



**MEETING NO: 15-04-D  
BENEFIT REVIEW COMMITTEE**

The Regular Meeting of the Benefit Review Committee of the Board of Trustees was held Thursday, April 16, 2015. Present at the meeting were Committee members, Miller, Kuehne, Stanish and Thompson, IMRF medical consultants, Dr. Rao and Dr. Miller, staff members, Davis, Dixon, Duncan, Janicki-Clark, Motto, O'Brien and Rockett.

Absent: Trustees Copper and Piechocinski

(15-04-01)(Visual roll call)

Mr. Kuehne presided as chairperson and called the meeting to order at 11:00 a.m.

(15-04-02)(Temporary Disability Eligibility – Mildred H. Hose – Ogle County - # 3048)

Mildred Hose did not appear before the Committee. The Committee heard comments from the Medical Consultant and staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

**After further discussion, the Committee recommends that the Board uphold staff's determination to deny temporary disability benefits.**

Motion: Stanish

Second: Miller

Ayes: Kuehne, Miller, Stanish and Thompson

Nays: None

Motion Passed: 4-0

(15-04-03)(Total and Permanent Benefits Eligibility – Shelly M. Hurley – Community Consolidated School District #54)

Shelly Hurley and her attorney, Thomas Duda appeared before the Committee in person. The Committee heard comments from Ms. Hurley regarding her conditions. Ms. Hurley answered questions from the Committee. The Committee heard comments from staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

**After further discussion, the Committee recommends that the Board uphold staff's determination to deny total and permanent disability benefits.**

Motion: Miller

Second: Stanish



Ayes: Miller, Kuehne, Stanish and Thompson  
Nays: None  
Motion Passed: 4-0

Dr. Rao and Miller left the meeting

Louis Kosiba entered the meeting

(15-04-04)(IMRF IMRF Eligibility - Dennis G. Gianopolus – City of Calumet City # 3331)

This appeal had been heard previously by the committee on November 21, 2013 and was continued to this date. The transcript of the November 21, 2013 hearing was provided, additional materials were presented by staff and a supplemental statement was filed by Mr. Gianopolus. Mr. Gianopolus, his attorney Michael Cainkar and the HR Director for Calumet City George Vallis appeared before the committee. Present at meeting were Committee members Stanish, Kuehne, Miller and Thompson and IMRF staff members Dixon, Janicki Clark, Rockett, Duncan, O'Brien, Kosiba, Davis, and Motto. A court reporter, Lyn Doering, was present to transcribe the proceedings.

## **BACKGROUND**

This case involves a question of eligibility for participation in IMRF by an attorney.

Dennis Gianopolus currently serves as both prosecutor and Corporation Counsel for Calumet City, Illinois. He has served as prosecutor since 2001 (with a short break in 2003) and has served in both positions since 2003. He is also the managing attorney/owner of the Law Offices of Dennis Gianopolus. Mr. Gianopolus owns 100% of this business. From 2001 through November of 2011, Mr. Gianopolus' earnings were reported to IMRF as the prosecutor for Calumet City and not as the Corporation Counsel. In November of 2011, the City filed earnings adjustments with IMRF going back to March of 2010, removing Mr. Gianopolus' earnings as prosecutor and replacing them with his much higher earnings as Corporation Counsel. Mr. Gianopolus turned 55 (which is the earliest an IMRF member can begin to draw a pension) on November 1, 2014. IMRF pensions are calculated using the highest four years of earnings from a 10 year window. The adjustments to Mr. Gianopolus' earnings were completed in light of Ordinance Number 11-66 which adjusted the City's salary ordinance retroactively to March of 2010 and made the Corporation Counsel position eligible for fringe benefits and the prosecutor position ineligible for fringe benefits. (p. 107-121)

Mr. Gianopolus' 2010 member statement estimated his pension at age 55 to be \$1,188.00 (based on his prosecutor wages). In 2012, that estimated figure had jumped to \$6,467.00 (due to the wage adjustments filed for the position of Corporation Counsel). Beginning in March of 2010, Mr. Gianopolus went from \$1,720.94 per month in reported wages to \$19,745.10 per month in reported wages.

In May of 2012, IMRF asked the authorized agent for Calumet City to show that Mr. Gianopolus was a common law employee. (Record p. 22-24) The City Attorney



responded on June 20, 2012. ( R. p. 25-28) The response states, among other things, that Mr. Gianopolus is an employee, that the Corporation Counsel is paid twice a month with deductions and that he is issued a W-2 for corporation counsel salary, that he performs the work on City premises and that corporation counsel services are rendered and managed personally. (R. p. 27-28) The City Attorney also relies on the salary ordinance number 11-36 (effective July of 2011) passed by the City which "clarified that payment for work as City Prosecutor would no longer be eligible for employee fringe benefits. Payments for the prosecutor position were thereafter paid on a "1099" basis. Effective August, 2010 Mr. Gianopolus began being paid out of the general fund, along with all City employees for his work as corporation counsel."(R p. 26).

In October of 2012, IMRF sent another letter directing the authorized agents for Calumet City and Chicago Heights to cease reporting Mr. Gianopolus (he had also been reported by Chicago Heights as their prosecutor since 2003) because IMRF did not believe he met the hourly standard and also because IMRF believed the positions were not IMRF qualifying positions. (R p. 52-53) It is from this decision that Mr. Gianopolus appeals. He is not contesting the removal of his Chicago Heights service (p. 57)

## **ISSUES**

Whether Mr. Gianopolus is properly enrolled in IMRF as the Corporation Counsel for the City of Calumet City (from March 2010-present)

Whether Mr. Gianopolus was properly enrolled in IMRF in the past as the Prosecutor for Calumet City (2001-2010).

## **SCOPE OF REVIEW**

The Committee heard testimony and reviewed the entire record presented, including the record presented on November 21, 2013 and the transcript from that date.

## **FINDINGS AND CONCLUSIONS**

- The City of Calumet City has adopted the 1000 hour standard for IMRF participation effective July 12, 2012. Under the grandfathering provisions of Section 7-137 of the Illinois Pension Code the IMRF hourly standard applicable to Dennis Gianopolus is 600 hours. (40 ILCS 5/7-137)
- Dennis Gianopolus was initially enrolled in IMRF by the City of Calumet City in September 2001 as the City Prosecutor.
- Dennis Gianopolus is the sole owner/shareholder of the Law Offices of Dennis Gianopolus.



- Dennis Gianopolus was not reported to IMRF by Calumet City for the months of April-September of 2003 because he did not hold any position with the City.
- Dennis Gianopolus was reappointed as City Prosecutor in September of 2003 and was appointed as Corporation Counsel at the same time.
- Dennis Gianopolus was appointed to the positions of Corporation Counsel and prosecutor individually (not as law firm or other entity) in 2003 and has been appointed in that manner through the current date.
- Dennis Gianopolus was reported to IMRF by Calumet City as the City Prosecutor from September 2003 through August of 2011. Dennis received W-2s for his City Prosecutor pay during this time and through 2011.
- The City of Calumet City paid Dennis Gianopolus, Esq. on a 1099 basis for his work as Corporation Counsel through November of 2011. The 1099's submitted show that Dennis G. Gianopolus, Esq. was paid the following amounts:
  - o 2012-\$53,973.09
  - o 2011- \$174, 133.32 (year that change occurred)
  - o 2010-\$387,821.16 (adjustments were filed reporting him as an employee beginning in March of 2010 but tax documents were never adjusted)
  - o 2009-\$295,579.64
  - o 2008-\$469,015.78
  - o 2007-\$380,593.19
  - o 2006-\$371,655.22
  - o 2005-\$248,258.43
  - o (Record p.p. 303-310)
- In July of 2011, the City Council of Calumet City passed Ordinance No. 11-36, effective August 1, 2011 which removed fringe benefits from the position of City Prosecutor and provided fringe benefits to the position of Corporation Counsel. Fringe benefits did not include sick, severance or vacation time. Mr. Gianopolus receives health, dental, vision and life insurance as Corporation Counsel. (R. 76-80) He had previously received these as Prosecutor. Prosecutor salary was listed as \$24,655 per year and Corporation Counsel was listed at \$20,000 per month. These salary changes were made retroactive to March 1, 2010 by Ordinance 11-66, which was passed on November 10, 2011.
- Calumet City filed wage adjustments with IMRF for Mr. Gianopolus for the period of March of 2010 through July of 2011 reflecting the higher salary of Corporation Counsel. (R. 490-492) W-2s were not issued for this period and withholding was not done by the employer for the Corporation Counsel position. Employer withholding was done for the prosecutor position.



- In 2010, Mr. Gianopolus' estimated pension was \$1,188.00 per month at age 55. After the adjustments, Mr. Gianopolus' estimated pension at age 55 was \$6,467.00 per month.
- Mr. Gianopolus has always used his firm's associates to assist him in performing the duties of Corporation Counsel, both when the position was reported as an IMRF qualified position and when it was not.
- Mr. Gianopolus has always used his firm's associates to perform the duties of Prosecutor, both when the position was reported as an IMRF qualified position and when it was not.
- IMRF was provided bills which showed that during the months of March 2011 Mr. Gianopolus worked 19% of the total hours spent by his firm on corporation counsel business and that in April of 2011 Mr. Gianopolus worked 20.6% of the total hours worked by his firm on corporation counsel business. An average of 27.5 hours per month was worked by Mr. Gianopolus based on these bills, which does not total 600 hours per year. In addition, Mr. Gianopolus presented no additional breakdown of hours spent personally or by his associates on City business which would refute this.
- Section 7-109 of the Illinois Pension Code defines "employee" as a "person" provides that "employees" for purposes of IMRF participation excludes independent contractors even when those independent contractors are appointed officials. Moreover, the determination regarding common law employment is made "under the usual rules applicable in determining the employer-employee relationship." (40 ILCS 5/7-109)
- Section 7-114 of the Illinois Pension Code provides that "earnings" for purposes of what is reported to IMRF includes "the total amount of money paid to an employee for personal services or official duties as an employee (except those employed as independent contractors) paid out of the general fund..." Money paid to appointed officers that are independent contractors is not considered IMRF earnings and is not reportable to IMRF(40 ILCS 5/7-114)
- An appointed official that is an independent contractor does not qualify for IMRF participation.
- An employee must personally work the required hourly standard in order for a position to qualify for IMRF participation. In order to earn a pension, the hours must be worked by the individual who is enrolled in IMRF (40 ILCS 5/7-137).
- The IMRF Board of Trustees has the ability to inquire into the eligibility of an individual to participate in the Fund and may make independent determinations on the basis of facts available. (IMRF Resolution 2008-01-05)



- IMRF has adopted guidelines to determine whether an individual is an employee or independent contractor based upon the IRS 20 factor test. (AA Manual Section 3.60 A)

- Applying the IMRF guidelines to determine whether Mr. Gianopolus is an employee or independent Contractor as Corporation Counsel for Calumet City, IMRF finds the following significant:

1. Mr. Gianopolus receives assignments from the Mayor and the City Attorney but he personally manages how those assignments are carried out.

2. Mr. Gianopolus offers services to other clients and the public through his firm, specifically: Chicago Heights, Monee, Steger and South Chicago Heights, among others.

3. Mr. Gianopolus is sole owner/shareholder of his law firm and his firm is paying the salary of his associates and support staff.

4. There has been no evidence that Mr. Gianopolus works prescribed hours as Corporation Counsel or that his office is on the premises of the IMRF employer.

5. Mr. Gianopolus' four assistants/associates are not furnished by the City but are furnished by his law firm.

6. Invoices show that Mr. Gianopolus was billing on an hourly basis in 2011 even though he was reported at that time as an employee.

7. Checks paid for the salary of Corporation Counsel in 2010 list Mr. Gianopolus' firm address, despite being reported as IMRF earnings.

8. The only thing that appears to have changed is the manner of payment, and not the way that the duties were being performed for the position of Corporation Counsel.

9. Bills from the law firm were submitted for expenses related to the position of Corporation Counsel.

10. Mr. Gianopolus does not receive vacation or sick time, which are available to other employees of the City

11. Some of the duties of Corporation were not performed personally by Mr. Gianopolus but were performed by his associates

- Applying the IMRF guidelines to determine whether Mr. Gianopolus was an employee or independent Contractor as Prosecutor for Calumet City, IMRF finds the following significant facts:



1. Mr. Gianopolus personally managed how the prosecutor duties were and are carried out.
  2. Mr. Gianopolus offered services to other clients and the public through his firm, specifically: Chicago Heights, Monee, Steger and South Chicago Heights, among others.
  3. Mr. Gianopolus is sole owner/shareholder of his law firm and he can experience a loss because he is paying the salary of his associates.
  4. There has been no evidence that Mr. Gianopolus worked prescribed hours as Prosecutor, although there is evidence that Mr. Gianopolus or his law firm associates attend court calls 2-3 times per month.
  5. Mr. Gianopolus' four assistants/associates are not furnished by the City but are furnished by his law firm.
  6. The only thing that appears to have changed with regard to the position of prosecutor is the manner of payment (it went from an annual salary to a retainer with hourly billing), not the way that the duties were being performed.
  7. Mr. Gianopolus did not receive vacation or sick time, which are available to other employees.
  8. Prosecutor duties were not and are not all performed personally by Mr. Gianopolus.
- Mr. Gianopolus did not personally work enough hours for either position to qualify for IMRF enrollment, even if he was not considered an independent contractor.

#### **MOTION**

After further discussion, Mr. Miller moved to recommend that the committee uphold the staff determination and find that Mr. Gianopolus is not properly enrolled in IMRF as the Corporation Counsel for Calumet City and further, that Mr. Gianopolus was not properly enrolled as Prosecutor for the City of Calumet City. Ms. Thompson seconded the motion.

Motion: Miller  
Second: Thompson  
Ayes: Miller, Kuehne, Stanish and Thompson  
Nays: None  
Motion Passed: 4-0



Louis Kosiba left the meeting

Kate Setchell joined the meeting –Video Conference Springfield

(15-04-05)(IMRF Disputed Pension Amount - Robert Hartnett – City of Rolling Meadows # 3794)

Mr. Hartnett and his wife Linda appeared before the committee. Present at meeting were Committee members Stanish, Kuehne, Miller and Thompson and IMRF staff members Dixon, Janicki Clark, O'Brien, Rockett, Duncan, Davis, and Motto. Kate Setchell, IMRF Field Representative was available through video conference from the IMRF office in Springfield.

## **BACKGROUND**

Robert Hartnett terminated his employment with the Village of Rolling Meadows on 1/9/2015. He filed an application for a retirement benefit with IMRF and received his first full pension check in February of 2015 with a gross amount of \$7,315.90. Mr. Hartnett contacted IMRF in February questioning why the amount of his pension was less than what his estimate provided. He was given four estimates in June of 2014 by Kate Setchell, Field Representative. Each estimate had a different proposed retirement date. The estimate with a proposed retirement date of January 2, 2015 provided for a monthly pension in the amount of \$8,100.81. When Kate met with Mr. Hartnett, he provided her with a payout amount to be entered in his last month of work. That payout amount was \$62,070. The first estimate Kate did for Mr. Hartnett had a retirement date of September 5, 2014 and estimated a pension of \$7,268.53. This situation was clearly caused by human error: Kate forgot to change the date of the payout to the last month on the other pension estimates she did that day, which resulted in her estimates being overstated. Keeping the payout in September caused it to fall outside the 125% rule and therefore overstated the amount of Mr. Hartnett's 2014 salary that would be used in the pension calculation. The actual payout happened in January 2015.

## **ISSUE**

Is Mr. Hartnett entitled to receive the pension amount of \$8,100.81, as stated in a pension estimate given to him in June 2014, and which was calculated in error?

## **SCOPE OF REVIEW**

The Committee heard testimony and reviewed the record presented.





## FINDINGS AND CONCLUSIONS

- IMRF Field Representative Kate Setchell did several retirement estimates for Mr. Hartnett on June 5, 2014. Ms. Setchell failed to move the month of Mr. Hartnett's final payout when doing these estimates which resulted in an error in the final amount of Mr. Hartnett's pension estimate with a retirement date of January 2, 2015. This estimate provided for a standard monthly pension of \$8,100.81. IMRF does not dispute that an error was made on this estimate.
- Mr. Hartnett did an estimate on-line in IMRF Member Access on July 29, 2014 which provided a standard monthly pension amount of \$7,315.00. Mr. Hartnett did not contact Ms. Setchell or IMRF after receiving this on-line estimate.
- Mr. Hartnett began receiving his IMRF pension in February 2015 and he received a gross amount of \$7,315.90. This is a correct calculation of his benefit.
- On January 14, 2015, Mr. Hartnett briefly stopped in while Ms. Setchell was doing a benefit review for another employee at Rolling Meadows and mentioned the discrepancy. Ms. Setchell mentioned that he might not have entered the payout and Mr. Hartnett said that he was not sure. Mr. Hartnett did not ask Ms. Setchell to double check the pension amount.
- Mr. Hartnett contacted IMRF by phone in February of 2015 asking about the discrepancy at which point the error was explained by Ms. Setchell and Dawn Seputis sent a letter advising of such and providing appeal rights.
- IMRF is authorized to pay benefits in accordance with the Illinois Pension Code (40 ILCS 5/7-179).
- IMRF pension benefit estimates are clearly provided as estimates to IMRF members and state that "the amounts indicated in this letter are estimates only and do not commit IMRF to your future pension benefits." The estimate continues "your actual benefits will be determined at the time of your retirement and will be based on actual records. In all cases the requirements of the Illinois Pension Code will apply."
- The estimate provided on June 5, 2014 which incorrectly stated the pension amount at \$8,100.81 lists as its assumptions "you will receive additional earnings of \$62,070.00 for the month of 9/2014. These earnings were added to your usual earnings for this month". (Record p. 70) This was not the correct month to reflect those earnings. IMRF advises its members to "closely review each section of the estimate" and to contact IMRF with questions regarding such estimate. (Record p. 67)

## MOTION



After further discussion, Ms. Thompson moved to recommend that the committee uphold the staff determination and find that Mr. Hartnett's current pension benefit was accurately calculated and that IMRF was not bound to pay him the amount of the June 5, 2014 estimate erroneously prepared by Ms. Setchell. Ms. Stanish seconded the motion.

Motion: Thompson  
Second: Stanish  
Ayes: Miller, Kuehne, Stanish and Thompson  
Nays: None  
Motion Passed: 4-0

O'Brien and Setchell left the meeting

Dr. Miller joined the meeting

(15-04-06)(Temporary Disability Benefits Termination – Tiffany Tidwell - Rockford School District - # 205)

Tiffany Tidwell appeared before the Committee via telephone. The Committee heard comments from Ms. Tidwell regarding her conditions. Ms. Tidwell answered questions from the Committee. The Committee heard comments from staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

**After further discussion, the Committee recommends that the Board uphold staff's determination to terminate temporary disability benefits effective April 01, 2015.**

Motion: Miller  
Second: Thompson  
Ayes: Miller, Kuehne, Stanish and Thompson  
Nays: None  
Motion Passed: 4-0

Dr. Miller left the meeting

15-04-07)(IMRF Return to Work - Beverly J. Wallace – Belvidere CUSD 100 # 1227)

Ms. Wallace appeared by teleconference before the committee. Present at meeting were Committee members Stanish, Kuehne, Miller and Thompson and IMRF staff members Dixon, Janicki Clark, Rockett, Duncan, Davis, and Motto.

## **BACKGROUND**

Ms. Wallace retired from Belvidere CUSD 100 (#1227) effective September 1, 2010. Ms. Wallace returned to work for her employer on a "fill in" or "substitute" basis



after retiring. Payroll records from the employer reveal that Ms. Wallace worked over the hourly standard for several years, surpassing 600 hours in 2012 and 2013.

## ISSUES

- 1) Should Ms. Wallace's pension have been suspended (and Ms. Wallace reenrolled in IMRF) upon her return to work in September of 2011?
- 2) If so, does a prepayment of benefits exist, and in what amount?
- 3) How should IMRF recover the prepayment of benefits?

## SCOPE OF REVIEW

The Committee heard testimony and reviewed the record presented.

## FINDINGS AND CONCLUSIONS

- Ms. Wallace retired effective September 1, 2010 after working 25.1 years with her IMRF employer. Ms. Wallace's initial pension was \$1,249.71 per month.
- Ms. Wallace returned to work for her IMRF employer in 2011. Her applicable hourly standard was 600 hours. There is evidence that she called IMRF in September of 2010 to discuss working some training hours at her previous employer and that she was advised to call prior to accepting any positions.
- Ms. Wallace says she was told by IMRF at this time that the hourly standard applied per position and that she believed that because she was never actually taking a position with her employer and only subbing that the hourly standard was not being violated. Ms. Wallace could not remember who she spoke to and no documentation exists to support this.
- The record shows that Ms. Wallace began exceeding the 600 hour standard in September of 2011. Ms. Wallace worked 914.5 hours in 2012 and 1290 hours in 2013.
- Public Act 98-389 was effective on August 16, 2013 and amended Section 7-144 of the Illinois Pension Code to create a clearer standard for return to work situations, instead of an expected hourly standard, the standard became whether 599 hours have been exceeded with an IMRF employer. Prior to the effective date of this law, the standard was whether a position was reasonably expected to exceed the hourly standard. Since Ms. Wallace was working in numerous substitute or fill-in positions, it was difficult for her employer to determine what was expected.



**MOTION**

After further discussion, Mr. Miller moved that the Committee find that Ms. Wallace returned to work in an IMRF qualifying position for the period from 8/16/13 through 9/26/14 ("the return to work period"). As such, her pension should have been suspended for the return to work period and recalculated upon her re-retirement. Ms. Wallace should receive a recalculated pension in the amount of \$1,438.91 per month effective October 1, 2014. A prepayment of benefits was created consisting of the pension payments received by Ms. Wallace while she was working over 599 hours with an IMRF employer during the return to work period. The prepayment totals \$ 18,219.02. Ms. Wallace should receive the recalculated pension amount and IMRF staff is directed to recover the prepayment amount from Ms. Wallace's recalculated pension payments by deducting the amount of \$189.78 from her monthly IMRF payments (excluding the 13th payment) for a period not to exceed 8 years or until the prepayment has been recouped Ms. Thompson seconded the motion.

Motion: Miller  
Second: Thompson  
Ayes: Miller, Kuehne, Stanish and Thompson  
Nays: None  
Motion Passed: 4-0

(15-04-08)(Public Comments)


There were no public comments made

(15-04-09)(Adjournment)

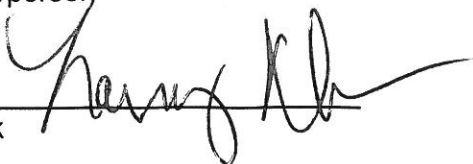
Ms. Stanish made a motion to adjourn at 3:45p.m. Seconded by Mr. Miller.

Motion passed by unanimous voice vote

The next regular scheduled meeting of the Committee will be at 11:00 a.m. on Thursday May 21, 2015.

  
Chairperson

5/21/15  
Date

  
Clerk

5/21/15  
Date