



**MEETING NO: 15-08-D
BENEFIT REVIEW COMMITTEE**

The Regular Meeting of the Benefit Review Committee of the Board of Trustees was held Thursday, August 27, 2015. Present at the meeting were Committee members Copper, Miller, Stanish and Thompson, IMRF medical consultant, Dr. Rao, Dr. Miller and staff members, Davis, Dixon, Howard and Janicki-Clark .

Absent: Piechocinski and
Kuehne

(15-08-01)(Visual roll call)

Ms. Copper presided as chairperson and called the meeting to order at 11:06 a.m.

(15-08-02)(City of Granite City - AP Exemption – City of Granite City # 3353
ACCELERATED PAYMENT EXEMPTION DENIALS RONNIE M. PARENTE (PAR
2004J), JUDITH DOTHAGE (DOJ 4786 I), NANCY C. MILLER (MIC 2661W) AND
BARBARA A. HOPKINS (HAB 7260 V)

City of Granite attorney, Brian Konzen and witness Scott Oney appeared before the committee via teleconference. A court reporter was present to take a transcript of the proceedings The Committee heard comments from Mr. Konzen, Mr. Owey and staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

BACKGROUND

Ronnie Parente terminated employment with the City on 12/31/14. The City received an invoice for an Accelerated Payment of \$7, 921.37 on January 5, 2015. The City applied for an exemption claiming the increase was part of a collective bargaining agreement with Operating Engineers entered into, amended or renewed before January 1, 2012. Article 14 of the CBA stated that employees who opt out of the City's health insurance program receive 300 dollars per month toward personal health insurance premium costs. Mr. Parente received other payouts at retirement, but the City is claiming only the 3300 dollars he received in lieu of health insurance is exempt from the AP. IMRF denied the exemption because the labor agreement was entered into after January 1, 2012. The Agreement is dated May 1, 2013 through April 30, 2017. The cash in lieu of insurance benefit was contained in previous collective bargaining agreements but Mr. Parente retired in 2014, when the 2013-2017 agreement was in effect.

Judith Dothage terminated employment with the City on 12/31/14. The City received an invoice for an Accelerated Payment of \$37, 496.71 on January 5, 2015. The City applied for an exemption claiming the increase was a standard employment promotion as well as

part of a collective bargaining agreement entered into, amended or renewed before January 1, 2012. The CBA with AFL-CIO provides for annual increases as well as early retirement bonuses. IMRF partially granted the exemption. The amount of increase attributable to the standard employment promotion from Executive Secretary I to Executive Secretary II was found to be exempt (\$3,819.12). However, the payments for Early Retirement made under Article 23 of the CBA were found not exempt. IMRF denied the exemption because the AFSCME labor agreement providing for the payments and under which Ms. Dothage retired was entered into after January 1, 2012. The Agreement is dated May 1, 2013 through April 30, 2017. Prior CBA offered the same or similar early retirement benefit.

Miller and Hawkins were covered under the same CBA as Dothage dated May 1, 2013-April 30, 2017.

Nancy Miller terminated employment with the City on 12/31/14. The City received an invoice for an Accelerated Payment of \$25,613.12 on January 5, 2015. The City applied for an exemption claiming the increase part of a collective bargaining agreement entered into, amended or renewed before January 1, 2012. IMRF denied the exemption because the labor agreement providing for the payments and under which Ms. Miller retired was entered into after January 1, 2012.

Barbara Hawkins terminated employment with the City on 12/31/14. The City received an invoice for an Accelerated Payment of \$28,234.39 on January 5, 2015. The City applied for an exemption claiming the increase part of a collective bargaining agreement entered into, amended or renewed before January 1, 2012. The CBA with AFL-CIO provides for early retirement bonuses under Article 23, Section 5. IMRF denied the exemption because the labor agreement providing for the payments and under which Ms. Miller retired was entered into after January 1, 2012.

ISSUE

Whether the City of Granite City is entitled to an AP exemption under 7-172(k) if a CBA that was entered into prior to January 1, 2015 but no longer effective contained a provision providing for a payout which was continued to a currently effective CBA.

SCOPE OF REVIEW

The Committee heard testimony from Mr. Konzen and Mr. Oney. The committee reviewed the record and asked questions of both staff and Mr. Konzen and Mr. Oney. Staff asked questions of Mr. Konzen and Mr. Oney.

FINDINGS AND CONCLUSIONS

The intent behind the exemption contained in Section 7-172 (k) of the Pension Code was to stop payments which would be considered end of career pay spikes. The specific language contained in the statutes states:

This subsection (k) does not apply to earnings increases paid to individuals under contracts or collective bargaining agreements entered into, amended, or renewed before January 1, 2012 (the effective date of Public Act 97-609), earnings increases paid to members who are 10 years or more from retirement eligibility, or earnings increases resulting from an increase in the number of hours required to be worked.

When assessing payment for any amount due under this subsection (k), the fund shall

also exclude earnings attributable to personnel policies adopted before January 1, 2012 (the effective date of Public Act 97-609) as long as those policies are not applicable to employees who begin service on or after January 1, 2012 (the effective date of Public Act 97-609).

The bargaining agreements that are currently in effect for the Granite City employees in question and under which the payments that resulted in the APs were made, were not entered into, amended or renewed prior to January 1, 2012. The fact that prior agreements contained the same benefit does not exempt these payments from being subject to the AP. Granite City testified that it could have but did not attempt to bargain for a change to these payments. Construing this language to allow exemptions based on provisions that existed in expired contracts and were not changed during the collective bargaining process for an agreement under which a member ultimately was paid a benefit is contrary to the intent of the statute and its plain language.

MOTION

After discussion, the Committee recommends that the Board uphold staff's determination to deny an exemption from the accelerated payment to the City of Granite City for payments made under a collective bargaining agreement to Ronnie M. Parente, Judith Dothage, Nancy Miller and Barbara Hawkins. The collective bargaining agreement which authorized the payments was not entered into, amended or renewed prior to January 1, 2012.

Motion: Stanish

Second: Miller

Ayes: Miller, Thompson, Stanish, Copper

Nays: None

Motion Passed: 4-0

(15-08-03)(Kathleen Konicki ECO/ Revised ECO – Will County - # 3076)

Kathleen Konicki appeared before the Committee in person. The Committee heard comments from Ms. Konicki and staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff.

BACKGROUND

The facts in this case are not in dispute. At dispute is the language contained in Public Act 91-0685 which created the Revised ECO program for elected county officials. Kathleen Konicki was an elected member of the Will County Board. She elected to participate in IMRF in 1997. An election to participate is required of elected officials. Will County adopted a resolution to provide the ECO plan to its elected officials (at this time it was Original ECO). In 1998, Ms. Konicki filled out paperwork to enroll herself in Original ECO. The documentation shows that she later changed her mind and asked that she not be enrolled, but her paperwork had already been mailed to IMRF. IMRF, after being contacted by the Authorized Agent for Will County regarding the mistake, allowed her to rescind the 6.21 form opting into Original ECO. Ms. Konicki does not dispute this. Much later, in 2008, she opted into Revised ECO because there was no more Original ECO per

P.A. 91-0685 (effective January 26, 2000). Ms. Konicki applied for and was enrolled in Revised ECO. Ms. Konicki terminated her participation in IMRF in November of 2012 with 192 months of service credit. She was advised that she could convert her past service to Revised ECO at any time after she retired but that it was a one-time opportunity that was prospective only and she qualified only for Revised ECO, not original ECO, due to the fact that P.A. 91-0685 added a subsection (h) to Section 7-145.1 of the Pension Code which stated that she would participate only in Revised ECO if she made contributions to ECO after January 26, 2000 (the effective date of P.A. 91-0685)

On February 12, 2013, Kathy O'Brien, IMRF's General Counsel, sent a letter explaining why Ms. Konicki could only participate in Revised ECO and a staff determination with appeal rights was sent on April 1, 2013. Ms. Konicki has appealed this determination and a hearing was held in December of 2013. At that time the staff determination was upheld and Ms. Konicki appealed the case to Sangamon County. Judge Belz sent the case back to IMRF and asked that the Attorney General and Will County be notified. Both parties were notified, but only Will County filed a statement concerning the constitutionality of the application of P.A. 91-685 to persons who are in the position that Ms. Konicki is in (individuals that could have, but did not opt into Original ECO prior to January 26, 2000)

ISSUES

Does this Committee have the ability to declare P.A. 91-0685 unconstitutional?
Whether Kathleen Konicki qualifies to convert her IMRF service to Original ECO?
Is IMRF estopped from denying Ms. Konicki enrollment in Original ECO?

SCOPE OF REVIEW

The Committee heard comments from Ms. Konicki. The Committee heard the comments from staff. Finally, the Committee reviewed the written materials that were submitted to the Committee by staff and Ms. Konicki. The Committee reviewed the memo and reply brief submitted by Ms. Konicki and the record will be amended to contain those documents.

FINDINGS AND CONCLUSIONS

The IMRF Board does not have the authority to determine whether a Public Act is unconstitutional.

P.A. 91-0685 which was effective on January 26, 2000, changed the formula contained in subsection (a), added the second paragraph in subsection (d) and added subsections (g) and (h) to the above cited statute. Subsection (h) very clearly provides that persons who first make ECO contributions after January 26, 2000 are subject to Revised ECO. Ms. Konicki's contributions were first made in 2008; 8 years after Revised ECO became effective. Because of the statutory language, Ms. Konicki was allowed only to participate in Revised ECO. Therefore, she cannot convert her prior service to Original ECO because the language of Section 7-145.1 (h) clearly prohibits her from doing so.

IMRF was not required to notify its members regarding the impending change from Original ECO to Revised ECO. The law implementing the Revised ECO plan was effective immediately on the date it was passed and it did not provide any "window" to opt into Original ECO. Once the Public Act was signed, there was no more Original ECO. Thus, any notification allowing members to opt into Original ECO after passage of the law was impossible. Any statements made to Ms. Konicki by IMRF staff that she could later opt into Original ECO were correct at the time they were made since there was no Revised ECO. IMRF is not estopped from allowing Ms. Konicki into Revised ECO. In fact, IMRF cannot

decision pending additional information.

Motion: Miller
Second: Thompson
Ayes: Copper, Miller, Stanish and Thompson
Nays:
Motion Passed: 4-0

15-08-06)(Hearing Officers Appointment)

Kathleen O'Brien, IMRF General Counsel, made a recommendation to the Committee regarding the appointment of hearing officers

After further discussion the committee recommends that the Board approve Susan Davis Brunner and the law firm of Otteson Britz as IMRF hearing officers.

Motion: Stanish
Second: Thompson
Ayes: Copper, Miller, Stanish and Thompson
Nays:
Motion Passed: 4-0


(15-08-07)(Public Comments)

There were no public comments made.

(15-08-08)(Adjournment)

Mr. Miller made a motion to adjourn at 2:47 p.m. Seconded by Ms. Stanish. Motion passed by unanimous voice vote

The next regular scheduled meeting of the Committee will be at 11:00 a.m. on Thursday September 24, 2015.



Chairperson



Date



Clerk



Date