has been on who is responsible for the Fund and that's the people. Over the years the authority has been convoluted as to what things can be done and who is in authority. The focus should be on the Fund and it's not broke.

Trustee Scott said everyone agrees that the staff does a good job. But, he asked, what happens if the Fund goes belly up and the City has to pay contributions?

Ms. Zimmermann asked what happens if the City cannot make payroll; who will pay the retirees?

Trustee Scott said that the City is making the payroll to retirees.

Ms. Zimmermann said that the City does not pay the retirees; they are paid by the Retirement Accountant out of the Retirement System.

Chairman Harrison recommended that the meeting be wrapped up. He reminded the trustees to submit their questions within the next two weeks to the Retirement Office.

He also indicated that Public Act 314 supersedes the Retirement Ordinance and that the CBA does not superseded Public Act 314. It is time to move on.

Trustee Redmond reminded the staff to send the election posting to the Department of Public Works.

Trustee Naglick said that Chairman Harrison sent a memorandum to the Emergency Manager who is in favor of separating the Retirement Staff from the City even though he knew it would be a hard thing to do. The Emergency Manager often pushes things through but he wants the Boards to be okay with it.

He told the Board that they distributed the findings from the audit report because they need to think about what will happen if the City runs out of money and how the Retirement operations will continue to run.

He said that there are precedents all over the City. He explained that the Library has separated and they are using the Library Mileage to operate. The City is currently collecting the taxes and routing the funds to the Library.

The separation of the Retirement Staff could be done many ways. It may work right now but it makes sense to have continuity in place to administer the System.

**RESOLUTION 11-082** By Jukowski, Supported by Waterman

Resolved, That the General Employees Retirement System Board adjourn the meeting at 3:28 p.m.

Yeas: 9 – Nays: 0

**RESOLUTION 11-053** By Nye, Supported by Lee

Resolved, That the Police & Fire Retirement System Board adjourn the meeting at 3:28 p.m.

Yeas: 5 – Nays: 0