

**REVISED MINUTES OF THE RETIREMENT BOARD  
Thursday, December 6, 2018**

A meeting of the Retirement Board was held on Thursday, December 6, 2018 at 8:30 a.m., in the Administration Building, 9<sup>th</sup> Floor Committee Room, located at 1 South Main Street, Mount Clemens, Michigan. The following members were present:

Present:

Mark Deldin, Bryan Santo, Larry Rocca, Gary Cutler, Carol Grant, Matthew Murphy, George Brumbaugh

Excused:

Bob Smith

Also Present:

Stephen Smigiel, John Schapka, Joe Biondo, Christina Miller, Andrew McKinnon, Tom Michaud, Mike Holycross

**1. Call to Order**

There being a quorum of the Board present, the meeting was called to order at 8:39 a.m. by Chair Deldin.

**2. Adoption of Agenda**

*A motion was made by Trustee Grant, supported by Vice-Chair Santo to adopt the agenda as presented. The motion carried.*

**3. Approval of Minutes from November 15, 2018**

*A motion was made by Vice-Chair Santo, supported by Trustee Murphy to approve the minutes from November 15, 2018 as presented. The motion carried.*

**4. Approval of Invoices**

*A motion was made by Trustee Cutler, supported by Trustee Grant to approve the invoices as presented. The motion carried.*

**5. Public Participation**

None

**6. Retirement Administrator Report**

Ms. Dobson was unable to be present for the meeting due to preparations for the Annual Retiree Holiday Luncheon being held today. Her monthly Activity Report was provided in the Board's packets for their review.

*A motion was made by Trustee Cutler, supported by Trustee Rocca to receive and file the Retirement Administrator Report. The motion carried.*

**7. Pension issues for discussion**

**a. Sinclair Retirement Benefit Opinion**

Mr. Schapka advised the Board that retiree Ms. Sheila Sinclair believes that the Michigan Constitution prohibits a reduction in the pension multiplier prior to her vesting. He stated that the answer to her inquiry is that the Constitution does not prevent the union from negotiating that type of reduction and since she was not yet vested, she had no rights in that pension until after the reduction. She is entitled to the 2.2 multiplier. The union has a contractual agreement that carefully preserves the rights to all of the employees who were already fully vested in the 2.4 multiplier and the negotiation only affected those employees who were not yet vested (like Ms. Sinclair). There is no violation of the Constitution and the union had the right to negotiate the reduction and Ms. Sinclair is only entitled to the reduced multiplier.

Chair Deldin inquired why the opinion on the Maria Zardis matter had been included. Ms. Schave responded that Ms. Dobson had asked that it be included because it was a similar situation wherein a benefit changed before a person was vested in the pension system. Trustee Grant sought clarification from Mr. Schapka that it was simply because Ms. Sinclair was not yet vested that she was not entitled to the 2.4 multiplier. He responded that the union was free to negotiate that multiplier for all non-vested union members. Ms. Sinclair was close to vesting, but not there yet.

Trustee Cutler stated that he respectfully disagrees with Mr. Schapka. He said that he has spoken to Mr. VanOverbeke about this specific scenario at the open sessions during MAPERS conferences and Mr. VanOverbeke has always stated that the Constitution does not say that a person has to be vested to be entitled to a benefit and that the benefit cannot be diminished or impaired. If someone was earning a benefit at a higher rate, it cannot be diminished. He would like to refer this matter to outside legal counsel for further review.

Mr. Schapka responded that unless you are vested, you have nothing. Mr. Michaud acknowledged that this is a bit of a gray area and is more of an individual issue than a collectively bargained issue. He noted that if she felt there was an individual right that had accrued, she would have had to take it upon herself to challenge the union's position at that time. She was put on notice at the time and did not disagree and essentially waived her right to challenge that reduction. Any objection to the reduction would have needed to have been addressed during the collective bargaining process. If it wasn't done at that time, the argument is simply that she did not object.

Retiree Representative Brumbaugh indicated that he recalled this situation and had spoken to a representative from another union at the time. Their position was that they needed to ensure that the County did not take away any vested benefits. If they are not vested, there is a right to negotiate something less.

Retiree Rep Brumbaugh also commented that he thinks that any legal opinions prepared for the Board (either by Corporation Counsel or outside legal counsel) should be marked as "Attorney-Client Privilege" communications and not distributed to anyone other than Board members. Chair Deldin and the other Board members had no objections.

**b. Non-spouse beneficiary**

Mr. Andrew McKinnon, Human Resources and Labor Relations (HRLR) Director distributed a handout to the Board to help assist him in explaining this issue. He stated that a month or so after he began working for the County, he had a conversation with a member of the DROP program about an issue they were having. They had utilized the online benefit calculator and it looked like their benefit was not what they were expecting it to be. Upon doing further research and in consultation with Mr. Michaud and Ms. Dobson, he is now bringing this issue before the Board.

Mr. McKinnon referred to the outline on the handout to help explain the issue. There are two options people can make when they apply for retirement (they can elect a 100% benefit for themselves or select a beneficiary). If they select a beneficiary, they can choose 100% benefit for their beneficiary or 50%. Those elections are irrevocable once they have been made. A portion of the retiree population has elected the 100% non-spouse beneficiary option. The Internal Revenue Code (IRC) requires that a pension benefit be primarily for the individual who earned the benefit (not for the beneficiary, but the person who worked for it). There is an incidental benefit that can go to a beneficiary and that incidental benefit falls under the Minimum Distribution Incidental Benefit (MDIB) rules.

Prior to 2001 the MDIB rules were largely ignored and in 2001, new IRC rules were proposed that provided a detailed table to be used when applying the MDIB rules. Those rules were adopted in 2004. The rules said that if you have a beneficiary and the age between the member and the non-spouse beneficiary is greater than 10 years, then there is a reduction in the 100% benefit. He gave an example of a child who is 50 years younger than the retiree and the 100% benefit is elected, they would only receive 52% of the benefit according to the rule. Disabled and minor children are exempt from the MDIB rules and are eligible to receive the full 100% non-spouse benefit without reduction.

The issue arises with the individuals who retired/dropped around the time the new rules went into effect and elected the 100% non-spouse beneficiary. At the time some of these individuals retired/dropped, the table was not applied and certain individuals were assured in writing that the MDIB rules did not apply to them based on the date of their retirement/drop. Some members dropped as of December 31, 2005 thinking they would be exempt from the reduction in benefit, but since those are not viewed as a "true retirement" that did not apply. The problem is that if the Pension Board does not apply the minimum distribution table, then the pension plan's status could be at risk.

Mr. Michaud provided some additional information with an example of how the dollar amounts could change based on what the retiree collects and then how it is reduced once the retiree passes and the non-spouse beneficiary begins to collect. Retiree Representative Brumbaugh pointed out that these individuals have paid into the system expecting to get 100% of their benefit and now those with non-spouse beneficiaries will not. He questioned whether the Retirement System itself benefits from this or where the excess money goes once the non-spouse beneficiary begins to collect the reduced amount.

Mr. McKinnon stated that they believe there are at least 25 members who have a non-spouse beneficiary more than 10 years younger than they are. Of that 25, some have disabled children and would not be impacted by the MDIB rules. His office has not yet reached out to any of these individuals because he wanted to come before the Board, so they would have an understanding of the issue being dealt with.

Mr. McKinnon then went through three possible, proposed solutions to this issue. Option #1 is to do nothing and simply apply the MDIB rules upon the death of the retiree. This puts the System into compliance with the IRC, but impacts the non-spouse beneficiary negatively in a variety of ways and reflects poorly on the Board and the System as a whole.

Option #2 is to inform those who are impacted by this issue, so that they can inform their beneficiary. This also puts the System into compliance with the IRC and allows it to be up front with retirees and DROP participants, but the System may also incur a loss in the event of a cause of action and reduces the level of trust members will have in the system.

Option #3 is to contact those impacted, inform them of the issue and provide a resolution that makes the non-spouse beneficiary whole. This would involve ensuring that the beneficiary has survived the retiree, recalculating their benefit through the MDIB rules via an actuarial analysis and then making up the difference in the 100% and any reduction through the use of other County funds outside the Retirement System. This puts the System into compliance with the IRC, the plan pays out less than expected and beneficiaries continue to get what they were relying upon. Negatively, there will be a cost for individual actuarial analysis when needed and additional County money would have to be allocated to pay beneficiaries.

Retiree Representative Brumbaugh stated that the promises that had been made should be kept. He suggested that the people who had been told that they would get the 100% or 50% (depending on what they selected) receive what they were told they would and the MDIB rules simply be applied going forward. He is not concerned with whether or not the IRS would question it and the explanation to them should simply be that the System had a contractual obligation with these individuals and they are simply honoring it. The cost to the system would be negligible and if anything the IRS might give them a slap on the wrist.

Mr. McKinnon does not believe they can suggest non-compliance. Mr. Michaud said that they really do need to follow the rules (even if it was just for one person). Mr. Michaud recommends Option #3. The rules are what they are and they have to be applied. Option #3 is a reasonable, straight-forward approach to resolve this issue and still maintain the qualified status of the plan. Chair Deldin stated that from his point-of-view, the only viable option is #3. He would like to see the Board re-certify its promise to the individuals affected by this and confirm that they will be made whole.

Retiree Representative Brumbaugh had one additional comment. He stated that the Board sends everything to their actuary and he is disappointed that they didn't question this when they should have been aware that the beneficiary was not a spouse. The actuary should have advised the Board and this could have been corrected back then.

Mr. Michaud recommended that the Board authorize HRLR and the Retirement Administrator to prepare a notification to the individuals affected implementing Option #3. Chair Deldin asked Mr. McKinnon to work with counsel on formulating a solution that can be transmitted to the individuals involved so they have something to add to their retirement papers.

Discussion ensued on where the money would come from to make these non-spouse beneficiaries whole once the reduction has been applied due to the MDIB rules. Mr. Smigiel speculated the money would likely have to come from the County General Fund. Chair Deldin thought that perhaps there should be a separate line item in the General Fund budget to account for this. The Board would also need to get the actuary involved to calculate what the exposure is for these individuals.

Chair Deldin asked if the consensus is to proceed with Option #3. No one voiced any objections and the matter will be passed to HRLR and counsel to begin the process of implementation of that option.

*A motion was made by Trustee Murphy, supported by Trustee Cutler to receive and file the pension issues discussed today. The motion carried.*

## **8. Disability Retirements**

### **a. Amy Bischof (initial opinion)**

The Board was in receipt of the Medical Director's confidential medical reports regarding the examination of Amy Bischof. The Medical Director has concluded, based on the exam, that her disability retirement should be approved.

*A motion was made by Trustee Cutler, supported by Trustee Grant that based on the Medical Director's opinion, the disability retirement of Amy Bischof shall be approved and the following resolution shall be adopted:*

**WHEREAS**, the Retirement Board is vested with the general administration, management and operation of the Macomb County Employees' Retirement System ("Retirement System") and has fiduciary responsibilities relative to the proper administration of the pension trust fund, and

**WHEREAS**, the Retirement Board is in receipt of an application for disability retirement from Amy Bischof dated August 23, 2018 and

**WHEREAS**, Section 28 of the Retirement Ordinance provides that upon the application of a member, or their department head, a member who (1) is in the employ of the County, (2) is vested, and (3) has become or becomes totally and permanently incapacitated for duty in the employ of the County, may be retired by the Retirement Board provided that after a medical examination of the member made by or under the direction of the medical director, the medical director certifies to the Board (1) that the member is totally incapacitated for duty in the employ of the County, (2) that such incapacity will probably be permanent, and (3) that the member should be retired, and

**WHEREAS**, the Retirement Board has previously acknowledged receipt of said application and directed the processing of said application in accordance with the Retirement System provisions, and

**WHEREAS**, on October 23, 2018, Dr. Neil S. Talon conducted an independent examination and reviewed all records provided and concludes Amy Bischof is totally and permanently incapacitated for duty in the employ of the County, and further indicates that Amy Bischof should be retired, and

**WHEREAS**, the Retirement Board is in receipt of a certification from the Medical Director, dated November 8, 2018, which states that Amy Bischof is totally and permanently incapacitated for duty in the employ of the County, that such incapacity will probably be permanent, and further indicates that Amy Bischof should be retired, and

**WHEREAS**, the Retirement Board has discussed this matter and has determined that Amy Bischof has met the eligibility requirements for disability retirement from the Retirement System, therefore be it

**RESOLVED**, that the Retirement Board hereby approves the disability retirement of Amy Bischof and directs that benefits be paid consistent with the Retirement System's provisions, and further

**RESOLVED**, that a copy of this resolution shall be provided to Amy Bischof and all other appropriate parties.

*The motion carried.*

**b. 2019 Disability Retirement Re-examination Resolution**

Ms. Dobson provided a draft resolution for the 2019 disability retirement re-examinations.

*A motion was made by Trustee Cutler, supported by Vice-Chair Santo to adopt the following resolution and begin scheduling appointments for the 18 employees listed for disability re-examination:*

**WHEREAS**, the Retirement Board is vested with the authority and fiduciary responsibility for the administration, management and operation of the Retirement System, and

**WHEREAS**, in accordance with Section 32 of the Retirement Ordinance, at least once each year during the first five (5) years following the retirement of a member with a disability pension and at least once every three (3) year period thereafter, the Retirement Board may require a disability retiree to undergo a medical examination by or under the direction of the Retirement Board's physician, and

**WHEREAS**, the Retirement Board has determined that required re-examinations must be performed by the Retirement Board's authorized physician on a schedule that coincides with the retiree's initial date of retirement, and

**WHEREAS**, it is the policy of the Retirement Board that all disability retirees be required to undergo annual re-examinations for purposes of determining continued eligibility to receive disability retirement benefits, unless otherwise determined by the Retirement Board based on reasons that support a disability retirees exclusion from the re-examination requirement, and

**WHEREAS**, the Retirement Board has reviewed the files of all disability retirees to determine what disability retirees must undergo medical re-examination, therefore be it

**RESOLVED**, the following disability retirees must be re-examined pursuant to Retirement System provisions:

Bratten, Julie	Bursey, Lennice
Candioliotis, Christos	Carpenter, Gordon
Delise, Frank	Gusmano, Lisa
Harrell, Joey	Hogan, Carrie
Kellie, Lori	Krese, Victor
Marker-Gray, Cherie	Marschke, Steven
O'Brien, Siobhan	Pintar, Matthew
Rasch, Dean	Rutledge-Dudek, Christine
Sechrist, Janine	Wyzlic, Mark

and further

**RESOLVED**, that the Retirement Board's Medical Director is designated to conduct or direct said examinations, and further

**RESOLVED**, that any member who refuses or fails to submit to said re-examination shall be subject to suspension or termination of disability retirement benefits, and further

**RESOLVED**, that a copy of this resolution and the appropriate letters be sent to said retirees and said physician consistent with this resolution.

*The motion carried.*

**9. Alidade Capital investment update – Geoff Langdon, Steve Faliski, Matt Richter**

Mr. Geoff Langdon, Mr. Steve Faliski and Mr. Matt Richter joined the meeting to provide an update on the Alidade Capital portfolio. Mr. Langdon reviewed the performance of Funds I, II, III and IV and reviewed the Capital Account Summary for each of those funds. He noted that Funds I and II have been extended through December 31, 2019 and are in the final harvesting stage.

Mr. Langdon also provided status updates for Funds III and IV. Additionally, he shared an update on the Alidade team. There have been three additions this year (a Vice-President in Transaction Management, a Vice-President in Finance & Operations and a Chief Compliance Officer).

*A motion was made by Vice-Chair Santo, supported by Trustee Murphy to receive and file the Alidade Capital investment update. The motion carried.*

**10. AndCo 3<sup>rd</sup> Quarter Performance Review**

Mr. Holycross provided a brief update on 3<sup>rd</sup> quarter performance. He reviewed comparative performance as of September 30, 2018 and discussed asset allocation for the total fund. The presentation books also include a financial reconciliation. The total fund for the quarter was up 3.63% and up 5.82% year-to-date. He also reviewed the performance of individual managers. Clarkston continues to hold 25-26% cash.

Mr. Holycross then discussed performance of the illiquid investments. There are some new pages in this book that include a "pacing summary" which provides a little more detail about each fund in one easy to review section. He will also be adding a "liquidity schedule" in future presentations.

*A motion was made by Trustee Murphy, supported by Trustee Rocca to receive and file the AndCo 3<sup>rd</sup> Quarter Performance Review. The motion carried.*

**11. Proposed Retirement Board meeting dates for 2019**

Chair Deldin indicated that the list of dates provided in the Board's packet had been vetted by Ms. Schave and Mr. Holycross to ensure a minimum of conflicts and presented it for discussion.

*A motion was made by Trustee Rocca, supported by Trustee Grant to adopt the proposed Retirement Board meeting schedule for 2019. The motion carried.*

**12. 2019 Pension Budget**

Mr. Smigiel presented the Board with a budget for 2019 for their consideration. He provided some additional detail on some of the line items. He is proposing a budget of about \$88 million in revenue and just shy of \$80 million in cash outflows for the year. Employer contributions are decreasing by about \$6 million in 2019 and that is based on the actuarial valuation for 2017. Benefit payments are increasing by about \$10 million. Contract services was also increased about \$20,000.

Mr. Smigiel also advised that the actuary has begun the experience study, but he does not expect any invoices for that until next year.

*A motion was made by Trustee Cutler, supported by Trustee Murphy to adopt the 2019 Retirement System Budget. The motion carried.*

**13. EnTrustPermal Investment Summit – March 6-7, 2019**

The information related to the March EnTrustPermal Investment Summit was presented to the Board for their review.

*A motion was made by Vice-Chair Santo, supported by Trustee Grant to approve permissible expenses for Board member attendance at the EnTrustPermal Investment Summit. The motion carried.*

**14. Unfinished Business**

Trustee Murphy inquired when there might be a legal opinion forthcoming related to the issue concerning Mr. Cada. Chair Deldin noted that Mr. Michaud had been excused from the meeting early, but that he had advised he would have something available for the December 20<sup>th</sup> meeting.

**15. New Business**

Employee Representative Brumbaugh asked to go back to the non-spouse beneficiary issue. He is concerned that adopting Option #3 would put the Board in violation of Article 9, Section 24 of the State Constitution (which says that once you vest and have given benefits, you can't diminish them). He added that this was just something else to think about.

**16. Adjournment**

*There being no further business before the Board, a motion was made by Trustee Grant, supported by Trustee Murphy to adjourn the meeting at 10:17 a.m. The motion carried.*