

**CITY OF PONTIAC, MICHIGAN
GENERAL EMPLOYEES RETIREMENT SYSTEM
GENERAL EMPLOYEES RETIREES HEALTH &
INSURANCE PLAN AND TRUST
VEBA**

BOARD OF TRUSTEES

JOINT SPECIAL MEETING

A special meeting of the Board of Trustees was held on Tuesday, August 17, 2010 at the City Council Conference Room, Second Floor, City Hall, 47450 Woodward Avenue, Pontiac, Michigan. The meeting was called to order at 10:09 a.m.

GERS TRUSTEES PRESENT

Shirley Barnett

Koné Bowman (*arrived at 10:10 a.m.*)

Charlie Harrison, Chairman

Mayor, Leon Jukowski

Devin Scott

Patrice Waterman

Debra Woods, Vice Chair

TRUSTEES ABSENT

Kevin Williams (*excused*)

Andrea Wright (*excused*)

GVEBA TRUSTEES PRESENT

Pamela Britton

Mayor, Leon Jukowski

Devin Scott, Chairman

George Williams

OTHERS PRESENT

Cynthia Billings, Sullivan, Ward, Asher & Patton

Ellen Zimmermann, Retirement Administrator

Jane Arndt, M-Administrative Assistant

Rob Englund, President, SAEA

Michael Stampfler, Emergency Financial Mgr

Dennis DuBay, Keller Thoma

Nick Nahat, Keller Thoma

Budget Discussion

Chairman Harrison defined the purpose of the special joint meeting. He appreciates the approach Emergency Financial Manager, Michael Stampfler, has taken to meet with the Boards. He acknowledged that the Boards want to do what is best.

He indicated that the course of action going forward will be determined by the attorneys at the table as to what can and cannot be done. He understands the issues the City is going through as a resident of the City.

The Board is willing to discuss the issues but they have a fiduciary responsibility to the Retirement System. They will rely on legal counsel, Cynthia Billings' opinion for what is appropriate.

Mr. Stampfler thanked the Board for holding the meeting. He understands their fiduciary role and wants to work together. The real request is whether the Board will consider the resolutions. Mr. Stampfler asked for the Board's consideration subsequent to the meeting to work out the details.

Chairman Harrison recommended that Attorney, Cynthia Billings lead the discussion.

Ms. Billings provided the background; she was contacted by the EFM through his attorneys with regard to the Retirement System funding retiree healthcare costs. She explained the funding difference between the VEBA and the GERS.

The General VEBA assets can clearly be used to pay for retiree healthcare costs (similar to the Police & Fire VEBA) provided the Fund receives proper invoices and ensure that the expenses are for eligible retirees and beneficiaries.

Upon reviewing the Trust documents there are three requirements in the General VEBA Trust. The first is that the City is required to contribute 3%; the second is that the City is required to put funds used back into the Trust and the third is that employee contributions can be used to pay for additional benefits. She feels that the EFM probably has the authority to strike the second section.

The General Employees Retirement System has some issues of concern; she distributed a memo to all present. The System is governed by both the Internal Revenue Code Section 420 and the State of Michigan Public Act 28.

Section 420 has specific requirements including:

- funding must be at least 125% (120% under PPA)
- only one qualified transfer per year
- cannot exceed what is required for qualified current retiree healthcare costs
- the amount received from the VEBA reduces the amount of the 420 Transfer.

The use requirements of Section 420 are:

- assets can only be used to pay for qualified current retiree health care
- there is a potential excise tax if the transfer exceeds the qualified amount

She emphasized that going forward it is imperative that the amount transferred is in compliance with the statutes. If the transfer exceeds the allotted amount a 20% excise tax may be assessed to the City.

Vesting requirements of Section 420 require that all current employees become immediately 100% vested, including those employees who terminated employment within one year of the

agreement. This requirement would have to be negotiated with all the collective bargaining units.

The minimum cost requirements of Section 420 state that healthcare coverage cannot be reduced for five years if a transfer is done.

Finally, there can be no contributions to the VEBA.

Mr. DuBay said they have no issue with Ms. Billings' comments so far.

Ms. Billings said that there is a difference of opinion on the interpretation of Public Act 28. She has told the Board that this statute indicates that 50% of the earnings on the employer contributions can be used to fund retiree healthcare. There is not a lot of specific information one can use to interpret this statute. The earnings used to establish a base are based on the previous year.

The Attorney General's opinion, based on Public Act 345, stated that only the previous fiscal year's interest earnings, up to 50% for the purpose of Public Act 28, are available to fund health care benefits. This indicates that prior interest earnings of the Fund cannot be used. However, the Attorney General was not looking at this particular situation.

She cautioned the Board that she could not recommend a transfer of assets before receiving an opinion from the Attorney General based on their fiduciary responsibility as trustees.

The actuary can put together various numbers but there is no way to determine the actual amount of employer contributions if contributions from the prior year were not the sole basis for this calculation. She is not comfortable moving forward before working with the actuary and receiving an opinion from the Attorney General.

Mr. DuBay from Keller Thoma said that he is working for the Emergency Financial Manager. It is his opinion that a Section 420 Transfer is looking at the interest earned from the investments which was \$70 million in 2009. The System is well funded at 150%. The statute indicates that the Board may use half of the interest earned from the reserve fund contributions over the years.

Based on the recent audit we know the amount of the interest earned. He agreed that the statute is murky. The amount of interest earned is a murky area. In 1990, an Attorney General opinion regarding an Ypsilanti case stated that all the interest earned on savings, included all investments income earned and collected. Assuming employee contributions were 5%, 95% of the money could be transferred, or approximately \$66 million. This would mean 50% of that, or \$33 million would be available for transfer. The earnings exceeded the actuarial assumption of 7.5%. They are seeking the excess earnings for reimbursement of actual retiree health care costs.

Mr. Stampfler said that the attorneys could go on and on but that was not the purpose of the meeting. The purpose was to ask the Board to consider the request to transfer funds. The attorneys can work out these issues and we will not get there today in this format.

He asked whether these Boards are of the mind to consider this request. His “drop dead” date is September 1, 2010. He would like to come back in a few weeks to seek the consensus of the Boards.

Trustee Woods said that she is also a representative for Teamsters 314 and her members have already voted against the transfer because of the immediate vesting requirement.

Ms. Billings indicated that another Michigan municipality did not comply with Internal Revenue Code Section 420 and is now required to pay back \$21 million.

Trustee Jukowski asked if the Teamsters would consider going back and taking a re-vote.

Trustee Britton asked what the Teamsters’ rationale was. Trustee Woods said that her members felt that the six new members should have to work ten years like they did to become vested.

Chairman Harrison confirmed that it would take a consensus of all the unions in order to meet the statute’s vesting requirements.

Trustee Jukowski felt that this requirement cannot keep the Board from looking into the issue.

Ms. Billings questioned whether the General VEBA funds could plug a hole and bide time. She also asked the amount of required funds.

Mr. Stampfler said that they were asking for \$3.8 million which was the amount adopted and put into the budget. This was the number they planned to receive. However, the City has been spending money that may or may not be received.

Trustee Jukowski said that if the City is asking for \$3.8 million; the VEBA has \$6 million which can be tapped immediately.

Mr. Stampfler said they would like to know the amount available determined by the actuary.

Ms. Britton said that she supports using the VEBA funds for retiree healthcare. She questioned why the unions do not have to vote on the VEBA funds being withdrawn. Ms. Billings stated that there would not be a change to the VEBA and the funds would be used as intended (for retiree health care) as long as proper invoices are received.

Mr. Stampfler said that the amount needed has increased. He explained the City’s problem is large and getting larger. Liquidation Motors only made a partial tax payment on July 30, 2010. They are disputing their tax assessment so the situation has gotten worse.

Trustee Waterman asked about obtaining the necessary invoices. Mr. Stampfler said there should not be a problem getting the invoices. Ms. Zimmermann indicated that the Police & Fire VEBA has been trying for months to get invoices to pay. Mr. Stampfler said he understands there will be restrictions on getting the money but feels he will be able to get the invoices within a week.

Chairman Harrison asked if Mr. Stampfler has a plan going forward instead of just trying to plug a hole now. He asked what the target date is going forward.

Mr. Stampfler said that the State's target is September 1, 2010 for the revised final plan. He confirmed that they would have access to \$3.8 million. He stated that if an opinion is needed from the Attorney General they have no control over when that could be issued indicating that the fiscal year ended on June 30, 2011. He said that certain actions could be taken starting with the \$3.8 million. They do not plan on doing anything draconian. He stressed that the City is \$1.3 million short based on Liquidation Motors withholding a portion of their tax payment.

The drop dead date is September 1, 2010. Since the City began their debt elimination plan in 2007 things are even worse. He anticipates other issues arising, including the GM tax appeal.

Trustee Jukowski indicated whether the number is \$3.8 million or \$4.2 million what is Mr. Stampfler's ballpark guess on needed funding for the next three or four years. Mr. Stampfler said that the worst case scenario would be that they would require additional funding over the \$4.2 million.

Ms. Zimmermann said that over the years the City's plans have not materialized with regard to the structural deficit. She expressed concerns about the lack of a structural plan in place.

Mr. Stampfler said that he has done a good job analyzing the issue since he began on July 1, 2010. However, by September 20, 2010 he will not be at the point to have the structural changes in place. There is also some expense in getting that done.

Trustee Jukowski said that they would make sure that the structural changes are done.

Trustee Waterman called for a vote.

Chairman Harrison called for the Board to move forward.

Chairman Scott asked if the General VEBA Board will require a separate vote.

Trustee Britton confirmed that the General VEBA will require a separate vote to transfer funds to pay for retiree healthcare.

Ms. Billings recommended that the GERS resolution be edited to authorize legal counsel and the actuary to work together and to obtain an opinion from the Attorney General if the Board is inclined.

Mr. Stampfler asked how long it will take to obtain an opinion from the Attorney General. Mr. DuBay said it could take six months to a year.

Trustee Jukowski said that the two legal counsels could work together and at some point request an opinion from the Attorney General. He would not be opposed to that transaction. He would not move forward without the Attorney General's opinion.

Chairman Harrison questioned whether legally they can move forward without the opinion from the Attorney General. He feels the Board may have hit a wall and has gone as far as it can, based on the requirements of Internal Revenue Code Section 420. The unions have to agree on the vesting requirement.

Trustee Jukowski said that legal counsels have different interpretations on the Funds.

Ms. Billings stated that she has no problem working with the City's attorneys.

Mr. Stampfler said that realistically the Board will take a conservative approach and will want the Attorney General's opinion. He questioned whether the attorneys agree on the amount available in the General VEBA Fund.

Ms. Billings said that funds can be transferred with the appropriate invoices.

Mr. Stampfler asked how quickly the assets can be liquidated.

Ms. Zimmermann stated that the funds are in mutual funds which can be liquidated immediately.

Mr. Stampfler said he is betting on September 24, 2010. He suggested that legal counsels proceed on structuring the request and the clarification of certain points and have the requirements for the Attorney General's opinion completed in September based on the difference in interpretations.

Ms. Billings agreed and said she will meet with the actuary before proceeding.

Chairman Harrison asked if action is required for the General VEBA.

Ms. Billings stated that she will make the GERS opinion her top priority.

Mr. Stampfler confirmed that it would be available by September 15, 2010.

Trustee Jukowski asked if Mr. Stampfler could start with the General VEBA once billings are submitted and expedited. Mr. Stampfler said that he could have the billings available by August 24, 2010.

It was determined that Ms. Zimmermann and Ms. Billings would review the billings.

Trustee Britton felt it is her fiduciary responsibility to know the amount of the reimbursement before approving the release of funds. She wanted a separate meeting to approve the amount.

Chairman Scott questioned why Trustee Britton would want to review the billings if they are reviewed by Ms. Zimmermann and Ms. Billings. He felt that they could include the approval to transfer the funds in the resolution.

Trustee Williams said he has no problem reconvening to approve the transfer once the billings are reviewed.

RESOLUTION 10-012 By Jukowski, Supported by Williams

Resolved, That the Board approve that the City will provide retiree health care invoices to the General VEBA by August 24, 2010 for review by the Administrator and legal counsel with the intent of expediting reimbursement to the City for these expenses.

Roll Call:

Britton – Yea

Scott – Yea

Jukowski – Yea

Williams – Yea

Trustee Jukowski confirmed that the only requirement for GERS is to put the choreography in place for obtaining the Attorney General's opinion.

Chairman Harrison asked whether the language should be added to the resolution. Trustee Jukowski said that the resolution should be framed to require the questions to the Attorney General be completed by September 15, 2010.

Mr. Stampfler asked if the Board is in favor of pursuing this issue by approving the resolution as a vote of confidence.

Trustee Jukowski confirmed that he is in favor.

RESOLUTION 10-075 By Jukowski, Supported by Waterman

WHEREAS, the Emergency Financial manager for the City of Pontiac has delivered a request dated August 9, 2010 to the Board of Trustees regarding the reimbursement retiree healthcare costs;

WHEREAS, the Emergency Financial Manager requests that the Board of Trustees consider and approve that the Pontiac General Employees Retirement System transfer certain assets, as allowed under law at MCLA 38.571 to pay for medical benefits of retirees;

WHEREAS, the payment of those medical benefits from the requested asset transfer will mitigate the City's contribution for such medical benefits for retirees and assist in improving the overall financial condition of the City;

NOW, THEREFORE, the Board of Trustees resolves and approves the following:

1. The Board of Trustees authorizes its legal counsel and actuary to request an opinion from the Attorney General to clarify the provisions of Public Act 28, which request to be completed by September 15, 2010, And, in concept, approve the reimbursement of retiree health costs as requested in the letter dated August 9, 2010 from the Emergency Financial Manager and as contemplated under MCL § 38.571;
2. The Board of Trustees authorizes its attorneys, actuaries and representatives to work with the City's Emergency Financial manager, attorneys and representatives concerning the transfer of such assets for retiree medical benefits;
3. The Board of Trustees agrees to meet in September , 2010 to review the actuarial report being provided at the City's expense and further consider the Emergency Financial Manager's request to transfer assets as contemplated under MCL § 38.571.

Roll Call:

Harrison – Yea
Barnett – Nay
Bowman – Nay
Jukowski - Yea

Scott – Yea
Waterman – Yea
Woods – Abstain

Motion failed.

Trustee Woods said that she does not agree with item two. Based on her union role she cannot agree with the transfer of assets.

Discussion followed regarding the proper procedure for reconsidering an item. Ms. Billings said that reconsideration at the same meeting requires a member of the prevailing side to make the motion; the resolution can be called again at a different meeting.

Trustee Jukowski said the resolution is only to explore whether this can be done.

Trustee Barnett stated that she does not support this resolution as a hospital retiree who does not receive the same benefits as City retirees. She indicated that her group has been asking for a raise in their pension benefits.

Trustee Bowman said that he does not agree with section one or section two. He is not in favor of even exploring the issue.

Trustee Jukowski said he is not committing himself; he feels that the Board needs to determine if it is legally possible to transfer funds. Ms. Billings could go through the process and report

that legally there is no way to do it. Even if the Attorney General says yes, that does not mean the Board would vote in favor of transferring assets.

Trustee Bowman said that he has a number of reasons why he is not in favor of the pension system transferring assets to fund retiree healthcare. This could deplete pension system assets by 30%. When he was on the City Council they raised issues regarding healthcare and knew it would get to this point.

Mr. Englund said he represents two unions who are in support of using pension assets to fund retiree healthcare. They would also like to fund the VEBA. There are concerns that members could be facing layoffs and the City may not be able to pay for retiree healthcare in the future. This issue is complex and scary.

Chairman Harrison recommended that when the Board meets next week at their regular meeting this item be added to the agenda.

Trustee Jukowski questioned whether a resolution could be added to deal with the Attorney General portion.

Mr. Stampfler said that until the GERS Board is in agreement there's no reason to keep paying the attorneys.

RESOLUTION 10-076 By Waterman, Supported by Woods
Resolved, That the City of Pontiac General Employees Retirement System Board adjourn the meeting at 11:23 p.m.

Yeas: 7 – Nays: 0

RESOLUTION 10-013 By Williams, Supported by Britton
Resolved, That the City of Pontiac General Employees VEBA Trust Board adjourn the meeting at 11:24 p.m.

Yeas: 4 – Nays: 0

Recorded by Jane Arndt