MINUTES OF THE RETIREMENT COMMISSION
Thursday, August 11, 2016

A meeting of the Retirement Commission was held on Thursday, August 11, 2016 at 8:30 a.m., at the Talmer Building, 2nd Floor Finance Department Conference Room, located at 120 North Main Street, Mount Clemens, Michigan. The following members were present:

Present:
Chair David Flynn, Vice-Chair Gary Cutler, Mark Deldin, Carol Grant, Bob Hoepfner, Derek Miller, Matthew Murphy, George Brumbaugh

Excused:

Also Present:
Stephen Smigiel, John Schapka, Stephanie Dobson, John Kravitz, Aaron Castle, Erik Burger, Mike Holycross

1. Call to Order

There being a quorum of the Board present, the meeting was called to order at 8:30 a.m. by Chair Flynn.

2. Adoption of Agenda

Chair Flynn requested some flexibility in the agenda items as there were some attendees who wished to participate, but needed to leave by a certain time due to other obligations.

A motion was made by Trustee Hoepfner, supported by Trustee Deldin to approve the agenda as presented and allow for flexibility in presentation of items. The motion carried.

3. Public Participation

Mr. Steve Carpenter, an employee with Community Mental Health residing at 31045 Sudbury Street, Farmington Hills, Michigan 48331 introduced himself to the Board. He read a prepared statement related to his initial employment period with the County (beginning in 2001 and ending in June 2009) under which he vested after eight years and then left to pursue his education. He returned to County employment in 2013 as a Public Health Nurse III. He believes there are seven (7) other individuals who were employed by the County, vested after eight years and then left, only to return to County employment sometime later.

Mr. Carpenter stated that his collective bargaining agreement (CBA) from his vesting period does not address the issue of "newly hired" and "re-hired" and how future retirement could be impacted. He also noted that he is not aware of any policy or procedure setting precedent for how a gap in service could affect retirement issues. He is here to ask the Retirement Commission to honor his past CBA by granting him the 70-point retirement plan and the ability to participate in the DROP since he is a vested employee as of July 2008 and did not remove any of his retirement funds from the system.

Chair Flynn inquired whether or not Mr. Carpenter is required to put his request in writing. Mr. Castle advised that he should submit his request in writing and a legal opinion would be prepared. Ms. Dobson will walk him through the process and give him the necessary information to submit his request. Trustee Miller asked whether all of the Board members would receive a copy of the letter when it is submitted. Chair Flynn indicated it would be distributed to the Board members once received and would be placed on a subsequent meeting agenda for discussion.

Ms. Maria Zardis addressed the Board next. She summarized the scenario that brings her before the board again and explained that she fully expected to be eligible for the 70-point retirement plan based on what is written in the Retirement Ordinance. As a non-union employee, she indicated her only source of information related to retirement benefits is the Ordinance. Upon inquiry, it had been explained to her that the County Board of Commissioners (BOC) had made a change eliminating the 70-point retirement plan at a meeting in February 2009. The Retirement Ordinance should have been updated at that time, but was not for some reason.

Mr. Michaud had previously provided the Board with a legal opinion that states that Ms. Zardis is not eligible for the 70-point retirement plan because of the action taken by the County BOC in 2009. Mr. Eric Herppich of Human Resources and Labor Relations (HRLR) had also responded to Ms. Zardis' inquiry about notification of this change. He informed her that a letter had been mailed out to all non-union employees advising them of this change (among others). She maintains that the change was not made because the Ordinance was not updated to reflect any such change and she says she was not notified of the change. She wanted to appear before the Board today to reiterate her position before they vote on her request later in the agenda.

4. Approval of Minutes

A motion was made by Vice-Chair Cutler, supported by Trustee Deldin to approve the minutes of the July 21, 2016 meeting as presented. The motion carried.

5. Approval of Invoices

A motion was made by Vice-Chair Cutler, supported by Trustee Murphy to approve the invoices as presented. The motion carried.

6. Chairman's Comments

Chair Flynn opted to forgo comments today due to the number of items to be covered in the agenda.

7. Treasurer's Report

To begin, Trustee Miller introduced an intern (Brandon) that had been working in his office over the summer. He is a Finance major at North Central University in Illinois. Brandon was in attendance to observe the meeting.

Trustee Miller continued with the Treasurer's Report. As of June 30, 2016, total benefits paid from the Retirement System were $32.7 million. Member contributions totaled $1.8 million and employer contributions totaled $10.5 million. In June 2016, net outflow was approximately $4 million with 2,571 members receiving a monthly benefit for an average monthly pension of $1,677.00.

A motion was made by Trustee Hoepfner, supported by Vice-Chair Cutler to receive and file the Treasurer's Report. The motion carried.

8. Retirement Administrator Report

Ms. Dobson provided the Activity Report for June and advised that her staff has been working on revising some of their data reports with the help of the people at OneSolution. These reports are running much faster and not bogging down the system the way the old reports used to. Chair Flynn inquired about the process currently in place for calculating an individual's pension benefit and how it has been changed to make sure the errors made by prior Administration are not still occurring. Ms. Dobson briefly described the current process including the audits being conducted. Chair Flynn requested a flow chart that could be distributed to the Board showing the calculation process. Ms. Dobson will prepare this and bring to a future meeting.

A motion was made by Trustee Hoepfner, supported by Trustee Deldin to receive and file the Retirement Administrator Report. The motion carried.

9. Retirement Commission Website Timeline – FINAL

Ms. Dobson reported that her office is still working with the IT Department on the transition from the old website format to the new. Since the timeline was provided for the agenda, she has added the "Pension Check Issuing Dates for 2016 and 2017" to the website. Her office is almost finished with a very basic Frequently Asked Questions (FAQ) document and she hopes to have that ready to post by mid-September. She has also added the introduction of the website to the timeline and hopes to begin that during open enrollment for retirees in early October. She is considering a simple, one page flyer with basic information introducing the Retirement Commission website and highlighting some of the material that can be found there (benefit information, forms, etc.). Chair Flynn thanked Ms. Dobson for putting this timeline together and stated it is what he was envisioning when he requested this information.

A motion was made by Trustee Murphy, supported by Trustee Hoepfner to adopt the Retirement Commission Website Timeline. The motion carried.

10. MMRO – Eligible Condition

Ms. Dobson provided some information related to a request she had received from MMRO seeking clarification on what is considered an "eligible condition" in regards to re-examinations for disability retirements. During the re-exam appeal process, employees are submitting additional medical information and not all of it relates to the condition that precipitated the granting of their disability retirement initially. MMRO has asked for the Board to make a decision on what it considers to be an "eligible condition" so they know how to continue to manage cases on appeal in addition to re-examinations. There are three options for what can be considered an "eligible condition":

1. The condition(s) noted on the application
2. The condition(s) they were initially assessed for
3. The condition(s) at the time of application and any additional condition(s)

The practice of the Retirement office is that the purpose of the re-exam is to examine individuals on the condition they went out for (#2). Vice-Chair Cutler appreciated MMRO asking for clarification on this because he believes it has been an on-going issue. He believes that the re-exam should be looking at the condition at the time of application and any additional conditions that may have developed since that time (#3). Trustee Murphy also expressed support for #3 to give the IME a little more latitude while still being conscious of what entails a disability and whether or not the individual meets the criteria necessary to do the job.

Chair Flynn inquired about what most systems use as their criteria. Mr. Castle indicated past practice (#2) is consistent with what most retirement systems follow. He pointed out that with option #3, the Board could run into the possibility that someone has developed a condition that is not duty related, but their original disabling condition was duty related, so there could be discrepancies if other conditions are taken into consideration. The other concern is that because #2 has been the past practice for so long, to change it now opens the door for those that did not have other conditions taken into consideration. Trustee Brumbaugh inquired whether or not the Board could pass a policy that says #3 applies to a non-duty related condition and #2 applies to a duty related condition. Mr. Castle confirmed that the Board has the ability to adopt rules and regulations as they see fit. Chair Flynn indicated that because the ramifications of this choice could be numerous, he thought that the Board members should consider it and place it back on the agenda for the August 25th meeting for further discussion.

A motion was made by Trustee Deldin, supported by Trustee Hoepfner to request legal counsel draft an opinion related to this question and place it on the agenda for the August 25, 2016 meeting for further review. The motion carried.

11. Disability Retirement

-- Arin White (Re-examination Opinion)

The Board was in receipt of the Medical Director's confidential medical reports regarding the re-examination of Arin White. The Medical Director has concluded, based on the re-exam, that his disability retirement should be continued.

A motion was made by Trustee Hoepfner, supported by Trustee Miller that based on the Medical Director's opinion, the disability retirement of Arin White shall be continued and the following resolution shall be adopted:

WHEREAS, the Retirement Commission 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, Arin White was granted a disability retirement on June 24, 2014, after a finding by the Retirement Commission that the requirements of the Retirement System had been met, and

WHEREAS, in accordance with Section 32 of the Retirement System, 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 Commission requires a disability retirant to undergo a medical examination directed by the Retirement Commission Medical Director, and

WHEREAS, the Retirement Commission directed the Human Resources and Labor Relations Department to contact the Medical Director to set-up an appointment for Arin White to be re-examined and to advise the Medical Director of their responsibilities, and

WHEREAS, the Board is in receipt of a Medical Report from its Medical Advisor, dated March 18, 2016, wherein the Medical Advisor concludes that Lori Kellie is totally and permanently disabled.

WHEREAS, on July 19, 2016, Dr. Calmeze Dudley conducted an independent examination and revised all records provided and concludes Arin White is totally and permanently incapacitated for duty in the employ of the County, and further indicates that Arin White should remain retired, and

WHEREAS, the Retirement Commission is in receipt of a certification from the Medical Director, dated July 28, 2016, which states that Arin White is totally and permanently incapable of resuming employment with the County in the same or similar job classification in which said individual was employed at the time of disability, and

WHEREAS, the Retirement Commission has discussed this matter and has determined that Arin White has met the eligibility requirements for a continual disability retirement from the Retirement System, therefore be it

RESOLVED, that the Retirement Commission hereby **approves** the continual disability retirement of Arin White and directs that benefits be paid consistent with the Retirement System's provisions, and further

RESOLVED, that a copy of this resolution shall be forwarded to Arin White and all other appropriate parties.

Motion carried.

12. Michael Grix Re-employment Issue – VOTE

Mr. Grix was present at the meeting and spoke on his own behalf. He summarized his request for the Board. He is seeking an answer on which vesting standard applies to him (8 year or 15 year) because he was previously employed by the County (during the 8 year vesting), left briefly, and when he returned to County employment in 2014 vesting had moved to 15 years. He is requesting the Board honor his original date of employment in 2004 placing him within the 8 year vesting requirement and apply it to his pension benefits. AFSCME President, Ms. Donna Cangemi also spoke in support of Mr. Grix's request.

Mr. Castle addressed the Board regarding Mr. Michaud's December 9, 2015 legal opinion. He indicated that legal counsel is not suggesting that Mr. Grix be divested of his original term of service. That term is recognized and he is vested and is entitled to retirement benefits for that term of service. Their legal opinion is that he is now in a second term of employment with a new hire date and as such is subject to the new vesting schedule. The Reciprocal Retirement Act would apply, however, and as long as Mr. Grix works for 30 months, his initial 10 years of employment would be applied to the 15 year vesting requirement in place when he returned to the County in 2014.

Trustee Miller referred to Section 18 of the Retirement Ordinance which states that when an individual leaves employment with the County and then returns within a period of three years, they should be put into the same position that they were in when they left. He then referred to the CBA that applied to Mr. Grix's bargaining unit as it relates to new hires and the changes that were made in that contract. In Trustee Miller's opinion, the fact that Mr. Grix was hired under a contract and was already vested under 8 years, he was not looking at that language referring to "new hires" as affecting him when he returned. He does not believe the contractual changes in the CBA would apply to Mr. Grix because he was "re-hired" not a "new hire". He believes that Mr. Grix deserves to be under the 8 year vesting plan because he came back within 6 months and the overall impact to the pension fund is minimal.

Trustee Brumbaugh echoed Trustee Miller's opinion. He agrees with him 100%.

Vice-Chair Cutler also agreed that Mr. Grix is not a “new hire” and he was re-employed within a three year period, so the 8 year vesting applies and he views it simply as a “break in service” or any other unpaid leave.

Trustee Grant concurred with Trustee Miller and Vice-Chair Cutler and also believes that Mr. Grix is “re-employed” because he returned within the three year time frame stated in Section 18 of the Retirement Ordinance.

Trustee Deldin asked Corporation Counsel to weigh-in. Mr. Schapka stated this is not a question of law, it is a question of policy and the Board can adopt virtually any policy it sees fit. Although Mr. Michaud’s opinion recommends one conclusion, there is nothing compelling the Board to follow his recommendation. Mr. Schapka’s only concern is that whatever the Board deems to be the rule, it can be applied to every future situation with similar circumstances.

Mr. Castle added a comment regarding the three year period that has been referenced from Section 18 of the Retirement Ordinance. His concern is if someone falls outside of that three year window, are they precluded from the 8 year vesting because they fall outside that three year period? Or is this being opened up to anyone who comes back? Trustee Miller stated that they would absolutely be precluded.

Mr. Schapka expressed his personal opinion that if an employee leaves, it really should not matter what the time period for the “break in service” is and that when they return they should be fully aware of the specific terms and conditions in place upon their return.

Trustee Deldin stated that if the Board is to vote the way most seem to be in favor of thus far, it would mean that any of the 2,000 County employees who were hired under the 8 year vesting would be welcome to “see if the grass was greener” elsewhere knowing they can come back within three years and still have all of the benefits of a defined benefit vesting period at 8 years (of which the organization had decided to close to limit its liability). He stressed that this is not a singular issue only applicable to Mr. Grix and that this could have far-reaching implications. The door would be opened for anyone else to leave and try to get hired back if they decide that they had a better deal with the County. He supports Corporation Counsel’s opinion that regardless if you were employed by the County before, an individual should accept the terms and conditions set at the time they are hired.

A motion was made by Trustee Deldin, supported by Trustee Hoepfner to concur with Mr. Michaud’s December 9, 2015 legal opinion subjecting Mr. Grix to the 15 year vesting period based upon his second hire date of September 14, 2014.

YES – Trustee Hoepfner, Trustee Deldin
NO – Vice-Chair Cutler, Trustee Murphy, Trustee Miller, Trustee Grant, Chair Flynn

The motion failed 2-5.

A motion was made by Vice-Chair Cutler, supported by Trustee Grant to approve Mr. Grix's request to have 8 year vesting apply as of his original May 2004 hire date.

Mr. Castle proposed a friendly amendment that this be contingent upon Mr. Grix's re-employment within three years from his separation date. Vice-Chair Cutler declined to accept the friendly amendment. In his view, the three years applies to Mr. Grix being able to buy back his time, but since he never withdrew his money from the system, this amendment is not necessary because it does not apply to his situation.

YES – Vice-Chair Cutler, Trustee Murphy, Trustee Miller, Trustee Grant, Chair Flynn
NO – Trustee Hoepfner, Trustee Deldin

The motion passed 5-2.

13. International Equity Manager Decision

Mr. Holycross summarized the interview process for the three managers that the Board is considering for International Equity Manager – HGK, Lazard and Cambiar. Currently, World Asset Management (WAM) is on the passive side and EARNEST Partners is on the active side. Graystone recommends HGK be added to WAM and EARNEST as HGK had excess returns above the benchmark.

Trustee Murphy inquired about the difference in fees vs. performance and what impact that would have had on actualized returns. Mr. Holycross responded that it turns out to be approximately 35-40 basis points in fee differential and the HGK portfolio does not offer a discount or room for negotiation on fees. He indicated that all of the composite returns reported are gross of fees for comparison purposes. HGK has out-performed by at least 40 basis points to make up the fee differential 60-70% of the time.

Vice-Chair Cutler stated that his big concern is the $160,000 difference in fees between HGK and Cambiar because the goal of the Retirement System is to pay people's pensions. The $160,000 amounts to roughly eight pensions that must be paid. He disclosed that he did have a call with HGK's investment team because they only brought their marketing people to the interview. On the investment side they are more concentrated (which he likes), but has a problem with the extra $160,000 in fees on an annual basis. The system will normally hold managers for a market cycle of 5-7 years, so that amounts to nearly $1,000,000 in additional fees to HGK. Vice-Chair Cutler would support choosing Cambiar over HGK.

A motion was made by Trustee Deldin, supported by Trustee Miller to select HGK as International Equity Manager.

YES – Trustee Deldin, Trustee Hoepfner, Trustee Miller, Chair Flynn
NO – Trustee Murphy, Vice-Chair Cutler, Trustee Grant

The motion passed 4-3.

Chair Flynn also disclosed that at the earlier Intermediate Trust Board meeting, action was taken to approve the same International Equity Manager allocating the same proportion of assets as done in previous investments.

14. Blackstone Tactical Opportunities Fund Update

Mr. Tom Sampson joined the meeting to provide the Board with an update. He is a principal with Blackstone based in Chicago. Blackstone is the largest alternative manager with approximately $340 billion in assets. They have four main businesses – private equity, real estate, credit and hedge funds. Mr. Sampson gave an example of one (Gianni Versace) of the companies the Board is invested in in this portfolio that is non-controlling. The return target for this fund is 13-15% net with a little shorter investment period and a little shorter hold period. The Board's initial investment was made in May 2013 and there are 30 diversified investments in this fund. He also covered both geographic and sector exposure.

Vice-Chair Cutler inquired about currency losses and whether or not Blackstone would consider doing some sort of currency hedge to avoid currency losses. Mr. Sampson responded affirmatively that Blackstone will hedge if the investments are based in Europe and are paying income and he stated they have been successful at that. Vice-Chair Cutler also inquired about the nearly 4% size of the investment in Sentosa Cove, compared to most of the other investments which are right around 2.5%. Mr. Sampson replied that the percentage of the investment is related to the size of the deal.

A motion was made by Trustee Murphy, supported by Trustee Hoepfner to receive and file the Blackstone Tactical Opportunities Fund Update. The motion carried.

15. Comerica Organizational Update

Mr. Holycross advised that Comerica is engaged in some cost cutting and a letter was received notifying the Board that World Asset Management (WAM) CIO Dennis Johnson was one of the executive level people let go. He does not feel that Mr. Johnson's departure will have much of an impact. Vice-Chair Cutler expressed concern about the level of support that WAM receives from Comerica and whether that support will be diminished as a result of the cost cutting. Mr. Holycross indicated he will research what the total assets are for WAM's top 5-10 clients and specifically Comerica and what percentage of WAM's total assets they are. He will have that information available at the next meeting.

A motion was made by Trustee Deldin, supported by Trustee Hoepfner to receive and file the Comerica Organizational Update. The motion carried.

16. EDRO Policy

Chair Flynn indicated he had a brief conversation with Mr. Eric Herppich of Human Resources and Labor Relations (HRLR) regarding the EDRO Policy. Mr. Herppich still needs to meet with the unions and would like to request an implementation date of October 15, 2016 for the new policy.

Trustee Brumbaugh inquired about the references within the policy to the “legal counsel” doing the analysis of the EDRO. He wondered if that refers to outside counsel or Corporation Counsel. Mr. Schapka responded that his office will be reviewing the sufficiency of the EDRO. Trustee Brumbaugh suggested this should be specified in the policy as “Corporation Counsel” (not just legal counsel) on pages eight and nine.

A motion was made by Trustee Deldin, supported by Trustee Murphy to replace the language as recommended by Trustee Brumbaugh (from “legal counsel” to “Corporation Counsel”) in all places and implement the policy with an effective date of October 15, 2016. The motion carried.

17. Maria Zardis Opinion - VOTE

Chair Flynn restated the question before the Board. In 2009, the County Board of Commissioners (BOC) passed a change to the Retirement Ordinance eliminating the 70-point retirement plan. However, the Ordinance itself was never actually updated to reflect this change. Ms. Dobson indicated that any time a change is made that affects non-union employees, massive mailings are done to notify them of the changes. The Human Resources and Labor Relations (HRLR) Department also has copies of the mailing labels for each, so that they know who was notified of the changes each time.

Trustee Brumbaugh commented that outside counsel’s opinion in this matter is correct and should be adopted.

Trustee Deldin inquired whether any other employee that falls into the same category as Ms. Zardis has ever challenged the fact that they never received notification of this change. Vice-Chair Cutler and Trustee Brumbaugh (who have both been involved in the retirement system for quite some time) indicated they know of no one else who has presented this issue. Mr. Schapka also indicated that in his four years, he also knows of no one else who has brought this issue forward.

Vice-Chair Cutler stated that any employee who is non-union only has the Retirement Ordinance to refer to and the language in the Ordinance was not updated to reflect the change made by the County BOC in 2009. If a non-union employee is looking for the rules related to retirement, they are referred to the Ordinance and that document was never updated to show the 2009 change made by the County BOC. Vice-Chair Cutler believes the employee has a legitimate concern because they felt they were entitled to a benefit based on the information provided in the Ordinance and they are now being told they don’t have that benefit.

Trustee Deldin drew a comparison with legislation signed by Governor Snyder and that it is the responsibility of each person to understand those laws. Comparatively, any employee who is not represented by a union with a Collective Bargaining Agreement (CBA), is responsible for keeping abreast of changes made by County BOC actions. In his opinion, the change made by the County BOC in 2009 stands regardless of whether the Retirement Ordinance was updated.

Trustee Grant questioned why the employee should be expected to follow through with keeping up to date with changes, but the Pension Board is not expected to. The Retirement Ordinance made available to employees should have been updated and while she does not know for sure if Ms. Zardis received the mailed notification of the change, she feels it is this Board's duty to update the Ordinance as the changes are made so when an employee needs to refer to it, the information it contains is current and correct.

Trustee Brumbaugh pointed out that Ms. Zardis indicated she understood the other changes referenced in the letter, but originally said she was not aware of the elimination of the 70-point plan (referenced in that same letter). He believes there is nothing better than a personal notice sent directly to an individual. He stated again that Mr. Michaud's opinion on this issue is correct and should be adopted by this Board.

Mr. Castle reiterated that this Board has an obligation and a duty to administer the Retirement Plan in accordance with its provisions. As Trustee Deldin stated, the Retirement Plan was amended in 2009 to eliminate the 70-point plan by the authority of the County BOC. The Pension Board does not have a choice but to follow the action taken by the County BOC. Mr. Schapka added that this Board does not have the authority to disregard properly enacted legislation by the County BOC.

Chair Flynn stated he agreed with the opinion from Mr. Michaud and his only concern is the dissemination of correct information to employees. Moving forward, he would like a better method of communicating significant benefit changes to employees and perhaps require them to acknowledge receipt and understanding of those changes.

A motion was made by Trustee Deldin, supported by Trustee Hoepfner to adopt the opinion of legal counsel that Ms. Zardis is not eligible for the 70-point plan.

YES – Trustee Deldin, Trustee Hoepfner, Trustee Miller, Chair Flynn, Trustee Murphy
NO – Vice-Chair Cutler, Trustee Grant

The motion passed 5-2.

Chair Flynn requested Ms. Dobson contact Ms. Zardis to advise her of the Board's decision.

18. Restatement of Retirement Ordinance discussion

Chair Flynn noted that Mr. Michaud was not present today and he has been an integral part of the restatement of the Ordinance. He also noted that Ms. Dobson and Mr. Scott Smith's notes from the last discussion were provided to the Board members for the meeting today. He would like for Mr. Michaud to have some draft language addressing the issues noted for the meeting on August 25, 2016 in order to keep progress moving forward. He will also ask Mr. Smith to be in attendance at that meeting.

A motion was made by Trustee Hoepfner, supported by Vice-Chair Cutler to receive and file the notes from Ms. Dobson and Mr. Smith. The motion carried.

19. Other Business

Trustee Grant inquired about having a Trustee on this Board that is a member of the DROP program. She wondered if it was possible to add a member or if it is possible for someone in the DROP program to run for a spot on the Board. Chair Flynn stated it is not possible to add a member because the County Charter dictates the membership of the Board, however, he is not sure if the Ordinance can address who is eligible to be an employee representative on the Board. He indicated that would be a question for legal counsel. Trustee Brumbaugh believes that the DROP policy prohibits a participant in the DROP program from serving on the Pension Board. Per a request from Trustee Grant, legal counsel will prepare an opinion on this to be presented at a meeting in September.

20. Adjournment

There being no further business before the Board, a motion was made by Trustee Hoepfner, supported by Trustee Murphy to adjourn the meeting at 10:13 a.m. The motion carried.