

MINUTES OF THE RETIREMENT COMMISSION
Thursday, August 25, 2016

A meeting of the Retirement Commission was held on Thursday, August 25, 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, Bob Hoepfner, Derek Miller, George Brumbaugh

Excused:

Carol Grant, Matthew Murphy

Also Present:

Stephen Smigiel, John Schapka, Stephanie Dobson, John Kravitz, Tom Michaud, Eric Herppich, Scott Smith

1. Call to Order

There being a quorum of the Board present, the meeting was called to order at 8:34 a.m. by Chair Flynn.

2. Adoption of Agenda

A motion was made by Trustee Deldin, supported by Trustee Hoepfner to approve the agenda as presented. The motion carried.

3. Approval of Minutes from August 11, 2016

A motion was made by Vice-Chair Cutler, supported by Trustee Hoepfner to approve the minutes of the August 11, 2016 meeting as presented. The motion carried.

4. Approval of Invoices

A motion was made by Trustee Hoepfner, supported by Trustee Miller to approve the invoices as presented with the exception of the "no show" fee assessed by MMRO. The motion carried.

MMRO "No Show" Fee Question

Ms. Dobson presented this issue to the Board and stated that this is the first "no show" fee charged since she has started working with MMRO. A member missed his scheduled appointment and did not notify MMRO that he would not be there. The letter sent to members

clearly explains the procedure for canceling an appointment and the \$475 fee that will be assessed for not complying. Ms. Dobson has not found any precedent for this situation and is asking whether this fee is to be paid by the member or if the system absorbs this fee. Mr. Michaud advised that similar situations have occurred some years ago and in those instances the prior Medical Director was willing to waive the fee. He indicated it may be possible to negotiate with MMRO and ask them to waive this fee. Ms. Dobson stated that she will check with them and see if this is possible since it is the first time this has happened. If they are unwilling to waive the fee, then Mr. Michaud indicated the Board does have the ability to pass that cost on to the individual.

A motion was made by Trustee Deldin, supported by Vice-Chair Cutler to pass the cost of the “no show” fee on to the member, if MMRO is not willing to waive the fee. The motion carried.

Ms. Dobson will make an attempt to negotiate or eliminate the fee with MMRO. If they are not amenable to that, she will contact the individual to advise him that he is responsible for paying the “no show” fee. This process will apply to all future instances of “no show” fees as well.

5. Public Participation

None

6. Chairman’s Comments

Chair Flynn stated that he would like to focus on the restatement of the Retirement Ordinance for the next 3-4 months as he would like to see this completed by the end of the year.

He also advised the Board that Ms. Maria Zardis had submitted a FOIA request this morning via email. Mr. Schapka confirmed that he had received the request and Mr. Herppich stated that the report containing the information she is seeking will be generated later today.

7. Request from Steven Carpenter (retirement issues)

Chair Flynn reminded the Board that Mr. Carpenter had presented his request verbally at the last meeting under Public Participation. He was asked to submit his request in writing and did so via email later that same day. A copy of that email has been provided to the Board members in their meeting packets for today’s agenda.

A motion was made by Vice-Chair Cutler, supported by Trustee Hoepfner to send Mr. Carpenter’s retirement question to independent counsel for a legal opinion. The motion carried.

Mr. Carpenter indicated he had some additional information he would like to submit. Chair Flynn requested he give all information to Ms. Dobson and she will forward it to Mr. Michaud. Mr. Michaud will work on having the legal opinion ready for the next meeting on September 15, 2016. Mr. Carpenter advised he may not be available to attend that meeting and Chair Flynn

confirmed that the Board will work with him to schedule the presentation of Mr. Michaud's legal opinion at a meeting that is convenient for him.

8. Retirement Survey Update

Mr. Herppich provided the results of the Retirement Survey that has been distributed to new retirees since August 2015. To date, there have been 140 surveys sent out with 31 returned completed. Overall, most respondents indicated they were satisfied with the service they received, but any comments or feedback provided are researched to see where changes might need to be made to improve the process and/or communication. He stated that he intends to provide these survey results annually unless the Board would like to see them presented more frequently. The Board confirmed that an annual update is sufficient.

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

9. MMRO "Eligible Condition" Decision

Ms. Dobson reminded the Board of MMRO's question related to the "eligible condition" they should be using for determining whether or not a disability retirement should be continued when presented with a re-examination or an appeal of a re-examination. There is a question regarding whether to continue following past practice (option #2 – only reviewing the individual for the condition for which they were originally assessed) or another option (option #1 – the condition noted on the application or option #3 – the condition at the time of application and any additional condition). Mr. Michaud added that there are two issues that must be considered when someone is on disability retirement – whether they are totally and permanently disabled and the cause of the disability (is it duty related or non-duty related?).

Mr. Michaud suggested that the Board's Disability Policy be updated to reflect whatever decision is ultimately made regarding what is considered an "eligible condition". The Board needs to determine whether the re-exam or re-exam appeal is limited only to the initial condition or if the Medical Director can consider additional information (including any other conditions that may have developed since the initial examination). The policy needs to be very straightforward.

Trustee Miller commented that it seems as though these decisions should be made on a case-by-case basis. Mr. Michaud responded that it is imperative there be a rule and that rule must be applied uniformly to everyone. There should be no "picking and choosing" what limitations apply to which individuals. Ms. Dobson indicated that she has spoken with MMRO regarding this and they are willing to provide some "boilerplate" language that has been used by other clients. Mr. Michaud indicated that would be a good starting point to create a draft detailing the standard protocol the Board wishes to follow.

Ms. Dobson is concerned with the individual who is currently in limbo awaiting a decision on this. He is out on a non-duty related disability and has appealed the re-examination decision and

provided additional medical information that encompasses several other conditions besides the one he was originally assessed for.

Vice-Chair Cutler remarked that for non-duty disabilities the person's conditions should be reviewed in their entirety (including all new information). He understands the distinction between duty and non-duty related disabilities and he would prefer to be broad in the re-examination of non-duty disabilities as there are a lot of compounding issues that come along with a disability (physical, psychological, etc.). He would like to see a new policy written that encompasses this for the non-duty disabilities and he agreed that MMRO's boilerplate language would be a good place to start.

A motion was made by Vice-Chair Cutler, supported by Trustee Deldin to proceed with option #3 ("eligible condition" includes the condition at the time of application and any additional condition) as it relates to non-duty disability only until a new policy has been put in place for disabilities. The motion carried.

10. Pension Audit Process

Ms. Dobson reviewed the form that is currently being used by her department to conduct pension audits. This form is divided into the four categories used when processing a pension. These categories contain the key fields that are checked to ensure the process is running properly.

A motion was made by Trustee Hoepfner, supported by Trustee Deldin to adopt the Pension Audit Process form. The motion carried.

11. DROP Participants on Retirement Commission legal opinion

Chair Flynn asked Mr. Michaud to review the legal opinion he has provided at the request of Trustee Grant. Mr. Michaud directed the Board's attention to the language taken from the DROP Policy that states any participant in the DROP is ineligible to vote in any retirement elections or hold office as an elected employee member. It is very clear that once an individual enters the DROP, they are no longer eligible to vote or hold office. This only applies to the Employee Representative positions, not the Officials or their Designees.

Officials who are in the DROP plan are still allowed to serve because they serve on the Board by virtue of their position (as prescribed by the County Charter) not by virtue of their membership. The individual employee representatives serve on the Board by virtue of their membership in the system.

Trustee Miller expressed his opinion that he believes it is flawed policy to deny someone in the DROP the ability to participate in voting and serving on the Retirement Commission. They still have an active interest in the system because they have money invested, even though they are technically no longer a member by virtue of their participation in the DROP. As they are

currently in the process of restating the Retirement Ordinance he would recommend changing this. Mr. Michaud replied that this is not something the Retirement Commission has the authority to change as a policy because the language does not come directly from the Ordinance. This language comes from the Collective Bargaining Agreements (CBAs) and the DROP Resolution.

Trustee Brumbaugh believes that the Retirement Commission could propose a change to the County Board of Commissioners, who could amend the DROP Policy and direct Human Resources and Labor Relations (HRLR) to work on amending the CBAs. Trustee Miller sees people who are participating in the DROP plan as almost more vested in how the Board is run and how the funds are managed and does not think they should not be excluded from voting or serving on the Board.

Mr. Michaud said that it is fairly common in other systems he has worked with to allow DROP participants to continue participating in the election process and serving on the Pension Board. He indicated that they are indeed "active participants," but that it comes down to the definition of "member" and that collectively bargained provision excludes DROP participants. He suggested that the definition of "member" could be updated in the Retirement Ordinance and then sent to the unions for concurrence by memo or letter of understanding.

Mr. Michaud pointed out that during the discussion of the restatement of the Retirement Ordinance, there was consideration given to whether or not the people participating in the Defined Contribution (DC) plan are "members" and it was determined that they are, albeit in a limited capacity. From a long-term standpoint, a decision will eventually need to be made when there are more DC plan participants than Defined Benefit (DB) plan participants, as it may not be appropriate to have those only in the DC plan making decisions that affect the DB plan.

Chair Flynn advised that this topic will be further examined in the Ordinance discussion later in the agenda.

A motion was made by Trustee Deldin, supported by Trustee Hoepfner to receive and file the DROP Participants on Retirement Commission legal opinion. The motion carried.

12. Restatement of Retirement Ordinance discussion

Mr. Michaud referred everyone to the summaries of concerns that had been compiled by Ms. Dobson and Mr. Smith during a past discussion of the restatement of the Retirement Ordinance. He provided an updated draft of the document (dated August 25, 2016) which incorporated the comments provided by the Board previously. He will go through this draft with the Board today and review the revisions that have been made since the last update.

Starting on page five, Mr. Michaud indicated he reviewed the County Charter to see what impact it would have on any of these revisions. He stated that Trustee Brumbaugh was correct when he stated that the Charter refers to this body as a "Commission" but in terms of the Ordinance

restatement, he finds that confusion likely stems from the reference to “Commissioners” (County Board of Commissioners, Retirement Commissioners?). His recommendation is that the Retirement entity be referred to as a “Board of Trustees” or simply “Board” throughout the document for ease of discussion.

For Final Average Compensation (FAC) on page seven, Mr. Michaud recalled some questions Vice-Chair Cutler had regarding the consecutive pays used to calculate this figure. Vice-Chair Cutler revisited his issue with end-of-the-year and beginning-of-the-year short pays. He believes that employees are being penalized since these short pays would result in some years missing one day, possibly two, in an employee’s FAC calculation. Mr. Smigiel stated that if consecutive 10-day pay periods are being used, an adjustment is made to the hourly rate depending on the number of working days (meaning that their compensation would still be the same). Mr. Herppich also advised that any split pay periods were always combined to create a full pay period for the purposes of calculating FAC. Mr. Smith suggested laying everything out on a calendar and going through the pay periods and calculations visually so that everyone has the same understanding as to how the calculation is really performed and applied. Chair Flynn agreed it would be worthwhile to do this, so that the Board members fully understand how the calculation is made. Mr. Michaud recommended that the language stay as presented in the Retirement Ordinance draft and then be further clarified with a Retirement Board policy (with examples) to provide the minute details related to the adjustments and pays and other information that goes into making the FAC calculation.

Moving on to page nine, Mr. Michaud revisited the discussion regarding the use of the term “quasi-judicial” to describe the Board’s authority. He feels strongly that it is in the best interest of the Retirement System to leave that term in the Ordinance as is. Chair Flynn agreed that the Board is a quasi-judicial body in certain respects, but not in every circumstance.

On that same page, Trustee Deldin inquired about the definition of a “designee”. He is asking based on previous discussion of who can and cannot sit on the Board. Since the County Charter indicates certain elected officials may designate someone to sit on the Board on their behalf, he is wondering if there are any restrictions applicable to those designees. Mr. Michaud indicated the term designee is used very broadly here and the elected officials who are allowed to designate a representative may choose anyone for that role (a retiree, someone in the DROP, someone living in another County, etc.), but ultimately the decisions that are made by that individual are attributed to the elected official who designated them. Trustee Deldin asked whether the term “designee” could be more narrowly defined within the Retirement Ordinance. Mr. Michaud responded that this could not be limited in the Ordinance because it is part of the County Charter.

On page 15, membership is discussed in Section 16. The County Charter does not address membership in the Retirement System (only the make-up of the Board of the Retirement System). Limits to membership in the system are dictated by the CBAs and action previously taken by the County Board of Commissioners.

There was some discussion related to the reference to “The elected County officials, including members of the Macomb County Board of Commissioners...” on page 15 (Section 16, subsection b). Chair Flynn inquired why the County BOC is listed separately. Trustee Deldin indicated that perhaps the language should include “County-wide” instead of just “County” as the BOC are elected by district not by the whole County. Mr. Smigiel added that the provision referred to in this sub-section actually only applies to the County Board of Commissioners (not all elected County officials) and was implemented by the County BOC in 2008 or 2009 as a budget cut. Chair Flynn requested that specific resolution be brought forward so the members can review it.

Looking at sub-section c of Section 16, Trustee Brumbaugh inquired whether or not people hired after January 1, 2016 will be eligible to vote in elections for employee representatives to serve on the Retirement Board. He believes this is something that Mr. Schapka might need to look into. He recalls that the Charter stipulates the employee representatives are elected by the “employees” not necessarily the members of the system. If they are eligible to vote, he thinks the Retirement Ordinance should make that clear. Mr. Herppich added that his department has already begun doing some research into what may need to happen in the next few years and it is likely they will recommend the creation of a separate governing Retirement Board for members of the DC plan.

Moving on to Section 18, Mr. Michaud noted that there are two proposed alternatives for this Section related to reinstatement of membership after a period of separation (or “break in service”) from the County. Mr. Michaud had a comment noted that there was some concern about whether people should remove their money from the system or leave it in and he sees no need to specify a requirement within the Ordinance. Trustee Brumbaugh had an inquiry about the second of the two proposed alternatives as it seemed to disagree with the action that had been taken by the Board on Mr. Grix’s situation at the last meeting. Mr. Michaud indicated there would need to be some further clarification related to that Board action related to Mr. Grix’s return to County employment. The clarification necessary centers upon the “...within a period of three years...” language that is currently a part of the Ordinance today. The alternative language also includes the three year period language and applies whether an individual is vested or not. If they return to County employment within a three year period, they are eligible to retain their prior service credit. If they removed their money from the system, they are also eligible to put it back in. If they are re-employed outside that three year period, they would not get their previous service credit unless they were vested. The Board’s action at the last meeting dealt with defining “hired” and the Grix decision says that because he was previously employed by the County, had a break in service, and came back to work for the County, he was not “hired” as of the new date. He was given his original date of hire for purposes of retirement.

Trustee Brumbaugh stated that the current Section 18 in the Ordinance today provided for people who withdrew their money and then paid it back in. He thinks the alternative Section 18 seems to indicate that if an individual does not return within three years, they are out. He believes that is a totally different concept that flies in the face of the motion made by Vice-Chair Cutler at the last meeting. Trustee Brumbaugh believes that Vice-Chair Cutler’s intention was that if an individual leaves and their money is not withdrawn, they are automatically back in the

system when they return. If they took their money out, they get three years to pay it back and at that time they become a member again. Trustee Brumbaugh thinks that the existing Section 18 agrees with the action that was taken by the Board on Grix. Mr. Michaud pointed out, however, that the existing Section 18 has been modified to reflect that an individual's return date determines their participation in the plan. If an individual returns after January 1, 2016, they are a member of the DC plan. The alternative Section 18 allows for an individual who returns within a three year period to re-join the plan they were in when they originally separated from the County. Trustee Brumbaugh recalled Mr. Castle asking for a friendly amendment to Vice-Chair Cutler's motion to include the three year provision and that was rejected by Vice-Chair Cutler. Trustee Miller remembered Mr. Castle asking what would happen if someone were to return after a five year break and that Trustee Miller responded they would not be eligible to re-join the plan they were in when they left. Trustee Miller inquired what Vice-Chair Cutler's motion had been. Chair Flynn referred to the minutes of the August 11, 2016 meeting and the motion did not include the three year language. Mr. Michaud indicated that he had understood the Board was addressing only Mr. Grix's specific question. Chair Flynn stated that the decision on Mr. Grix's issue is the precedent until the Board makes a final determination on how to handle similar circumstances going forward and addresses them specifically in the Ordinance. Chair Flynn believes the Ordinance should reflect exactly what the Board wants as standard policy moving forward.

Mr. Michaud asked the Board if they want the draft Ordinance to continue to have two options for Section 18 or do they want one of them eliminated. Trustee Miller indicated he would support eliminating the first option. Chair Flynn advised that he would prefer to wait until all Board members are in attendance to vote on which option to remove. Mr. Herppich asked for clarification on the motion made by Vice-Chair Cutler at the last meeting. He understood that the motion made was related to employees who leave County employment and come back and was directed at the employees who were vested at the time they left. Vice-Chair Cutler indicated his intent was that individuals who re-hire back into the County, according to the Ordinance, come back into the system. Mr. Herppich inquired if this is irrespective of whether they were vested or not. Vice-Chair Cutler indicated that is how he interpreted the Ordinance. Trustee Miller interpreted that the gist of the motion was the fact that the term "re-hired" was being contemplated and throughout the discussion, he had been focused on the three year period and that Mr. Grix had been "re-hired" within three years (the original language in Section 18). This was what he thought they had voted on. Chair Flynn commented that this was difficult because the Board was voting on one specific employee's situation. He indicated that further discussion of this will take place at the meetings in September and moving forward a decision needs to be made that is very clear, that does not raise any questions, and that people will understand.

Moving to page 17, Mr. Michaud indicated that a change had been made in Section 19(C) so that it now reads that service credit is not earned during unpaid leaves including those granted under the Family Medical Leave Act (FMLA).

On page 20, in Section 22, Mr. Michaud noted that the specific 65% vs. 66% distinction has been added in the required areas.

On page 32, in Section 37, the Reserve name has been updated per a request from Mr. Smigiel.

On page 40, in Section 51, the “any 12-month period” is defined as a calendar year for the purpose of tracking hours worked by individuals who are re-employed by the County after retirement. Trustee Brumbaugh asserted that the state statute says “any 12-month period” and this cannot be amended or defined a certain way within the Ordinance. He does not believe this Ordinance can be presented to the County BOC without the language as specified by the state statute. He said that state law is very clear on this topic and the Board should use that language and not try to redefine what the statute means. He feels very strongly about this. Mr. Smith added that he is looking at it as the state law being permissive in allowing the Board to select the 12-month period and the particular 12-month period being chosen is a calendar year. Mr. Michaud concurred with Mr. Smith. Mr. Schapka indicated he would like to review the statute before giving his opinion. Vice-Chair Cutler indicated that he believes that what Trustee Brumbaugh stated is the intent of the statute, however, he is someone who administers this because his department has a lot of retired County employees employed part-time and it is nice to not have to look at their hours on a rolling basis. Hours are much easier to track in a calendar year, but he does not believe that was the intent of the statute.

That concluded the discussion of the draft document presented today. Chair Flynn would like to continue this discussion at the September meetings when hopefully all Board members will be in attendance, so final decisions can be made on some of the revisions.

A motion was made by Trustee Hoepfner, supported by Trustee Miller to receive and file the August 25, 2016 draft of the restatement of the Retirement Ordinance. The motion carried.

13. Comerica Organizational Update follow-up

Mr. Holycross was not present for the meeting and Chair Flynn indicated that the information Vice-Chair Cutler had requested pertaining to Comerica was not yet available from Graystone.

A motion was made by Trustee Hoepfner, supported by Vice-Chair Cutler to put this item back on the agenda for the September 15, 2016 meeting. The motion carried.

14. Other Business

None

15. Adjournment

There being no further business before the Board, a motion was made by Trustee Hoepfner, supported by Trustee Miller to adjourn the meeting at 10:08 a.m. The motion carried.