

**CITY OF PONTIAC, MICHIGAN  
GENERAL EMPLOYEES RETIREMENT SYSTEM  
BOARD OF TRUSTEES  
NOVEMBER 13, 2007**

**SPECIAL MEETING**

A special meeting of the Board of Trustees was held on Tuesday, November 13, 2007 at the Shrine Room, Main Floor, City Hall, 47450 Woodward Avenue, Pontiac, Michigan 48342. The meeting was called to order at 10:02 a.m.

**TRUSTEES PRESENT**

Raymond Cochran (*arrived at 10:16 a.m.*)

Charlie Harrison, Chairman

Mayor, Clarence Phillips (*arrived at 10:42 a.m.*)

Javier Saucedo, Vice Chair

Devin Scott

Kevin Williams

Debra Woods

Andrea Wright

**TRUSTEES ABSENT**

Shirley Barnett

Koné Bowman

Robert Giddings

**OTHERS PRESENT**

Tom Michaud, VanOverbeke, Michaud & Timmony

Dennis Scanlon, SAEA

Rob Englund, SAEA

Eric Goldstein, Berry, Johnston, Szykiel, Hunt & McCandless

Ellen Zimmermann, Retirement Systems Administrator

Jane Arndt, M-Administrative Assistant

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**Re: Disability Approval - Hofmeister**

Chairman Harrison called the meeting to order. He said the first item on the agenda is to review Dan Hofmeister's disability status.

Ms. Zimmermann distributed the Medical Director's findings. She stated that at the October 24, 2007 meeting per the policy the physician and hospital reports were forwarded to the Medical Director. After review, the Medical Director has found the member totally disabled. She asked that the meeting be called to get the member on payroll as quickly as possible.

Mr. Michaud recommended that if it is necessary to discuss the member's medical condition the Board should move to closed session.

Chairman Harrison said that this is a timely and sensitive issue. He also told the Board that Ms. Tetmeyer went to the member's rehabilitation center to facilitate the paperwork.

**RESOLUTION 07-081** By Woods, Supported By Williams

Resolved, That the Board approved Dan Hofmeister's application for disability retirement.

Yeas: 6 – Nays: 0

**Re: SAEA Part-Time Service Credit Issue**

Chairman Harrison stated that the second issue on the agenda is in reference to the SAEA members' part-time service credit.

Ms. Zimmermann stated that she was not asked to put this on the agenda until late Friday and did not receive the documents until after 5:00 p.m., Friday. She explained that this is in regards to the SAEA members' part time service credit included in the benefit calculations. At the August meeting the Board approved the request to obtain cost studies for these members. The cost studies were received and forwarded to Human Resources. It was the Board's understanding at the time that the Human Resources Director would then present the cost studies to Council for approval pursuant to Public Act 728. She distributed a copy of the letter from the actuary stating that the recognition of part-time service is considered a benefit change under state law and that the cost increase was not accounted for in the annual valuation.

Chairman Harrison asked who was initiating the discussion and bringing this issue to the Board.

Trustee Scott said that he is familiar with labor relations and is bringing this matter back to the Board. He provided documentation from the City and union's attorneys. He feels the Board needs to do the right thing and review the information and come to an agreement today. The Board is looking at legal ramifications and possible litigation.

Chairman Harrison questioned what information needs to be reviewed. Trustee Scott said that the Union and the City do not feel this is a change of benefit. Mr. Michaud said that it is a change of benefit. Mr. Goldstein said that it is not a change of benefit and that the SAEA settled that issue in arbitration. The ordinance does not supersede the collective bargaining agreement.

Chairman Harrison suggested that the attorneys review the issue before the Board.

Mr. Goldstein said he has not been to any prior meetings. He referred to his letter sent to the City. It is his understanding that the collective bargaining unit has given the Human Resources (HR) Director the authority to calculate benefits for pensions. Historically, the methodology of calculating benefits was vested with the Board per the ordinance and collective bargaining agreements were historically silent. The current CBA has vested the authority to calculate benefits to the Human Resources Director.

The collective bargaining agreement trumps the local ordinance, so the question is what controls? Michigan law states that it is collective bargaining. The perception is that including part-time hours is not something that has been done in the past. The Human Resources Director

has decided to include part-time hours in the benefit calculation which is only a change in the calculation method. There is a perception that this is a change of benefit. If this goes in front of Council for approval you are ignoring the CBA and MOU. Essentially this renders no one with authority other than the City Council to render benefits.

He said he has reviewed the letter drafted by Mr. Michaud which was well reasoned. The letter makes reference to a Supreme Court Case referring to past practice in regard to who decides duty or non-duty disability. He said in that case there was language in the ordinance and CBA which said the same thing but it has been done differently for years. He said that accordingly if "Plan A" is being enforced as past practice it is a ratification of "Plan B." In this case the Union and City agreed to take authority away from the Board. The Board now has to implement pending a lawsuit to enforce the arbitration order. That is his understanding.

*Trustee Cochran arrived at 10:16 a.m.*

Mr. Michaud said that the Board needs to understand the collective bargaining process. Historically and now, the Board does not get into the collective bargaining process. As a fiduciary of the retirement system the trustee is to administer benefits that are negotiated. Collective bargaining supersedes the ordinance. The Board is to implement the provisions. None of our previous discussions have been contrary to that. Some of Mr. Goldstein's statements imply that the Board has discretion when applying provisions. The problems occur when there is no language in the ordinance that supports a provision or the language requires clarification.

It is not an issue of Board discretion regarding part time service credit. Membership is historically clear: part time employees were not members of the System. There was never a provision that included part-time service in the benefit calculation. Part time employees can be members but it requires an affirmative change by ordinance or collective bargaining. As we have discussed in the past, part time employees were not members. To be a plan amendment, it can be negotiated and become a new provision: now they can be members. It can be done by collective bargaining, but there are other requirements as well. What Mr. Goldstein does not recognize are the legal requirements the Board has to follow. Public Act 728 (PA 728) requires an actuarial study to be done in advance of implementation and presented to the Board and Council at least seven days in advance of implementation. The law became effective January 2003. Many systems did not follow this process before. It is the responsibility of the Retirement Board to make sure this is followed.

Regardless of whether the provision to grant part-time hours as service credit was based on a CBA or MOU the assumption is that those persons were not considered members as part-time employees and are now considered members. The Board recognizes this as a new plan provision established through collective bargaining. Based on Public Act 728 an actuarial study is done when there is a change to a plan provision. The system needs to know what the cost to the system will be. That is why the actuarial cost study is requested and forwarded for approval at least seven days in advance of the benefit being implemented.

In this instance the City and union want HR to grant benefits. That is fine however they still have to comply with PA 728. The annual actuarial study looks at all the factors of the system to determine the liability: FAC and service determine the liability. Being over funded is good but whether or not a system is over funded, there is a cost associated with a change. The actuary gears future contributions based on provisions in effect to properly fund for the long term.

When additional service credit is included in the FAC benefit calculation it is a liability. This system has a superior funding level unlike most systems. When you change service credit or the FAC it changes the financed liability. Ten years ago a lot of systems were granting benefits without cost studies and were surprised by the significant change in their funding level. This is one reason why the law was put in place. It protects the Plan and it protects the trustees. Those systems are not fully funded today and are looking at potential long-term funding issues.

The legal actuarial valuation report provision can not be under valued or avoided. There needs to be compliance because there are liabilities. The Retirement System does not chose who gets benefits. Again, if there is a change it has to be costed out with a copy to the Board and to Council seven days in advance of the benefit implementation. This protects the integrity of the plan. Deviating from this practice puts the liability on the system and the individual trustees.

Chairman Harrison said that all agree that the benefit has been bargained. No one is arguing the point. The difference is how it relates to Public Act 728 which does not get superseded. He asked if collective bargaining can supersede state law. Mr. Michaud said that state statutes trump collective bargaining agreements and the cost study must be done.

Mr. Goldstein acknowledged that the cost studies have been done. He said that the cost studies are not the issue. He understands the liability concern. The question is the definition of a new benefit. He said you do not have a new benefit you have a change in policy. Before the CBA part-time hours were not included and the Board's actions were consistent. The CBA narrows the range of discretion that existed.

Mr. Michaud stated that the Board has indicated that it was a well established past practice. If the Board had implemented that provision in the past and then took it away people would argue that it could not be changed. The argument of discretion or no discretion is well understood. However, City employees that left during the last twenty-five years could now come back and ask for additional benefits.

Mr. Goldstein said that Mr. Michaud makes a good point. He said that the documents included in the review were MOUs from 1983, 1984 and 1985 speak to a sub-set of the part-time employees. Ms. Zimmermann said that they got credit provided they met the criteria detailed in the MOU. Mr. Goldstein said that was the reason for the arbitration.

*Trustee Woods left at 10:40 a.m.*

Mr. Englund, Vice President of the SAEA referred to the 1983 MOU. He said that it addressed the Walter Hardin and Leonard Smith seniority and part-time service credit issue. He said that

he is confused because he feels that the issue also applies to Alvin Hardy and Linda Chambers. He does not know why the actuarial study was never done in reference to the 1983 MOU.

*Trustee Scott left at 10:42 a.m.*

*Trustee Scott and Mayor Phillips arrived at 10:43 a.m.*

Ms. Zimmermann said no cost study was done in 1983 because the state law was not then in effect and at that time it was not required.

Mr. Englund felt that Mr. Hardy and Ms. Chambers should be allowed to retire under the same provision. They took the grievances to arbitration for clarification. The contract language was not derived to take responsibility away from the Retirement Office. He said that Human Resources does not agree with the Retirement Office that these employees were not eligible.

He said that he does not understand the legal reference to Public Act 728. He does not know why the actuarial study was not requested in 1983 but one must have been done when the collective bargaining agreement was agreed. However, the CBA language clearly defines permanent part-time hours which would circumvent the ordinance. He said they waited several years and thought the people would be fine. These people are on the streets and their credit is destroyed. Gordon Gregory the Union's attorney could not be present. The grievances and change to the agreement were done to address a situation, not to take authority from the Board.

Chairman Harrison said that the Board wants to take care of the members and rectify the situation.

Trustee Scott asked why Public Act 728 would take precedence if there is a MOU agreement.

*Trustee Woods returned at 10:49 a.m.*

Mr. Michaud said that in terms of those individuals they did not meet the MOU requirements until it was changed or amended unless past practice has been established. The plan provision is what is in effect.

Trustee Scott said that there is a difference between part time and permanent part time. These employees made contributions in the 1980's.

Ms. Zimmermann said that she was directed to process Walter Hardin's pension. She felt her job and her staff's jobs were threatened. Leonard Smith had adequate service credit without the part-time service credit which is the difference between him and Walter Hardin. His pension did not include the part time service credit when he retired. No employees made contributions past the mid-1970's. The original MOU with that language expired with the contract.

Mayor Phillips asked if there is a statute that governs this issue. Chairman Harrison said that Public Act 728 governs it and it is a state act and is what everything is hinging on. We need to bring this to a conclusion because we are dealing with people lives. There is a difference of opinion which requires more clarity. He would like to move toward a resolution.

Mayor Phillips also asked what statute would govern Ms. Zimmermann's job being on the line.

Mr. Michaud said that since the City and the Union are on the same page a new MOU would provide consistency with the arbitration ruling. The arbitration award was lacking the compliance with Public Act 728. For several months Mr. Marshall was stating the position of the City and the Union. The Board asked to get the service credit information in writing from the Union. All parties agreed. It is not the job of the Board to move this issue forward.

Trustee Wright said the meeting could have been over at 10:30. In August she thought the issue was resolved during the meeting. The Human Resources Director agreed to provide a document in writing. We determined there was a difference of opinion but the cost studies were requested. Once the cost studies were done why were they not taken to Council? It appears there was reluctance to get them processed. This is why she wants the members to get paid. Chairman Harrison said that when the trustees left the August meeting the Board thought that the Human Resources Director would take the studies to Council. There is still concern that other members who have already retired could be coming back.

Trustee Woods said that Human Resources does not see this as a new benefit. Mr. Michaud said the issue is not the benefit or the cost study, but the process.

Chairman Harrison said that this issue should be discussed through the attorneys.

Mr. Goldstein said that the goal is to move forward. He understands the risk and liabilities and that new benefits need to be brought before Council. However, this is not a new benefit that Council is required to approve. The only difference is the cost involved in providing the benefit. It is a different cost but it is the same benefit. His clients have made a choice on what is good and consistent. It was properly and fully costed out. It is time to move forward to get relief for the members. The City has negotiated through collective bargaining with the Union to take away the discretion from the Board. He proposed to move forward and approve the benefit and take the chance on violating the Public Act with the possibility of the Board getting its wrist slapped down the road.

Trustee Cochran asked if it is the Board's decision. Mr. Michaud said that it can not be considered a policy change because these members were not entitled to a benefit at that time. He said to avoid litigation he does not understand if the City and Union agree why they can not provide a MOU. The cost studies have been processed.

Mr. Goldstein said that the premise is by providing a new document the old documents do not suffice. Mr. Michaud said that it would provide certainty. He asked why there is reluctance. The arbitrator did not rule on any specific circumstance.

Trustee Wright said the question is whether this change in collective bargaining was included historically.

Mr. Michaud said that these persons were not given benefits or considered members of the system at that time. This creates new liability and is a new benefit.

Trustee Wright used an analogy where the collective bargaining agreement states that for every 8 hours worked the employee would be paid for twelve hours. She asked if the earnings would be included in the final average calculation. She also asked if that would be considered a benefit change. Mr. Michaud said that it would not be considered a benefit change because it would be part of the employee's wages.

*Trustee Scott left at 11:20 a.m.*

Mr. Englund said that the letter from the Board's attorney stated that part-time service was not included and that is what the arbitrator decided. He said that he feels the Board was aware of the language.

Chairman Harrison said that the Board does not consider it a change in the language and that it needs to go to Council for approval. He asked if it would be acceptable to both parties if Ms. Zimmermann could present the issue in front of Council.

Mayor Phillips asked if this is an issue for Council. Trustee Scott replied no.

Mr. Michaud said since the cost studies were never provided to them, the Council needs to agree to any new provision. The Council votes on all new contract language. Trustee Wright asked if it requires their approval or acknowledgement. Mr. Michaud said that it requires Council's approval.

Mr. Goldstein said he has no problem giving the information to Council, but not for approval. If they do not approve it, it could become a liability. The argument advanced to the arbitrator by the union compels the City to comply pursuant to collective bargaining. It ratifies the Human Resources Director's changing of the benefit. The arbitrator has authorized the Human Resources Director to give these people pensions.

Chairman Harrison questioned whether the Board would be in violation of Public Act 728 by not taking this to Council. Mr. Michaud said that the Board would be in violation. The Council, City and union need to know the cost for the City to implement the benefit.

*Mayor Phillips and Mr. Goldstein left at 11:29 a.m.*

Trustee Williams said that according to Mr. Goldstein's documents this is not considered a new benefit. Is it or is it not? Mr. Michaud said that it is a new benefit.

Trustee Scott said that Mr. Hardin was done that way. Mr. Michaud told the Board that the MOU used to retire Walter Hardin had expired and did not apply. The fact that is he is getting a benefit is because the MOU was recognized.

*Meeting Break at 11:31 a.m.*

*Meeting Resumed at 11:42 a.m.*

Ms. Zimmermann said she could take the cost studies to Council on behalf of the Board. She would explain that the benefit was granted according to documents negotiated in the past and these are the cost studies that are required per a recent law, Public Act 728. Trustee Wright asked if this would require a new cost study because it has to be provided seven days in advance. She was told that the cost studies are required at least seven days in advance of implementation.

Mayor Phillips asked what if the information is taken to Council and they say no. Ms. Zimmermann said that the Board would then comply with the arbitrator's decision. Trustee Scott said he does not feel the cost studies should be taken to Council.

Chairman Harrison said in order to protect the Board he feels that the cost studies should be taken to Council for acknowledgement since the attorney tells us we would be in violation.

Trustee Scott said that Walter Hardin was approved by the Board. Ms. Zimmermann replied that putting him on payroll was wrong.

Mr. Michaud asked why there is reluctance on the part of the City and Union to provide a MOU for these members. The council has to acknowledge the cost. This is consistently done with the fifty public pension plans he represents.

Mayor Phillips asked why you would take it to Council if it is not needed.

Mr. Michaud stated because it is a new benefit and the contract that ratified this provision was never costed out.

Trustee Cochran said he is not an attorney, but Mr. Goldstein has stated that this is not a new benefit change. Mr. Michaud said that the arbitrator was not provided all the information when the decision on the benefit was determined.

Mayor Phillips said that he had no idea there were people out there with nothing. That is just wrong. The statute is already in place.

Chairman Harrison said that if the Council denies the provision it could be implemented through the collective bargaining agreement.

Mr. Michaud said making an assumption that the Council will deny is getting the Board involved in labor issues. Again he stated that the law requires that cost studies have to be provided seven days in advance of implementing a benefit. He said the original language gave the Human Resources Director the authority to determine benefits for individuals but not the ability to apply his authority in order to implement the benefit.

Mr. Englund said that the contract has given him the authority. Mr. Goldstein said that the cost study could not be done before the service credit was determined by the Human Resources



Director. This is the same benefit with a cost association. Mr. Michaud stated that it is a new benefit and questions the legitimacy of the agreement.

Trustee Wright said that she does not think taking the cost studies to Council would cause them to be automatically denied but they could be belabored. If Council already approved the contract language and the cost studies are done, we need to get this implemented. The additional information can be forwarded to Council for their information.

**RESOLUTION 07-082** By Scott, Supported By Wright

Resolved, That the Board approve and implement the increased benefits for Linda Chambers, Alvin Hardy and Leonard Smith by acknowledging that this is not a new benefit and to provide retroactive benefits for these individuals.

**Roll Call:**

Trustee Woods – Yes

Trustee Saucedo - No

Trustee Wright – Yes

Chairman Harrison – Yes (with reservation)

Trustee Scott – Yes

Mayor Phillips – Yes

Trustee Williams – Yes

Trustee Cochran – Yes

Chairman Harrison said that this is still a grey area and he still has reservations. All you need is one person to come back and question this language. Ms. Zimmermann said that employee groups could request a technical review because the past language is not clear.

Trustee Wright asked what happens next.

Ms. Zimmermann said that the Board has made their determination based on the various facts. The cost studies will not be forwarded to Council and the members will be put on payroll.

**ADJOURNMENT**

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**RESOLUTION 07-083** By Woods, Supported By Scott

Resolved, That the meeting be adjourned at 12:00 p.m.

Yeas: 8 – Nays: 0

I certify that the foregoing are the true and correct minutes of the special meeting of the General Employees Retirement System held on November 13, 2007.

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Raymond Cochran, Secretary

*As recorded by Jane Arndt*