

**CITY OF PONTIAC, MICHIGAN  
GENERAL EMPLOYEES RETIREMENT SYSTEM  
BOARD OF TRUSTEES  
NOVEMBER 30, 2016**

A regular meeting of the Board of Trustees was held on Wednesday, November 30, 2016 at the Pontiac General Employees' Retirement System Office located at 2201 Auburn Road, Suite B, Auburn Hills, Michigan 48326. The meeting was called to order at 10:00 a.m.

**TRUSTEES PRESENT**

Sheldon Albritton  
Jane Arndt  
Janice Gaffney  
Robert Giddings  
Walter Moore, Chairman *(by Skype/video)*  
Nevrus Nazarko *(arrvd. @ 10:02 a.m.)*  
Billie Swazer  
Deirdre Waterman *(arrvd. @ 10:10 a.m.)*  
Patrice Waterman  
Kevin Williams, Vice Chair

**OTHERS PRESENT**

Cynthia Billings-Dunn, Sullivan Ward Asher & Patton  
Deborah Munson, Interim Executive Director  
David Lee, Dahab Associates  
Steven Roth, Dahab Associates  
James Anderson, Gabriel Roeder Smith & Co.  
Kevin Beardsley, Gabriel Roeder Smith & Co.  
Louise Gates, Gabriel Roeder Smith & Co.  
Heath Merlak, Nyhart  
Danielle Winegardner, Nyhart  
Clarissa Cayton-Grigsby

**TRUSTEES ABSENT**

Koné Bowman *(excused)*

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*Vice Chairman Williams opened the meeting at 10:00 a.m.*

Vice Chair Williams welcomed the Board to the November 2016 meeting, the Chair who is participating by video and greeted those watching the meeting via video on Comcast.

**PUBLIC COMMENT – N/A**

**AGENDA CHANGES – N/A**

**ACTUARIAL FIRMS PRESENTATIONS**

Miss Munson told the Board that we are down to two finalists who will be presenting to the Board. She noted that Nyhart is the current actuary to the System and Gabriel, Roeder, Smith & Co was the actuary for the System for sixty years from inception through 2006. She suggested that presentations be done in alphabetical order. She asked whether the Trustees had any questions prior to the start of the presentations.

***Gabriel, Roeder, Smith & Company***

James Anderson, Senior Consultant, FSA, EA, MAAA

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Kevin J. Beardsley, Software Consultant  
Louise Gates, Senior Consultant, ASA, MAAA

Louise Gates introduced herself and thanked the Board for the opportunity to meet with them today. She indicated that she is an actuary and a consultant with Gabriel, Roeder, Smith & Company. As an actuary and consultant she has over thirty years of experience providing services to public employee retirement systems.

Kevin Beardsley introduced himself and told the Board that he has been with GRS for approximately twelve years. He heads the technology group that handles the software that the Retirement System currently uses. He has worked with the Retirement staff in the past and would continue to do so in the future if selected.

Jim Anderson introduced himself and indicated that he is a senior consultant and actuary and has been in the actuarial business since the late 1980's. He is a life-long Michigan resident and works for clients on both sides of the state and across the country. He returned to GRS approximately five years ago to be the face for GRS on the west side of the state.

Mr. Anderson noted that GRS was the System's actuary for sixty years. They operate from a position of strength having a large Michigan client base and providing actuarial services to more Michigan public plans than any other consulting firm. This experience brings special value to the systems they support. He noted they serve systems with over and underfunded positions and a number of closed plans. This System has a large number of retirees and a shrinking active member base and the plan is essentially closed which presents a number of other issues. Their large Michigan client base gives them access to the practices and policies of other plans and access to the studies including those with closed plans.

They have experience working with the state laws of Michigan which is a huge benefit to their clients. They also strive to provide jargon-free communications which is important for the Trustees.

Gabriel, Roeder, Smith & Company was established in Michigan in 1938. They are in close proximity to the GERS and have a strong local presence. They employ fifty Michigan residents. They provide client education at MAPERS where they support Michigan public organizations and interact with the Boards. He and Ms. Gates are regular speakers at MAPERS. They take pride in their support of local organizations and systems. They are in the forefront of public retirement system issues in Michigan.

They are one of the largest service providers to both public and private plans across the country which gives them a national public plan perspective. They support national public plan organizations including NCPERS, OPAL, the International Foundation and GFOA just to name a few.

Their affiliation with organizations allows them to be at the forefront of public sector issues and provide input prior to implementation. They are advisors to a number of actuarial and accounting organizations and want to be involved in the discussions on these boards.

There is a GRS employee who is the chairperson on the Actuarial Standards Board that recently announced that there are new standards coming out that could affect how plans are valued. This could affect the GERS System. The System currently has a \$250 million liability but the proposed standards could value that liability at \$500 million, \$750 million or more. The new standards were originally focused on only public plans but they want to insure that the standard is spread across all plans - both public and private.

They also have representation on the Governmental Accounting Standards Board (GASB). There is a new standard coming out and they want to be in the discussion with regard to the standard.

The chief actuary at GRS is on the Board for the Society of Actuaries and is the head of the committee that investigates mortality. He explained that mortality table estimates are very important when determining retirement benefits.

Mr. Anderson noted that he is also a member of the Pension Section Council of the Society of Actuaries which provides a public sector voice on the council and defends public sector systems.

He stated that if GRS is hired it would be a seamless transition.

Ms. Gates reviewed the summary of their proposed actuarial services. As a preliminary step they would start the process with an actuarial audit in order to build a strong foundation for the work to follow. It should also give the Board an additional level of comfort in the work that has been done. They would do a full replication and go beyond the funding valuations and look at the calculations. They would report and explain any issues that they discover during the audit to the Board. They would also make recommendations for change to the Board. They view this as an important preliminary step and collaborative process with the Board and its other advisors.

The System uses their software services which produces benefit calculations and data files. GRS would provide the funding valuation as well as the accounting valuation required by GASB 67/68. She also noted the statements to be released that will be effective in 2017 which will affect the City's retiree healthcare.

Ms. Gates stated that – in addition to the valuations – GRS would also provide routine actuarial consulting services as part of their routine services. The Retirement System produces its own audited financial statements but GRS could provide actuarial reports the City may need for its CAFR.

Trustee Giddings questioned what GRS would expect to find with an audit.

Ms. Gates explained that they begin the audit by attempting to replicate the present value of the future benefits which is the total liability. She explained that given that our plan is heavily weighted towards retirees, she would expect to be able to replicate that liability within half a percent. She explained other costs and their makeup which they will review.

Ms. Gates discussed some of the complimentary actuarial services they would be provide including an annual educational session and bi-annual social security death checks. They also provide an online service on their website called GRS Advantage which allows for secure file transfers. Also included in this service is a limited service death check which would allow the System to spot check for specific retirees.

She reviewed the proposed timetable if they are selected as the System's actuary. She noted that GRS would have the preliminary reports to the Board in April as requested and would present the final results at the Board's May meeting.

She also reviewed the proposed fee schedule including the retainer services; financial reporting services; actuarial audit; data analysis; GASB valuation and reporting; pension software maintenance fee will not change; an experience study would cost approximately \$8,000.00 and the fees for optional services including EDRO calculations and supplemental valuations.

Mr. Anderson clarified that there is no additional charge for the audit.

Miss Munson confirmed that two plan-wide death audits and unlimited individual searches in GRS Advantage are included in the price

Miss Munson asked whether an audit of the optional forms of payment for 2016 retirees is included.

Ms. Gates confirmed that the audit includes a review of the optional forms of payment and the assumptions that were used.

Ms. Gates explained the optional forms of payment and how they are calculated, mortality tables and interest rate assumptions. Ms. Gates indicated that it has not been her experience that the generational mortality tables are used to calculate the optional forms of payment. She explained that the tables used to fund the plan typically are not the tables used to calculate the optional forms of payment.

Miss Munson confirmed with Ms. Gates that GRS – were they selected – would make a recommendation on the calculation of the optional forms of payment that is consistent with the System's population and compatible with the member data software.

Mr. Nazarko questioned which method of calculating the optional forms of payment provided the largest benefit to the member.

Ms. Gates described that the optional forms of payment calculations are based on mortality tables and interest rates. The System changed the mortality table but not the interest rate. She described the change using the analogy that it would cost less for a member purchasing a life insurance policy if they are expected to live longer because the likelihood of exercising the option decreases.

Mr. Nazarko confirmed that a member receives a larger benefit using the updated mortality tables.

Vice-Chair Williams noted that the thirty minute time limit had expired.

**RESOLUTION 16-169** By D. Waterman, Supported by Arndt

Resolved, That the Board approves to extend the allotted time to allow for more questioning.

Yeas: 10 – Nays: 0

Trustee Nazarko questioned what GRS found interesting when they reviewed the System's 2015 Valuation.

Mr. Anderson stated that he noted the large impact that the change to the COLA calculation had on the liabilities. He also noted that the System has used the same mortality table for a number of years.

Ms. Gates noted the rate of investment return. Because the plan is closed, it has substantial liquidity needs. She discussed the need of the System to make liquidate assets to pay plan expenses and noted that it is the nature of investments that some will be sold at a gain and some will be sold at a loss. The System has to reallocate the assets based on its liquidity needs but that does drive down the rate of return.

Mr. Lee asked about the complimentary actuarial services, whether there will be a fee for them in the future and how they differ from services provided to other clients.

Ms. Gates indicated that they pass along the cost to many clients. However, when they say a service is free they honor their commitment.

Mr. Anderson indicated that it is typical for GRS to charge for the audit.

*Mr. Anderson, Mr. Beardsley and Ms. Gates left at 10:41 a.m.*

***Nyhart Actuary and Employee Benefits***

Heath Merlak, FSA, EA, FCA, MAAA

Danielle Winegardner, ASA, EA, MAAA

Mr. Merlak provided information regarding the company and Danielle and his backgrounds and services they currently provide to the System including administrative solutions. He has been an actuary for 20 years and is Nyhart's defined benefit Practice Leader and sits on their Executive Board. They represent both private and public plan clients. Their job is to promote the sustainability of pensions plan for their private and public plan clients.

He noted their actuarial credentials and requirements.

Ms. Winegardner stated that she works for both public and private plan clients. She has worked for Nyhart for seven years and is currently pursuing the FSA.

She described their services including defined benefit actuarial services and administration.

Mr. Merlak reviewed their presentation and highlighted that Nyhart was founded in 1943 and started as a family business which is where they get their name. They have nine offices and provide reasonable fees to their clients and proactive consulting.

He noted that Nyhart has a strong commitment to their clients based on their ownership in the company (ESOP). They have a 99% client retention rate. Their CEO works with their clients providing a business approach for growth. They are client- and technology-focused providing tools to help clients manage their pension programs.

Ms. Winegardner provided an overview of their valuation services including deliverables; consulting; special projects including de-risking strategies and regulatory focus. She indicated that Nyhart has a lot of experience with special projects.

Ms. Winegardner reviewed the 2016 recap of their experience working with the System. She noted the \$24 million reduction in the liability to revision of the COLA calculation done by the prior actuary. She indicated that they feel very confident in the current coding in the current valuation that they noticed that problem and were able to give a more true liability.

Mr. Merlak interjected that Nyhart went back and did some more digging after a discussion with the Board about the transition to the prior actuary from their predecessor. He noted that there was one year when there was a \$24 million loss in one year but no additional follow up was done by the actuary at the time to determine the cause of the loss.

Ms. Winegardner noted that the System had a large gain on the assets that year which masked to loss related to the liability. She continued that Nyhart looks at changes to the assets separately from changes to the liability.

Ms. Winegardner continued that in 2016, Nyhart also reviewed the \$400.00 temporary supplemental benefit as well as the mortality tables which the Board did update. She noted that they provided fees ahead of time for ad-hoc administrative requests. She stated that Nyhart is committed to Michigan public plans. Nyhart could also perform an experience study analysis for the System. Even without an experience study it is important to look at the assumptions every year because they are dynamic. They would work closely with the investment consultant on any changes to the interest rate assumption related to a change in the asset allocation.

Mr. Merlak provided an overview of their customized software NyPAS. He noted that they are the System's current actuary and that there would be no transition required actuarial services. Nyhart would do a thorough review for the software transition and reconcile the benefits to the plan documents. They expect the software transition would take approximately eight weeks and Mr. Merlak reviewed the timeline.

Miss Munson requested that Nyhart discuss with the trustees the optional forms of payment calculations. Miss Munson explained that there is essentially no difference in the optional payment amounts calculated using the old mortality tables and the amounts calculated by Nyhart using the updated mortality tables.

Ms. Winegardner described the optional payment factor. She stated that the interest rate changed in addition to the mortality table. She explained that the single life annuity factor as well as the joint & survivor annuity factor (numerator and denominator) are affected by the mortality table in a like fashion cancelling out any effect.

Mr. Merlak stated that it is a common approach in Michigan to use the same mortality table for both funding purposes as well as calculation of optional forms of payment amounts. He did note that it is a good idea to stick with one table for the calculation of the optional forms of payment for a number of years.

There was additional discussion regarding the formatting of Nyhart's reporting as presented in the proposal and that provided to the Board for 2015.

*Mr. Merlak and Ms. Winegardner left at 11:40 a.m.*

**RESOLUTION 16-170** By Gaffney, Supported by P. Waterman

Resolved, That the Board approves to move the two actuary-related resolutions up from New Business.

Yeas: 10 – Nays: 0

Miss Munson noted how the comments of both actuaries regarding the System's negative cash flow and investment returns tie in with information the consultant has been providing with respect to their work on the asset allocation.

Chairman Moore suggested that the finance sub-committee's recommendation be shared with the Board.

Miss Munson stated that the committee scored both firms and they preferred GRS. The committee appreciated GRS' familiarity with the Plan and their strong presence in the Michigan public retirement sector. The GRS software is also appropriate for what we do at a reasonable price. Miss Munson noted that the committee is also prepared to make a recommendation on the software in the case GRS is not selected as actuary.

Trustee Gaffney stated that at a later time the System could do a more thorough search for pension software. Continuing with the GRS software buys time without having to make any immediate changes.

Trustee Swazer questioned whether GRS is capable of performing the optional forms of payment calculations.

Miss Munson explained that GRS can calculate the optional forms of payment. It is the GRS software that cannot accommodate generational tables. She noted how Ms. Gates noted that generational tables typically are not used to calculate the optional forms of payment amounts. The GRS software can accommodate updated tables that are static - not generational.

Trustee Patrice Waterman asked about the difference in the calculations based on the different tables.

Miss Munson stated that the difference between the optional payment amounts calculated under the new tables differs by less than 2% from the amounts calculated under the old tables.

There was additional discussion regarding the software and potential alternatives.

**RESOLUTION 16-171** by Gaffney, Supported by Swazer

Resolved, That the Board approves the hiring of Gabriel Roeder Smith & Company to provide actuarial consulting services for the City of Pontiac General Employees' Retirement System, and further Resolved, That the Board authorizes the Chairman's signature on the actuarial services agreement pending legal review.

Yeas: 10 – Nays: 0

Trustee Gaffney recommended that - in light of hiring Gabriel Roeder Smith & Company - that the System continue to use the GRS software and reevaluate the matter at the appropriate time.

**RESOLUTION 16-172** by Gaffney, Supported by Swazer

Resolved, That the Board approve the hiring of Gabriel Roeder Smith & Company to provide pension management software to the City of Pontiac General Employees' Retirement System, and further Resolved, That the Board authorizes the Chairman's signature on the software agreement pending legal review.

Yeas: 10 – Nays: 0

**APPROVAL OF CONSENT AGENDA**

- A. Approval of the Minutes of the Regular Board Meeting held October 26, 2016
- C. Ratification of Retiree Payroll & Staff Payroll



Retiree Pay Date: November 9, 2016

**TOTAL PENSION PAYROLL**

\$4,321.355.22

Staff PPE November 10 & 23, 2016

**TOTAL STAFF PAYROLL**

\$ 14,431.06

D. Communications:

1. Northern Trust Securities Litigation Settlement Notice
2. NCPERS 2017 Legislative Conference: Jan 29-31, 2017 (Washington, DC)
3. IFEBP Investments Institute: March 13-15, 2017 (Phoenix, AZ)

E. Financial Reports:

1. Accounts Payables – November 2016
2. Dahab Associates Flash Report October 2016
3. Attucks Asset Management, Manager of Managers Report – October 2016
4. Statement of Changes – October 2016

F. Private Equity Capital Calls & Distributions

G. Applications for Retirement, Final Calculations, Refunds, Re-examinations

1. New Retirements

Ret No.	Member's Name	Years/Months of Service	Union	Age	Retirement Option	Monthly Benefit	Effective Date
2800	Walker, Cynthia	10 – 2	NU	60	Option V	\$1,488.71	01/01/2017
2799	Ortiz, Guadalupe	8 – 0	NOMC	60	Option III	\$183.28	01/01/2017

2. Terminated Retirements (Deaths)

Ret No.	Member's Name	Date of Death	Benefit Amount	Union or Dept.

3. J&S Continued Retirements

Ret No.	Name	Date of Death	Survivor's Name	Member Benefit	Beneficiary Benefit	Union or Dept.

4. Recalculated Retirements

Ret No.	Name	Union	Effective Date	Reason For Change	Old Amount	New Amount
2788	Martinez, Magdalena	NU	12/01/2016	Final Benefit	\$58.88	\$59.64

5. Disability Medical Re-Exams/Benefit Continuation

Ret No.	Name	Reason	Benefit Amount	Union or Dept.

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## 6. Refunds of Employee Contributions

Trustee Giddings asked that the FOIA request from Francine Finnegan be pulled from the consent agenda for further review.

Trustee Gaffney pointed out on page two of the minutes that the EDRO note regarding Freddie Garland from last month's agenda was still in the agenda and should be removed.

Trustee Deirdre Waterman questioned the commentary regarding the \$400.00 temporary increase termination date included in the consent agenda.

It was determined that all of the superfluous commentary would be removed from the Consent Agenda.

**RESOLUTION 16-173** by Gaffney, Supported by P. Waterman

Resolved, that the Board approves and ratifies actions described in the Consent Agenda for November 30, 2016 as corrected.

Yeas: 10 – Nays: 0

### **Re: FOIA Request from/to Francine Finnegan: October 26, 2016**

Trustee Giddings questioned why a FOIA request was sent to GERS regarding a Police & Fire not directed to the Police & Fire System's administrator. He also questioned why there was no fee for the information provided.

Miss Munson explained that this office was also the administrator of the Police & Fire Retirement System and - because of that history - staff will assist former PFRS members if they call or stop by. Ms. Finnegan is a member of the PFRS and the GERS and came into the office to discuss a PFRS benefit that had been suspended: she wanted to understand the history of that particular benefit. Miss Munson stated that they reviewed the PFRS Ordinance and one of the CBA's. She explained to Ms. Finnegan that all of the hard copies of PFRS records were shipped to Benesys and that the only ones maintained by the Retirement Office are those that are electronic. She continued that when she received the FOIA request, she did a search on the System's electronic records using a few key words. She noted that the search yielded a few documents and took less than 15 minutes to complete. Per the FOIA policy, labor is charged in 15 minute increments and is rounded down which is why there was no charge to the member. She also suggested to Ms. Finnegan that she send a FOIA request to the PFRS administrator.

**RESOLUTION 16-174** By Gaffney, Supported by Swazer

Resolved, That the Board accept the FOIA Request from/to Francine Finnegan dated October 26, 2016 for informational purposes.

Yeas: 10 – Nays: 0

## CONSULTANT

### Re: Dahab Associates

#### Asset Allocation Recommendation

Mr. Lee noted that they will provide market values as of Monday's market closing (November 28, 2016). They normally provide the market values as of Tuesday's market closing.

He reviewed the portfolio asset allocation comparisons for the five-year period ending June 30, 2016. The charts compared the returns, value and standard deviation for all the assets mixes introduced to the Board. There were individual charts that compared three different mixes along with the current asset allocation per page.

He provided a thorough description of the chart comparing mix one, mix three, mix nine and the System's current target allocation. He noted that mix one had the highest returns but it also has the largest allocation to illiquid assets which is why they focused on mix three.

He also described the other charts comparing the other mixes

Miss Munson told the Board that the summary statistics are also included in the meeting handbooks. She also asked if the Board would like her to provide the finance subcommittee's recommendation. She reported that the finance sub-committee reviewed all the mixes and is recommending that the Board adopt mix three based on the investment consultant's recommendation.

Vice Chair Williams asked if the Board had any other questions regarding the asset allocation recommendation

Mr. Lee stated that at the committee meeting they stressed that it will take some time to migrate the current asset allocation to mix three and there is room for flexibility. It was not possible to provide all the asset allocations so they ran a subset of asset allocations for the Board's review.

He described the changes with regard to mix three from the System's current asset allocation including its allocation to real estate. This will help decrease the System's exposure to stocks. Currently there is too much allocated to equities in the System's portfolio. The Plan has done well and has kept the System in a healthy position but it needs to move toward a more conservative posture. Moving to mix three will help the System move toward that position but it will take time to get to that point. There is also variability in getting to that point.

Trustee Patrice Waterman stated that the committee vetted this process and went through every element and scenario. The committee believes that mix three is the best option for the System.

### **RESOLUTION 16-175** By D. Waterman, Supported by Gaffney

Resolved, That the Board approves to amend the Investment Policy Statement to adopt the asset allocation referred to as Mix 3 in the September 2016 Asset Allocation Study which consists of 50% equities; 25% fixed income; 10% private equity; 10% real estate and 5% emerging markets as recommended by the investment consultant.

Yeas: 10 - Nays: 0

#### December 2016 Rebalancing Recommendation

Mr. Roth referred to an excel spreadsheet with the information regarding the rebalancing. He told the Board that at the end of the year it is time for the System to raise cash to pay for benefits and expenses. The cash account was down to \$3.6 million after the November benefit payments.

He noted that the System is somewhat over allocated to small cap. The current allocation to small cap value manager Loomis Sayles is 12.1% which is over the target allocation of 10% but in the allowable range. They are recommending that the Board approve the rebalancing of assets by transferring \$6 million from the Loomis Sayles account and transfer the assets into the cash account. He noted that as of November 29, 2016 the cash account was down to \$3.1 million.

#### **RESOLUTION 16-176** By Nazarko, Supported by P. Waterman

Resolved, That the Board approves the transfer of \$6,000,000 from Loomis, Sayles & Company to provide for benefits and operating expenses as recommended by the investment consultant.

Yeas: 10 – Nays: 0

#### Third Quarter 2016 Performance Review

Mr. Roth provided a brief review of the performance summary for the third quarter ending September 30, 2016. He will provide a thorough review at the retreat in January, 2017.

He started with a brief economic overview. The economy continues to do well and continues to grow. The GDP saw a strong increase from the previous three quarters at 2.9% and was just revised upward to 3.2% on November 29, 2016. The current forecast for the fourth quarter is 3.6%. The average for the year will be around 2.5%. The economy continues to follow a similar seasonal pattern and is still moving along.

There was a slight increase in unemployment to 5%. The government uses a full employment range as 4.5% to 5%. You could start seeing the unemployment numbers bounce around a bit but there is no cause for concern.

Inflation saw the CPI at 1.5% and they anticipate there will be some pickup in inflation due to the fiscal stimulus and fiscal plan put in place by President Elect Trump.

It was a good quarter all around for the equity markets. The Brexit vote created a lot of turmoil in the markets the last five days of the second quarter. The market sold off a bit but came back strong.

Most of the returns in the third quarter came in July. Returns were primarily pretty flat for the quarter.

October was a down month and November was an up month during the current quarter with the markets trading flat. Performance is slightly up.

For the quarter, the System returned 3.2% on a gross of fee basis. This does not include all the private equity performance which could add a basis point or so to the performance. This performance ranked in the 58<sup>th</sup> percentile better than 42% of the public fund universe. Lower numbers are better in the rankings. He noted that five-year performance returns of 11.1% ranked in the 6<sup>th</sup> percentile. Overall, the System's long-term performance has done very well.

Total Plan performance net of fees was 3.1% versus the shadow index at 3.7%. The shadow index shows how good or bad the active management performed versus the benchmark. The shadow takes the asset allocation and applies the passive benchmark returns and calculates that through.

Domestic equity performance was 4.1% versus the benchmark at 4.4%; with international equity returns were 4.8% versus 6.5%; global fixed income returns were 1.9% versus 0.3% and domestic fixed income returns were 0.4% versus 0.5%.

What helped in the quarter was the equity allocation. The global bond portfolio also helped performance for the quarter with performance up 1%.

Mr. Lee indicated that the Fund performed well versus its universe. Trailing year returns of 10.3% ranking in the 25<sup>th</sup> percentile; three-year returns were 6.6% ranking in the 31<sup>st</sup> percentile and five-year returns at 11.1% ranked in the 6<sup>th</sup> percentile beating out 90% of the funds. The System does not need to continue hitting homeruns or triples. He says that because returns may not be that good on a go forward basis with the new asset allocation.

Ms. Billings-Dunn confirmed that the System's returns are good but are based on the level of risk in the portfolio. Returns will not be as good when the risk in the portfolio is reduced.

Mr. Lee pointed out that no one ranks net numbers because they include the fees and cannot be used in determining ranking percentiles.

Ms. Billings-Dunn said that the System's funded position is very good and there are not many systems over 100% funded.

Chairman Moore asked for the current Fund value.

Mr. Roth indicated that as of November 29, 2016 the market value of the Fund was \$465 million down slightly from the end of September. However, \$6 million in cash has been withdrawn for benefit and expense payments.

Trustee Moore confirmed the market value was after the COLA payments had been made.

Active management hurt during the quarter and the lack of emerging market exposure. There is some exposure with WCM and First Eagle. Emerging markets returns were 9.2% during the third quarter which hurt in the short-term but helped out in the long-term.

He described the chart that showed lagged private equity data comparing the second quarter data versus the current performance for the other asset classes.

He reviewed the actual experience net of fees for the past five years. The chart compared the actual returns versus the 7.5% actuarial rate of returns versus the negative cash flow.

The beginning value of the Fund in the third quarter was \$461,079,901 with net withdrawals of (\$7,006,268) and investment returns of \$14,788,717 with an ending value of \$468,862,350. He noted the returns for the quarter indicating that you make more in returns on a larger base with returns of 3.3% versus a smaller base with returns of 5%.

Mr. Lee pointed out that over the five year timeframe if the Fund had returns of 7.5% the total Fund value would be less than the current Fund value. He attributed this to the System's returns of 11% during the five-year time period.

The snapshot shows that for the period beginning September, 2011 total Fund value was \$378,139,184; net negative contributions of -\$143,837,866; and investment returns of \$234,461,024 with an ending value of \$468,862,350. The returns were more than enough to pay for benefits and added to the overall of the assets of the Fund.

Mr. Roth reviewed the overall asset allocation with targets of the Fund. The current allocation to equities is approximately 68% based on market value and percent of assets in each investment class. He noted that the uncalled capital for private equity is being held in the equity portfolio.

Mr. Roth reviewed the manager performance summary for the quarter. He grouped the managers in the Attucks portfolios into one

Sawgrass had a tough quarter but a great year.

The Attucks Michigan manager portfolio returned 4.2% versus the Russell 1000 at 3.5% ranking them min the 50<sup>th</sup> percentile.

Systematic had a good quarter due to the yield trade. At the manager review meeting they noted that they are not investing in REITs. Their strategy is coming into favor.

He reported that the market is fairly strong and the fourth quarter is usually a good performance quarter. There is no macro news. The Fed will come out and the probability is that they will raise rates by 25 basis points. The economy is growing. Valuations are full at approximately 17x. There is some uncertainty in the market with a new President coming into the White House.

For October 2016 the Fund was down 2%. The performance in November was flat but slightly up.

He also indicated to the Board that they finally have access to the System's data at Northern Trust. They are going through it and recalculating the data.

Mr. Lee indicated that there have been some slight adjustments. They found some errors but no significant issues.

Mr. Roth indicated that First Eagle's net returns were being reported as their gross returns. Their returns were better than reported.

Mr. Lee also indicated that they are verifying that the private equity performance calculations are consistent.

## **COMMITTEE REPORTS**

**Re: Chairman – None**

**Re: Trustees**

### Annual Election of Chairman and Vice Chair

Vice Chair Williams explained that the current policy indicates that Board officers are elected annually. He deferred to the Secretary, Trustee Nazarko to conduct the elections.

Trustee Albritton asked if it is feasible to hold an election of officers every year. It makes it divisive to hold elections every year. He suggested holding elections every other year.

Trustee Deirdre Waterman noted that the Retirement Ordinance would need to be amended to change the elections to every other year.

Trustee Billie Swazer agreed and noted that the Retirement Ordinance can be changed.

Trustee Nazarko thanked Chairman Moore, past Chairman Giddings and Vice Chair Williams for their leadership and a job well done during the past year. He opened the floor for nominations for Chairman.

Trustee Patrice Waterman nominated Trustee Moore for Chairman. Trustee Swazer seconded the nomination.

Trustee Deirdre Waterman nominated Trustee Gaffney for Chairman. Trustee Arndt seconded the nomination.

Trustee Gaffney declined the nomination.

Trustee Nazarko closed the nominations for Chairman.

There was a brief discussion regarding whether a vote should be taken.

**RESOLUTION 16-177** By Gaffney, Supported by Swazer

Resolved, That the Board approve the appointment of Trustee Moore for Chairman by acclamation.

Yeas: 9 – Nays: 0  
Abstain: Trustee Giddings

Trustee Nazarko opened the nominations for Vice Chairman.

Trustee Swazer nominated Trustee Williams for Vice Chairman. Trustee Patrice Waterman seconded the nomination.

Trustee Nazarko closed the nominations for Vice Chairman.

**RESOLUTION 16-178** By Gaffney, Supported by P. Waterman

Resolved, That the Board approve the appointment of Trustee Williams for Vice Chairman by acclamation.

Yeas: 10 – Nays: 0

Chairman Moore thanked the Board for their confidence in electing him to serve for another year.

Vice-Chair Williams thanked the Board for their confidence and years of service and thanked the television audience for their support.

Vice-Chair Williams referred to the issue raised by Trustee Albritton that the election of officers should be changed from annually to bi-annually.

Ms. Billings-Dunn indicated that the Board could recommend to the City Council to amend the Retirement Ordinance from an annual election for officers to a biennial election of officers.

Trustee Nazarko stated that he believes there should be more discussion regarding whether the election of officers should be changed. The Board has plenty of time to look into the issue.

The Board tabled the issue for further discussion.

**Re: Committees**

**Personnel Sub-Committee**

Trustee Gaffney deferred to Miss Munson to provide the committee report.



Miss Munson reported that the committee met on November 3, 2016 and November 29, 2016.

#### Retirement System Administration

The committee continued their discussion regarding the administration of the System. BeneSys will be coming to the Retirement System on December 7, 2016 to review our processes to provide a more accurate quote. The committee is planning an onsite visit to Benesys.

Trustee Giddings questioned whether any other TPA's were considered.

Trustee Gaffney stated that they would like to get an idea of what a blended administration model may involve. Benesys is the only TPA in the area so the committee has requested they provide an outline of what a blended system would include.

Trustee Giddings asked if they committee is looking to go further and possibly look at other firms.

Trustee Gaffney indicated that it is not efficient to send out an RFP without knowing what direction the Board is heading.

#### Beneficiary Nomination – Ortiz

Miss Munson reported that the committee reviewed the beneficiary information submitted by Guadalupe Ortiz and felt that it was not sufficient to meet the insurable interest criteria. The committee has requested that the resolution be tabled until January.

#### 2017 Retirement System Budget

Both committees reviewed the 2017 budget and will recommend it for approval at the January 2017 meeting. No changes have been recommended by either committee. She asked that the Board send any questions or changes with regard to the budget to her prior to the January 2017 meeting.

#### 2016 Healthcare Premium Rebates

She explained that there is a reconciliation and a request to refund 20% of the 2015 Medical Loss Ratio rebate to employees beginning in February 2017. She asked that the Board approve the payment.

#### 2017 Retirement Staff Health Insurance Plans

Miss Munson reviewed the staff insurance renewal proposal. The committee also reviewed the employee health insurance quotes for 2017. She explained the various options to the Board noting that the Board's cost for health insurance has decreased 31% with Ms. Arndt's spouse now being eligible for Medicare. Both committees reviewed the options and recommended Option 3 which is the most similar plan to what the staff currently has.

### **RESOLUTION 16-179** By Nazarko, Supported by P. Waterman

Resolved, That the Board approves the election of the Option 3 Health Plan through United Healthcare beginning February 1, 2017.

Yeas: 9 – Nays: 0  
Abstain: Trustee Arndt

Crime Insurance

Both sub-committees reviewed and are recommending for approval renewal of the crime insurance.

2017 Production Calendar

The personnel sub-committee reviewed the 2017 production calendar and it is included in the agenda for informational purposes.

Employee Vacation Bank Overage

Miss Munson reminded the Board that they had adopted the Personnel Policies handbook at their October meeting. In conjunction with that, a review of the employees' leave balances revealed that one of the employees will soon reach the maximum vacation leave accrual. The committee is recommending allowing the employee until their anniversary date in April 2017 to bring her bank into compliance with the recently adopted Vacation Policy. The policy limits the maximum number of vacation hours an employee may accrue to two times their annual accrual. However, the policy is silent on the treatment of the excess accrual.

It was noted that the employees are at or near the accrual limits because of the current staffing level: employees could not take the amount of leave that would have been required to not exceed the maximum.

Trustee Swazer added additional insight into the City's vacation policy and recommendations for changes to the current policy.

There was additional discussion regarding vacation balances, maximums, pay-outs and measurement dates.

The committee will be reviewing the Vacation Policy to address the questions that have been identified.

**RESOLUTION 16-180** By Gaffney, Supported by Nazarko

Resolved, That the Board approves to allow the employee in question until her anniversary in April 2017 to bring her accumulated vacation bank into compliance with the policy.

Yeas: 9 – Nays: 0  
Abstain: Trustee Arndt

Staff Assistance to Parties-In-Interest Policy

Miss Munson referred to the draft of a policy resolution to the Board regarding what assistance the staff can provide or how they handle requests for assistance to interested parties. She told the Board that the policy definition of a 'group' was taken from a legal opinion written by Tom Michaud and

the types of services and facilities that could be provided were outlined in a recent legal opinion by Ms. Billings-Dunn.

The personnel sub-committee has recommended that the Board adopt the policy.

There was discussion regarding the policy resolution.

Trustee Patrice Waterman felt that the policy needs to be better defined.

The Board determined to defer the issue until the Trustee Retreat.

#### Retirement Office Holiday Schedule

Miss Munson reported that the committee reviewed the upcoming holiday schedule. The office will be closed on Friday, December 23, 2016; Monday, December 26, 2016; Friday, December 30, 2016 and Monday January 2, 2017.

#### Duty Disability Age 65 Conversion Overpayments

Miss Munson reported that both committees had discussed the duty disability retirees who were not converted at age 65. She reviewed with the Board the timeframe of events and indicated that Nyhart has calculated the amounts of the lifetime reductions. Included in the agenda is a summary as well as a copy of the request for a legal opinion. Once the legal opinion is received, the Board will be asked to make a determination on how to recoup the overpayments. She requested that the legal opinion include the range of potential options.

The Trustees expressed their desire that the process be done as humanely as possible.

#### Finance Subcommittee

Miss Munson reported that the finance sub-committee met and reviewed the revised directed brokerage program. She indicated that she has included in under the 'Reports' section of the Board's agenda the entire package that was reviewed by the sub-committee. This matter is still with the sub-committee, however this background information is being provided to ensure that all of the Trustees understand the issue and have an opportunity to ask questions prior to being asked to approve the revised program.

The committee reviewed the financial reports and unaudited Q3 financial statements.

They also reviewed the actuarial proposals and the scoring matrix.

### **EXECUTIVE DIRECTOR**

#### Asset Transition Monthly Update

There were no sales in November. There are two remaining securities left to transition.

#### Cost of Living Adjustment (COLA)

Miss Munson reported that a member passed away prior to the payment of the COLA benefit which resulted in a reduction of the total cost of the 2016 COLA benefit to the System by approximately \$2,700.00.

Securities Litigation Summary

Miss Munson reported that she included in the agenda package only the summary pages for the securities litigation update reports. She noted that the entire reports were provided to the Trustees in the electronic agenda.

Member Trustee Election Legal Opinion

She reminded the Board that they requested a legal opinion regarding the Member Trustee election which the attorney will address under her report.

Trustee Handbooks

Miss Munson indicated that the Trustees will receive updated handbooks at the Trustee Retreat in January which will include the updated Investment Policy Statement with the revised asset allocation. She requested that the Trustees send her any suggestions they would like included in the updated handbooks.

Trustee Nazarko questioned the status of a determination on the administration of the System.

Trustee Gaffney stated that the personnel sub-committee is looking at a blended system and meetings have been scheduled to gather more information.

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**UNFINISHED BUSINESS**

**Re: Ordinance Language Clean-Up Recommendation - Tabled**

*Trustee Nazarko left at 1:08 p.m.*

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**NEW BUSINESS**

**Re: 2017 Crime Insurance Policy**

Miss Munson requested that the Board approve the 2017 crime insurance policy at the annual rate of \$1,501.00 for the period January 1, 2017 ending December 31, 2017.

**RESOLUTION 16-181** By Swazer, Supported by Albritton

Resolved, That the Board approves to renew the employee dishonesty insurance offered through Chubb Group of Insurance Companies for the period January 1, 2017 thru December 31, 2017 at the annual rate of \$1,501.00 pending legal review of the policy.

Yeas: 9 – Nays: 0

**Re: Resolution for Beneficiary Nomination of Guadalupe Ortiz**

**RESOLUTION 16-182** By Swazer, Supported by P. Waterman

Resolved, That the Board approves to table the beneficiary nomination by Guadalupe Ortiz until the insurable interest determination can be resolved.

Yeas: 9 – Nays: 0

*Trustee Deirdre Waterman left at 1:11 p.m.*

**Re: Resolution to Approve 2015 Medical Loss Ratio Premium Reduction**

**RESOLUTION 16-183** By Moore, Supported by P. Waterman

Resolved, That the Board approve the refund of 20% of the 2015 premium rebate to employees on a bi-weekly basis beginning effective February 1, 2017.

Yeas: 7 – Nays: 0  
Abstain: Trustee Arndt

**Re: 2017 Board Meeting Calendar**

Miss Munson requested that the Board approve the 2017 Board Meeting Calendar.

**RESOLUTION 16-184** By Gaffney, Supported by Swazer

Resolved, That the Board approves the 2017 meeting schedule and directs that it be posted to the System's website and at City Hall.

Yeas: 8 – Nays: 0

**Re: Resolution to Approve the 2017 Hospital Trustee Election Calendar**

Miss Munson requested that the Board approve the 2017 Hospital Trustee election calendar.

Trustee Moore asked whether the election will be conducted by the Retirement Office or the Hospital members.

Trustee Giddings noted that the Retirement Ordinance states that the Hospital conducts the election. In the past that the Hospital has allowed the Retirement Office staff to conduct the election. He suggested that the Hospital may want to conduct the election now that there is a Hospital retiree organization.

Trustee Swazer expressed that it may be a bad idea for the Hospital's group to conduct the election. The Retirement Office staff has conducted the election the last few years.

After reviewing the Retirement Ordinance, Ms. Billings-Dunn read the pertinent section regarding the election of the Hospital Trustee aloud:

“...shall be nominated and elected by the deferred vested or retired members who were formerly employed by PGH, pursuant to an election or nominating procedure adopted by the PGH Members...”

She stated that this means that the Hospital members have a responsibility to conduct the election. This is not uncommon with other plans that she represent and it appears that the Ordinance gives the right to conduct the election to the Hospital members. She noted that the Ordinance specifically references an election or nominating procedure adopted by the Hospital members whereas the active and member Trustee elections are conducted by procedures adopted by the Board.

Trustee Swazer questioned how the Ordinance recognizes a particular group as the Hospital group and ensure that all of the Hospital members have the opportunity to vote and not just select individuals.

Trustee Giddings noted that it may be the case that the Hospital members may decide to let the staff conduct the election. However, they have never been given the opportunity to make that the decision stated in the Ordinance.

There was a lengthy discussion regarding whether the Hospital members should conduct the election of their representative.

Trustee Patrice Waterman noted that the Notice of Vacancy is scheduled to be sent on Friday, January 20, 2017 and that the Board does not have a meeting in December. She believes that the Hospital members can conduct the election because they are electing their representative to the Board.

Trustee Gaffney agreed with Trustee Patrice Waterman and suggested that the Notice of Vacancy could include language notifying the Hospital members of their right to conduct the election. She and Trustee Patrice Waterman concurred that the process of the Hospital Trustee election doesn't affect the Board.

Miss Munson suggested an 'opt-in' process whereby the notice will indicate that the Retirement Office staff will conduct the election unless a Hospital group requests to do so.

**RESOLUTION 16-185** By Gaffney, Supported by Swazer

Resolved, That the Board approves the 2017 Hospital Trustee Election Calendar with additional language in the notice indicating the Hospital members' right under the Ordinance to conduct the election.

Yeas: 8 – Nays: 0

**Re: Legal Report**

Garland Domestic Relations Order

Ms. Billings-Dunn reported that this is for the Trustees' information.

Portfolio Monitoring Reports

- Robbins Geller October 2016 Monitoring Report
- Motley Rice Third Quarter 2016

Ms. Billings-Dunn reported that this is for the Trustees' information

**Request for Legal Opinion Regarding 2012 Ordinance Amendment**

Ms. Billings-Dunn began by stating that the issue was over the 2012 Ordinance amendment adopted that the Emergency Manager adopted with respect to Trustee positions on this Board. Specifically, there were two provisions that were amended: one was the three active member trustee positions that were changed from three active members to one active member nominated and elected by the active members of the System and two active, retired or deferred members nominated and elected by the active, retired and deferred members. The second provision that was amended pertained to the Hospital representative on the Board which was changed from one deferred Hospital member to one deferred or retired Hospital member nominated and elected by the deferred and retired Hospital members.

Her opinion read as follows:

This correspondence is in response to your request for a legal opinion regarding the appropriateness of the elections that were held for two member Trustee positions in light of the 2012 Ordinance amendment that was effectuated by the then Emergency Manager Louis Schimmel, at the request of the Board of Trustees. You have requested that address the following issues as part of my analysis:

1. Would you please include in your analysis a discussion of how we resolve the conflict between the past practice of excluding non-City members from participating in the Member Trustee elections and the plain language of the Ordinance which does not exclude them?
2. Would you please include in your analysis a discussion of the relevant section of PERA that governs Board composition as a mandatory subject of collective bargaining? Would you also please discuss how Board composition in total is covered and not just the Active Trustee position under this provision?
3. Would you also please address the question of whether PERA's mandatory subject provision is applicable to the 2012 Ordinance amendment since it was adopted by the

Emergency Manager pursuant to the authority to amend the Ordinance granted to him by PA 4/PA 436?

### Background

In 2010 and 2011, the City experienced massive layoffs of personnel, forcing the Retirement System into a partial plan termination. At its February 23, 2011 Board meeting, the trustees started the discussion of the impact the layoffs would have on the Board's three (3) employee trustee positions. This discussion continued at the March 23, 2011, meeting where the trustees discussed the fact that,

*"[they] did not want the dynamics of the Board altered...The Board determined that they would get the unions involved. They recommended that the three Employee Trustee positions on the Board would be elected by active and vested deferred members of the System."*

On March 23, 2011, following the Board meeting, Attorney Renzi forwarded correspondence to Dennis Cowan (attorney for then Emergency Manager ("EM"), Michael Stampfler) requesting that the EM amend the Retirement System ordinance as follows:

*Three (3) active members or deferred vested member of the retirement system who are or were employed by the City of Pontiac to be nominated and elected by the active member or deferred vested members who are or were employed by the City of Pontiac, also known as "employee trustees."*

While no action was taken at that time by the EM, the trustees continued to discuss this matter at its April, May and June 2011 meetings. At its July 27, 2011 Trustee meeting, the Board again discussed the number of City employees that had been laid off and the concern that the pool of active members for the three (3) active member trustee positions would continue to decline. The trustees discussed *"broadening the pool and opening up the position to retirees"* as well as deferred vested members.

The trustees then turned its discussion to another provision of the ordinance that allows for a hospital deferred vested member to serve as trustee and the fact that the Board had been unable to fill this position for a number of years because most of the hospital deferred members had retired and as such were no longer eligible to serve.

The minutes reflect that *"Trustee Naglick recommended fixing both trustee positions."* The Board resolved to *"direct legal counsel to send the amended Board composition letter to the Emergency Manager."*

On August 12, 2011, Attorney Billings forwarded correspondence to Dennis Cowan requesting the EM to amend the Retirement System ordinance as follows:



(e) Three (3) active members and/or deferred vested members and retirants from the General Retirement System who are or were employed by the City of Pontiac, to be nominated and elected by the active members and/or deferred vested members and retirants from the General System who are or were employed by the City of Pontiac, also known as "employee trustees."

(g) One deferred vested member or retirant of the Retirement System who was formerly employed by the Pontiac General Hospital, who shall be elected or nominated by the Pontiac General Hospital deferred members and/or retirants.

On October 18, 2011, Attorney Billings again forwarded a copy of her August 12, 2011 correspondence to Attorney Cowen requesting that the new EM, Louis Schimmel consider the proposed amendment.

During the January 25, 2012 trustee meeting, Chairman Harrison convened a committee to discuss the appropriate changes to the Board composition. The February 22, 2012 minutes reflect that Trustees Naglick, Stubblefield and Chairman Harrison made up the committee. These minutes provide in part,

*Trustee Naglick stated that the Hospital Deferred Trustee will become the Hospital Trustee and will be elected by all hospital members. The Employee Trustees will have one Employee Trustee which will be elected from and by active City employees. The other two Employee Trustees will be elected by the active, deferred and retired City members.*

*Retiree Larry Marshall confirmed that there will be one Employee Trustee elected by the General active members and the other two Employee Trustees will be elected by active, deferred and retired City members.*

*Ms. Zimmermann explained that in the past the Board did not want to change the Hospital Deferred Trustee position on the Board. However, the position could not be filled because most of the deferred members had gone into pay status. The new trustee position will allow for either a deferred or retired member to hold the position.*

*The Employee Trustee positions will change going forward. One Employee Trustee position will be elected by active remaining City employees so they have a representative on the Board. The other two Employee Trustee positions could be either active, deferred or retired*

*City members who are nominated and elected by active, deferred or retired Citymembers.*

*Trustee Naglick asked that Ms. Zimmermann explain the election procedures. Ms. Zimmermann stated that the Retiree Trustee election would be a mail ballot and mail election to all retired GERS members. The Hospital Trustee would be a mail ballot and mail election to all deferred and retired hospital GERS members. One Employee Trustee position (active) election would be held at City Hall and the position would be elected by active City employees. Two Employee Trustee positions would be a mail ballot and mail election to all active, deferred and retired City members.*

Attorney Billings subsequently drafted the following amendment which was ultimately adopted by the EM on March 1, 2012 (hereinafter referred to as the "2012 Amendment"):

***ADMINISTRATION OF RETIREMENT SYSTEM***

*There is hereby created a Board of Trustees in whom is vested the general administration, management, and responsibility for the proper operation of the Retirement System and for making effective the provisions of this amendment. The Board shall be a quasi-judicial body consisting of eleven (11) Trustees as follows:*

- (1) A member of the City Council to be selected by the City Council.*
- (2) The Mayor of the City of Pontiac.*
- (3) The Finance Director of the City.*
- (4) The City Council shall appoint three (3) citizens who are electors and freeholders of the City and who are not eligible to receive benefits under this Retirement System, hereinafter referred to as the citizen trustees.*
- (5) Three (3) active members of the Retirement System one (1) of whom shall to be an active member nominated and elected by the active members of the Retirement System and two (2) of whom shall be either active, deferred vested or retired members, nominated and elected by the active, deferred vested and retired members (Herein after referred to as the Employee Member Trustees).*

- (6) *One (1) retirant of the Retirement to be elected by the retirants of the Retirement System.*
- (7) *One (1) deferred vested or retired member of the Retirement System who was formerly employed by Pontiac General Hospital (Now known as North Oakland Medical Center) ("PGH Deferred Member") shall be nominated appointed and elected by the deferred vested or retired members who were formerly employed by PGH, other members of the Board of Trustees from those PGH Deferred members pursuant to an election or nominating procedure adopted by the PGH Members. Elections shall be conducted by the PGH members and shall be held in such a manner as to afford all PGH Deferred and retired Members the opportunity to vote.*

You have requested that I address the following issues:

1. *Would you please include in your analysis a discussion of how we resolve the conflict between the past practice of excluding non-City members from participating in the Member Trustee elections and the plain language of the Ordinance which does not exclude them?*

Response: There is no conflict. Prior to the 2012 amendment, Section 92-3(5) did not specifically exclude hospital employees, however, it was interpreted to exclude hospital employees. There was no intent that the 2012 Amendment change that interpretation. The above-referenced excerpts from the Board's meeting minutes clearly express the Board and the City's intent to continue to exclude hospital employees, hospital deferred vested members and hospital retirants from Section 92-3(5) of the ordinance. A conflict would have occurred if the Ordinance *specifically stated* that hospital retirees were to be included (i.e. plain language) but the past practice excluded them. The principle that a long-standing interpretation of statute by the agency that administers it is entitled to great weight [but it] does not control where the interpretation is clearly wrong. *In re Storm*, 204 Mich App 323; 514 NW2d 538, 541 (1994).

Furthermore, an absence of language does not equate to "plain language" it equates to silence. In the instant situation, there is no absence of language; the hospital representative is specifically provided for under Section 92-3(7). However, assuming arguendo that there is an absence of language, the Michigan Supreme Court has acknowledged that a past practice may develop, specifically, "[w]here the ... agreement is ambiguous or silent on the subject for which the past practice had developed ..." [emphasis added]." *See Port Huron Ed Assn, MEAINEA v. Port Huron Area School District*, 452 Mich 309; 550 NW2d 228, 237-238 (1996),

The rules of statutory construction provide that "long continued contemporaneous and practical interpretations of a statute<sup>1</sup> by those charged with its administration<sup>2</sup>

constitutes an invaluable aide in determining the meaning of a doubtful statute." 2A Southerland, Statutory Construction (4th ed.) §49.03, p 353. Thus, if it could be argued that the Ordinance is silent because it does not specifically exclude hospital members from section 92-3(5), then it is appropriate to consider the Board's past practice in interpreting the provision.

2. *Would you please include in your analysis a discussion of the relevant section of PERA that governs Board composition as a mandatory subject of collective bargaining? Would you also please discuss how Board composition in total is covered and not just the Active Trustee position under this provision?*

Response: PERA mandates that "[a] public employer shall bargain collectively with the *representatives* of its employees ... and is authorized to make and enter into collective bargaining agreements with such *representatives* [emphasis added]." MCL 423.215(1). For the purposes of PERA, "to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith *with respect to wages, hours, and other terms and conditions of employment*, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party [emphasis added]." MCL 423.215(1).

According to the Michigan Supreme Court in *Detroit Police Officers Ass 'n. Detroit*, 391 Mich 44; 214 NW2d 803, 808 (1974), the duty to bargain under PERA extends to those subjects found within the scope of the phrase "wages, hours, and other terms and conditions of employment." The subjects included within that phrase are referred to "mandatory subjects" of bargaining.<sup>3</sup> *Detroit Police Officers Ass 'n, supra*. The Michigan Court of Appeals has held that board composition for Michigan public sector retirement systems is a mandatory subject of bargaining. See *City of Detroit v Michigan Council 25, et al.*, 118 Mich. App. 2111982 and *Retired Detroit Police and Firefighters Association v. The City of Detroit et al.*, 2007 Mich. App. LEXIS 286 (February 6, 2007) (unpublished).

In this matter, the Court affirmed the decision that the compositions of the Boards were mandatory subjects of bargaining, finding that the powers of the Boards were substantial and had a significant effect upon the conditions of employment. These powers included in part, the right to determine whether employees were totally disabled so as to entitle the employee to benefits, and the power to determine the investment of funds. As such, it is the Board composition in total that is considered a mandatory subject of collective bargaining and not just the active trustee position.

3. *Would you also please address the question of whether PERA 's mandatory subject provision is applicable to the 2012 Ordinance amendment since it was adopted by the Emergency Manager pursuant to the authority to amend the Ordinance granted to him by PA 4/PA 436?*

Response: PA 4 granted the emergency manager the authority to amend the Ordinance.<sup>4</sup> Section 15(4) of PA 4 provided in part,

(4)...[the governor shall appoint] an emergency manager to act for and in the place and stead of the governing body.

Furthermore, the Unions did not take issue with the 2012 Ordinance amendment and ensuing interpretation, and as such their approval was implied through past practice. "Custom and past practice may be held enforceable...as part of the parties, 'whole' agreement."<sup>5</sup>

In conclusion, the 2012 Ordinance amendment was properly adopted and should continue to be interpreted to allow for (i) three member trustees, two of whom shall be nominated and elected by the active, deferred and retired city members and (ii) one hospital representative to be nominated and elected by the deferred and retired hospital members.

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<sup>1</sup> The rules of statutory construction also apply to City Charters. See *Brady v. Detroit*, 353 Mich 243 (1958).

<sup>2</sup> Section 92-3 of the Retirement System Ordinance provides, inter alia, that "there is hereby a Board of Trustees in whom is vested the general administration, management, and responsibility for the proper operation of the Retirement System and for making effective the provisions of this amendment."

<sup>3</sup> A "permissive" subject of bargaining falls outside of the phrase "wages, hours, and other terms and conditions of employment." See *Detroit Police Officers Ass'n, supra*, N6. The parties may bargain by mutual agreement on a permissive subject. Id. "Illegal" subject of bargaining is a provision that is unlawful under the Collective Bargaining Statute or other applicable statute. Id.

She reviewed the partial plan termination which resulted in the reduction of the number of Employee Trustees to one and the creation of two Member Trustees and referred to the Ordinance amendments.

It is her opinion that the Board meeting minutes clearly expressed the Board and City's intention was to exclude Hospital retirees, deferred and employed members. And, because the amendment language is silent and did not include Hospital members there is no conflict. Section 92-5 of the Retirement Ordinance always pertained to City members so again there is no conflict.

*The Board reserves the right to enter into closed session to review matters in accordance with Michigan Public Act 267 of 1976 Open Meetings Act).*

**RESOLUTION 16-186** By Gaffney, Supported by Swazer

Resolved, That the Board move to closed session to discuss pending litigation.

**Roll Call:**

Trustee Albritton – Yea

Trustee Arndt – Yea

Trustee Gaffney – Yea

Trustee Giddings – Yea

Chairman Moore - Yea

Trustee Swazer - Yea

Trustee Patrice Waterman – Yea

Trustee Kevin Williams - Yea

General Employees Retirement System  
Regular Meeting  
November 30, 2016

*The Board moved to closed session at 1:45 p.m.  
The Board returned from closed session at 2:14 p.m.*

**RESOLUTION 16-187** By Gaffney, Supported by Swazer

Resolved, That the Board approve the Chairman's signature on the Declaration of Motion for Approval of Settlement in the Northern Trust Securities Lending Litigation.

Yeas: 8 - Nays: 0

**RESOLUTION 16-188** By Swazer, Supported by Gaffney

Resolved, That the Board authorize Bernstein Litowitz to file for lead plaintiff status in the action against InterActiveCorp Litigation.

Yeas: 8 - Nays: 0

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**SCHEDULING OF NEXT MEETING**

Regular Meeting: Wednesday, January 25, 2017 @ 10:00 a.m. – Retirement Office  
Special Meeting: Saturday, January 28, 2017 Time and Location - TBD

**RESOLUTION 16-189** By Swazer, Supported by P. Waterman

Resolved, That the meeting of the Board of Trustees of the Pontiac General Employees' System be adjourned at 2:20 p.m.

Yeas: 8 – Nays: 0

I certify that the foregoing are the true and correct minutes of the meeting of the General Employees Retirement System held on November 30, 2016

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*As recorded by Jane Arndt*