

MEMORANDUM

TO: Board of Trustees
FROM: Benefit Review Committee
DATE: February 25, 2021
SUBJECT: Report of the Benefit Review Committee Meeting held on February 25, 2021

A meeting of the Benefit Review Committee of the Board of Trustees was held via video conference on Thursday February 25, 2021. Present at the meeting were Committee members Copper, Kuehne, Miller, Mitchell, and Stefan. Also present was Trustee Henry. Staff members present were Seputis, Shuliga, Carter, Janicki Clark, Davis, and Claussen.

(21-02-01) (Roll call)

Ms. Copper presided as chairperson and called the meeting to order at 9:00 a.m. Committee members Copper, Kuehne, Miller, Mitchell, and Stefan were present for roll call.

(21-02-02) Approval of the open session committee meeting minutes from December 17, 2020.

Motion: Kuehne
Second: Mitchell
Ayes: Copper, Kuehne, Mitchell, Stefan
Nays: None
Present: Miller
Motion Passed: 4-0

(21-02-03) Approval of the closed session committee meeting minutes from December 17, 2020.

Motion: Mitchell
Second: Kuehne
Ayes: Copper, Kuehne, Mitchell, Stefan
Nays: None
Present: Miller
Motion Passed: 4-0

(21-02-04) Sherylynn King – Return to Work Violation

Ms. King appeared via videoconference with her attorney Brad Stewart before the Committee. The employer, Dundee Township Park District appeared through attorney Scott Puma via videoconference as well. The Committee received and reviewed the written submissions from the member and employer prior to the hearing. The Committee also received and reviewed the late submission affidavits submitted by the employer on February 24, 2021. The Committee heard testimony from Ms. King and argument from both Mr. Stewart and Mr. Puma.

The Committee took a recess from 11:02 am to 11:07 am.

(21-02-05) Catherine Lemke – Return to Work Violation

In lieu of appearing before the Committee, Ms. Lemke submitted a written statement which was read into the record. The employer, Huntley Community School District 158, appeared through Assistant Superintendent for Human Resources Adam Zehr and Payroll Manager Kimieth Rutherford. The Committee received and reviewed the written submissions from the member and employer prior to the hearing. The Committee also heard comments from IMRF staff and the employer representatives.

Trustee Henry left the meeting at 11:45 am.

(21-02-06) Shirley Buss – Return to Work Violation

Ms. Buss appeared before the Committee via videoconference. The employer, Washington County, appeared through Assistant State's Attorney Crystal May. The Committee received and reviewed the written submissions from the member and employer prior to the hearing. The Committee also heard comments from Ms. Buss, IMRF staff, and Ms. May.

(21-02-07) Findings and Conclusion of the IMRF Hearing Officer – Robinson Community Unit School District #2

Associate General Counsel Shuliga presented the findings and conclusion of the IMRF Hearing Officer in the above referenced case. The Committee reviewed the recommended findings and conclusions of the IMRF hearing officer.

After further discussion, a motion was made to recommend the adoption of the findings and conclusion of the IMRF hearing officer in the above referenced case. The recommended findings and conclusions are attached hereto.

Motion: Kuehne
Second: Miller
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

(21-02-08) Findings and Conclusion of the IMRF Hearing Officer – Deer Park School District #82

Associate General Counsel Shuliga presented the findings and conclusion of the IMRF Hearing Officer in the above referenced case. The Committee reviewed the recommended findings and conclusions of the IMRF hearing officer.

After further discussion, a motion was made to recommend the adoption of the findings and conclusion of the IMRF hearing officer in the above referenced case. The recommended findings and conclusions are attached hereto. The Committee further recommends that the IMRF Legislative Committee propose a change to Section 7-172(k) exempting accelerated payments caused by a member receiving unreportable workers compensation benefits.

Motion: Kuehne
Second: Miller
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

At 12:10 pm Trustee Miller made a motion to go into closed session to discuss evidence presented in open session in the King, Lemke, and Buss return to work appeals pursuant to Section 2(c)(4) of the Open Meetings Act. Trustee Stefan seconded the motion which was approved by a unanimous 5-0 roll call vote.

At 12:59 pm Trustee Stefan made a motion to return to open session. Trustee Miller seconded the motion which was approved by a unanimous 5-0 roll call vote.

(21-02-04) Sherylynn King – Return to Work Violation

After deliberation, Trustee Stefan made a motion to admit the four late submission affidavits into the record over Ms. King’s objection and without further rebuttal or delay of these proceedings.

Motion: Stefan
Second: Kuehne
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

Also after deliberation, the Committee recommends that the Board find that Ms. King returned to work in a qualifying position while receiving retirement benefits; that Ms. King received a prepayment of retirement benefits that she was not entitled to in the amount of \$169,437.03 which must be repaid to IMRF; that Dundee Township Park District shall be held liable for one half of the prepayment owed by Ms. King; and that Ms. King’s portion of the prepayment be recovered from retirement benefits over the next 120 months. The Committee recommends that the Board adopt the attached findings and conclusions setting forth the basis of its decision.

Motion: Kuehne
Second: Miller
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

(21-02-05) Catherine Lemke – Return to Work Violation

After deliberation, the Committee recommends that the Board find that Ms. Lemke returned to work in a qualifying position while receiving retirement benefits; that Ms. Lemke received a prepayment of retirement benefits that she was not entitled to in the amount of \$7,971.50 which must be repaid to IMRF; that the Huntley Community School District 158 shall be held liable for one half of the prepayment owed by Ms. Lemke; and that Ms. Lemke’s portion of the prepayment be

recovered from retirement benefits over the next 120 months. The Committee recommends that the Board adopt the attached findings and conclusions setting forth the basis of its decision.

Motion: Stefan
Second: Miller
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

(21-02-06) Shirley Buss – Return to Work Violation

After deliberation, the Committee recommends that the Board find that Ms. Buss returned to work in a qualifying position while receiving retirement benefits; that Ms. Buss received a prepayment of retirement benefits that she was not entitled to in the amount of \$9,741.72, through February 2021, which must be repaid to IMRF; that Washington County shall be held liable for one half of the prepayment owed by Ms. Buss; and that Ms. Buss’s portion of the prepayment be recovered from retirement benefits over the next 120 months. The Committee recommends that the Board adopt the attached findings and conclusions setting forth the basis of its decision.

Motion: Kuehne
Second: Mitchell
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Motion Passed: 5-0

(21-02-08) Litigation Report

Attorney Shuliga presented an update regarding pending or recently concluded litigation. No final action was taken.

(21-02-09) Annual Reports

Benefits Manager Amy Claussen presented an annual report on activity of the benefits department in 2020. Disability Manager Larry Dixon also presented annual reports on the activity of the disability department, collection of prepayments, and consultant utilization. The presentations and subsequent discussions were informational, and no action was taken by the Committee.

(21-02-10) Public Comment

None

(21-02-11) Adjournment

Trustee Miller made a motion to adjourn at 1:31 p.m. Seconded by Trustee Kuehne. Motion passed by unanimous roll call vote.

**BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND**

In the Matter of:)
Sherylynn King (MID# 183-2749))
and Dundee Township Park)
District (ER# 3798))
[Appeal of return to work violation]) Hearing held February 25, 2021

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the IMRF Non-Disability Appeal Procedures, the Benefit Review Committee met on February 25, 2021 to hear the appeals of Sherylynn King (“King”) and the Dundee Township Park District (the “Park District”) regarding an IMRF staff determination that King returned to work in an IMRF qualifying position with the Park District in violation of the Illinois Pension Code. King and the Park District were given proper notice of the hearing.

Introduction

King participated in the Illinois Municipal Retirement Fund (“IMRF”) with several different IMRF employers prior to her retirement in July 2007. In October 2008, King began employment with the Dundee Township Park District while continuing to collect her IMRF retirement benefits. IMRF staff conducted an employer audit of the Park District in April 2020 and found that King had exceeded the hourly standard, thereby making her qualified for IMRF participation, beginning on October 22, 2016. IMRF determined that King’s retirement benefits must be suspended as of this date, and that she was required to be retroactively enrolled in IMRF during this period. Additionally, IMRF staff determined that King accrued a prepayment of \$221,965.25¹ as of May 2020. King continued to be in

¹ This calculated amount was erroneous. Through her termination date on March 13, 2020, the prepayment amount is \$169,437.03.

an IMRF qualifying position until leaving employment with the Park District on March 13, 2020. Both King and the Park District appealed the IMRF staff determination.

King does not dispute that she worked more than 999 hours in a year but argues that she occupied three different positions at the Park District, none of which individually met the required hourly standard for participation. She further argues that she relied on the Park District to track her hours, and that they were aware that she was an IMRF annuitant. Therefore, she asserts that the Park District bears responsibility for the return to work violation. The Park District, on the other hand, denies that it can be held liable under Section 7-144(a-5) for any portion of the prepayment charged to King. (40 ILCS 5/7-144(a-5))² The Park District argues that neither King nor IMRF informed them of her annuitant status, and that they had no intent for her to exceed the hourly standard.

Administrative Hearing Procedure

King appeared via video conference with her attorney, Brad Stewart, and explained the basis for her appeal. The Park District appeared via video conference through their attorney, Scott Puma. Greg Gannon and Dave Peterson, employees of the Park District, were also present. Committee Chairperson Natalie Copper presided over the hearing. Committee members Tom Kuehne, Dave Miller, Tracie Mitchell, and Peter Stefan were

² Section 7-144(a-5) provides, in pertinent part:

If any annuitant under this Article must be considered a participating employee per the provisions of subsection (a) of this Section, and the participating municipality or participating instrumentality that employs or re-employs that annuitant knowingly fails to notify the Board to suspend the annuity, the participating municipality or participating instrumentality may be required to reimburse the Fund for an amount up to one-half of the total of any annuity payments made to the annuitant after the date the annuity should have been suspended, as determined by the Board.

(40 ILCS 5/7-144(a-5))

also present. IMRF Trustee Gwen Henry was present. IMRF staff present at the hearing included Beth Janicki Clark, IMRF General Counsel, Vladimir Shuliga, IMRF Associate General Counsel, Elizabeth Carter, Staff Attorney, Larice Davis, IMRF paralegal, Amy Claussen, Benefits Manager, and Dawn Seputis, Customer Service Director.

Copies of all documentation submitted as evidence by IMRF staff, King, and the Park District at this hearing were received into evidence as Board Exhibits, pages 1 through 169. The day before the hearing, on February 24, 2021, the Park District submitted four affidavits for consideration in this appeal. The IMRF Benefit Review Committee granted leave to submit these documents for consideration, which are incorporated into the record as Board Exhibits, pages 170 through 173.

As a result of the February 25, 2021 hearing and the written documentation received, the Board of Trustees of IMRF finds and determines as follows:

I. EVIDENCE AND TESTIMONY

Review of Written Documentation and Testimony

1. King is an IMRF annuitant who first retired and began drawing an IMRF pension in July 2007. (Board Exhibits, pp. 3, 133; Testimony of King).
2. King began working for the Dundee Township Park District on October 23, 2008. (Board Exhibits, pp. 3, 133; Testimony of King).
3. While working for the Park District, King knew that she was required to work less than 999 hours annually in order to continue receiving her retirement benefit. (Board Exhibits, pp. 3, 133; Testimony of King).
4. On April 8, 2020, an IMRF employer audit determined that King had returned to work beginning on October 23, 2016, when she first exceeded the 1000-hour standard

for IMRF qualification with the Park District. (Board Exhibits, pp. 3, 12-13).

5. On May 20, 2020, IMRF notified King that due to her return to work,³ she would need to reimburse IMRF for pension payments made during that time period. She was also advised that her pension must be suspended until her termination of employment with the Park District. (Board Exhibits, pp. 1, 14-15).

6. IMRF determined that King received a total prepayment of \$221,965.25⁴ as of May 2020, which constituted the retirement pension payments King received while working in an IMRF qualifying position with the Park District. (Board Exhibits, pp. 4-5, 14-15).

7. On March 13, 2020, King terminated employment with the Park District. (Testimony of Puma).

8. King testified that she returned to work with the Park District because she wanted to keep herself occupied during her retirement.⁵ (Testimony of King).

9. King testified that she did not keep track of hours to ensure that she was not working over the 1000-hour limit. (Testimony of King).

10. King further testified that she relied on her employer to ensure that she did not exceed the hourly standard. (Testimony of King).

11. King does not dispute, and in fact admitted, that she did exceed 1000 hours of work in at least three years. (Testimony of King).

12. Attorney for the Park District testified that King should have kept track of her

³ The letter sent to King by IMRF dated May 20, 2020 incorrectly reflects the return to work date as October 22, 2008. This is the date that she began employment with the Park District, however she was not required to be enrolled in IMRF due to exceeding the hourly standard until October 23, 2016.

⁴ Through her termination date on March 13, 2020, the prepayment amount is \$169,437.03.

⁵ The Committee found King's testimony to be credible and persuasive.

own hours to ensure she did not exceed the hourly standard. (Testimony of Puma).

13. Mr. Puma testified that the Park District did not intend for King to exceed the hourly standard in any year. (Testimony of Puma).

14. Mr. Puma testified that the relevant persons at the Park District were not aware of her status as an IMRF annuitant. (Testimony of Puma).

15. IMRF staff testified that the corrected prepayment amount for the period from November 2016 through March 2020, is \$169,437.03 (Testimony of Shuliga).

16. In its written materials, the Park District argued that it did not knowingly fail to advise IMRF of the return to work, because it was not aware that King was an IMRF annuitant. The Park District also argued that in any given year, the number of hours over 1000 which King worked was *de minimis*. (Board Exhibits, pp. 127-28; Testimony of Puma).

II. FINDINGS OF FACT

1. The undisputed evidence shows that King returned to work with the Park District and first exceeded 1000-hours worked over a 12-month period on October 23, 2016. She continued to work in an IMRF-qualifying position until March 13, 2020.

2. Between October 23, 2016 and March 13, 2020, King received retirement annuity benefits.

3. King failed to track her hours, which resulted in her exceeding the hourly standard for the affected time period.

4. The Park District did not re-enroll King in IMRF and did not notify IMRF to suspend King's annuity during the period that King had returned to work in a qualifying position.

5. The Park District should have been aware that King was an IMRF annuitant. In any case, the Park District was aware of the number of hours that King worked but did not enroll King as required under the Pension Code.

6. Between October 23, 2016 and March 13, 2020, King received a prepayment of retirement annuity benefits not exceeding \$169,437.03.

III. CONCLUSIONS OF LAW

7. The Board of Trustees of IMRF has jurisdiction over this appeal pursuant to Sections 7-146, 7-179, and 7-200 of the Illinois Pension Code (40 ILCS 5/7-146, 7-179, and 7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code (40 ILCS 5/7-198).

8. King returned to work in an IMRF qualifying position beginning on October 23, 2016 and remained in a qualifying position until March 13, 2020.

9. IMRF has a fiduciary duty to only pay those benefits authorized by the Illinois Pension Code. Therefore, the prepayment must be repaid to IMRF in an amount not exceeding \$169,437.03.

10. Pursuant to the terms of Section 7-144(a-5) the Park District knowingly failed to notify IMRF to suspend King's annuity and to re-enroll her when she returned to work in a qualifying position, thereby making the Park District liable for one-half of the prepayment, or an amount not to exceed \$84,718.52.

11. The term knowingly means that the "[Park District] is consciously aware that [its] conduct is practically certain to cause the result." *See People v. Dorsey*, 2016 IL App (4th) 140734, ¶ 34.

12. The Board concludes that by choosing not to calculate the total number of hours

worked by King, the Park District was consciously aware that its conduct was practically certain to cause the Park District to fail in its obligation to notify IMRF that King returned to work in a qualifying position.

13. At all times relevant to this appeal, Section 7-135(b)(1) of the Illinois Pension Code (40 ILCS 5/7-135(b)(1)) provided that one of the duties of IMRF Authorized Agents is, “[t]o certify to the fund whether or not a given person is authorized to participate in the fund.”

14. The Park District, through its Authorized Agent, has always had a duty to notify IMRF of every employee that was employed by the Park District in an IMRF qualifying position and to enroll those employees in IMRF.

15. The Park District has failed to show by a preponderance of the evidence that it did not knowingly fail to notify the Board to suspend King’s annuity after she returned to work in an IMRF qualifying position.

IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the Petitioners, Sherylynn King and the Dundee Township Park District, HEREBY ORDERS as follows:

The administrative staff determination that Sherylynn King returned to work in an IMRF qualifying position and received a prepayment of retirement annuity benefits an amount not to exceed \$169,437.03 is hereby affirmed. Staff is directed to calculate the final prepayment amount, and permit King to repay one-half of that amount over a ten-year period. Additionally, the Park District knowingly failed to notify the Board to suspend the

retirement annuity once King returned to work in an IMRF qualifying position, thereby making the Park District liable for one-half of the prepayment. The Park District is required to repay an amount not to exceed \$84,718.52 to IMRF.

This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (*See* 40 ILCS 5/7-220).

These Findings of Fact and Conclusions of Law are adopted this 26th day of February 2021, by the following roll call vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Being parties to these proceedings.

President, Board of Trustees
Illinois Municipal Retirement Fund

ATTEST:

Secretary, Board of Trustees
Illinois Municipal Retirement Fund

**BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND**

In the Matter of:)
Catherine Lemke (MID# 177-2175))
and Huntley School District)
#158 (ER# 1685))
[Appeal of return to work violation]) Hearing held February 25, 2021

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the IMRF Non-Disability Appeal Procedures, the Benefit Review Committee met on February 25, 2021 to hear the appeals of Catherine Lemke (“Lemke”) and Huntley School District #158 (the “School District”) regarding an IMRF staff determination that Lemke returned to work in an IMRF qualifying position with the School District in violation of the Illinois Pension Code. Lemke and the School District were given proper notice of the hearing.

Introduction

Lemke participated in the Illinois Municipal Retirement Fund (“IMRF”) with the Crystal Lake School District #47 until her retirement in June 2015. On February 23, 2017, Lemke began employment with Huntley School District #158 while continuing to collect her IMRF retirement benefits. During an IMRF audit in June 2020, it was discovered that Lemke had exceeded the hourly standard of participation, 600 hours, as of February 23, 2018. On June 22, 2020 both Lemke and the School District were notified that her retirement benefits would need to be suspended during her employment. She was also notified that she was required to be retroactively enrolled in IMRF as of that date. Additionally, IMRF staff determined that Lemke accrued a prepayment of \$7,971.50 through May 2020. Lemke requested to continue receiving her pension during the

pendency of this appeal, while remaining employed by the School District. Both Lemke and the School District appealed the IMRF staff determination.

Lemke argues that she knew she could not work more than 599 hours in a year and that she was assured by the School District that she was not exceeding her hours. In turn, the School District argues that her hours were being tracked based on the school year calendar, and not the date that she became employed. The School District also claims that it should not be responsible for any prepayment as, in their view, the retiree is entirely responsible for tracking their hours. The School District denies that it can be held liable under Section 7-144(a-5) for any portion of the prepayment charged to Lemke. (40 ILCS 5/7-144(a-5))¹

Administrative Hearing Procedure

Lemke advised IMRF that she did not wish to appear to present her case. The School District appeared via video conference through employees Adam Zehr, and Kimieth Rutherford. Committee Chairperson Natalie Copper presided over the hearing. Committee members Tom Kuehne, Dave Miller, Tracie Mitchell, and Peter Stefan were also present. IMRF Trustee Gwen Henry was present. IMRF staff present at the hearing included Beth Janicki Clark, IMRF General Counsel, Vladimir Shuliga, IMRF Associate General

¹ Section 7-144(a-5) provides, in pertinent part:

If any annuitant under this Article must be considered a participating employee per the provisions of subsection (a) of this Section, and the participating municipality or participating instrumentality that employs or re-employs that annuitant knowingly fails to notify the Board to suspend the annuity, the participating municipality or participating instrumentality may be required to reimburse the Fund for an amount up to one-half of the total of any annuity payments made to the annuitant after the date the annuity should have been suspended, as determined by the Board.

(40 ILCS 5/7-144(a-5))

Counsel, Elizabeth Carter, Staff Attorney, Larice Davis, IMRF paralegal, Amy Claussen, Benefits Manager, and Dawn Seputis, Customer Service Director.

Copies of all documentation submitted as evidence by IMRF staff, Lemke, and the School District at this hearing were received into evidence as Board Exhibits, pages 1 through 156. On February 10, 2021, Lemke emailed an additional letter for consideration by the Board, which was read by IMRF staff at the hearing. This document is incorporated as Board Exhibit page 157.

As a result of the February 25, 2021 hearing and the written documentation received, the Board of Trustees of IMRF finds and determines as follows:

I. EVIDENCE AND TESTIMONY

Review of Written Documentation and Testimony

1. Lemke is an IMRF annuitant who earned her IMRF service through Crystal Lake School District #47, where she terminated in June 2015. (Board Exhibits, p. 3).
2. Lemke began drawing her IMRF pension in July 2015. (Board Exhibits, p. 3).
3. On February 23, 2017, Lemke began employment at Huntley School District #158. (Board Exhibits, p. 3).
4. While working for the School District, Lemke was required to work less than 600 hours annually in order to continue receiving her retirement benefit. (Board Exhibits, pp. 3).
5. During an audit of the School District in June 2020, it was determined that Lemke had exceeded the hourly standard for IMRF participation. (Board Exhibits pp. 5-6).
6. Based on a review of Lemke's time records, it was determined that Lemke had worked 654.5 hours from February 23, 2017 to February 22, 2018. (Board Exhibits, p. 11).

7. On June 22, 2020, IMRF notified Lemke and the School District that Lemke had returned to qualified IMRF employment while receiving a pension as of February 23, 2018. (Board Exhibits, pp. 14-17).

8. The parties were notified that a prepayment of \$11,667.54² had accrued as of June 2020, which constituted the retirement pension payments Lemke received while working in an IMRF qualifying position with the School District. (Board Exhibits, pp. 14-17).

9. After refining the prepayment total from March 2019 through May 2020, the total prepayment amount is \$7,971.50. (Testimony of Carter).

10. On or about May 22, 2020, Lemke terminated employment with the School District. (Board Exhibits, p. 18; Testimony of Zehr and Rutherford).

11. Lemke states that she kept track of hours to ensure that she was not working over the 600-hour limit. (Board Exhibits, pp. 18, 157).

12. Lemke further states that she only exceeded the hourly standard due to a misunderstanding of what 12-month period is used in the return to work determination. (Board Exhibits, pp. 18, 157).

13. Representative of the School District testified that the School District erred in tracking Lemke's hours. (Testimony of Zehr).

14. Representative of the School District testified that the School District did not intend for Lemke to exceed the hourly standard in any year and counted her hours in accordance with the school calendar, and not beginning with Lemke's date of employment. (Testimony of Zehr).

² The prepayment amount from March 2018 to May 2020 is \$7,971.50.

15. In its written materials, the School District stated that there may have been a miscommunication with Lemke regarding counting her hours. (Board Exhibits, p. 28).

16. The School District further stated that it, in the past, employed a practice of relying on the retiree-employee to track their own hours to determine whether the position was qualifying. (Board Exhibits, p. 28; Testimony of Zehr).

II. FINDINGS OF FACT

1. The undisputed evidence shows that Lemke returned to work with the School District and first exceeded 600-hours worked over a 12-month period on February 23, 2018.

2. Lemke terminated employment at the School District as of May 22, 2020.

3. Lemke received retirement annuity benefits at all relevant times, including the period beginning March 1, 2018, when she was working in an eligible IMRF position.

4. Lemke tracked her hours but did not do so accurately based on her employment date, which resulted in her exceeding the hourly standard for the affected time period.

5. The School District did not accurately track Lemke's hours to determine whether her position required IMRF enrollment.

6. The School District did not re-enroll Lemke in IMRF and did not notify IMRF to suspend Lemke's annuity during the period that Lemke had returned to work in a qualifying position.

7. The School District was aware that Lemke was an IMRF annuitant. In any case, the School District was, or should have been, aware of the number of hours that Lemke worked but did not enroll Lemke as required under the Pension Code.

8. Between March 1, 2018 and May 1, 2020, Lemke received a prepayment of

retirement annuity benefits not exceeding \$7,971.50.

III. CONCLUSIONS OF LAW

9. The Board of Trustees of IMRF has jurisdiction over this appeal pursuant to Sections 7-146, 7-179, and 7-200 of the Illinois Pension Code (40 ILCS 5/7-146, 7-179, and 7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code (40 ILCS 5/7-198).

10. Lemke returned to work in an IMRF qualifying position beginning on February 23, 2018 and remained in a qualifying position until May 22, 2020.

11. IMRF has a fiduciary duty to only pay those benefits authorized by the Illinois Pension Code. Therefore, the prepayment must be repaid to IMRF in an amount not exceeding \$7,971.50, representing amounts paid through May 2020.

12. Pursuant to the terms of Section 7-144(a-5) the School District knowingly failed to notify IMRF to suspend Lemke's annuity and to re-enroll her when she returned to work in a qualifying position, thereby making the School District liable for one-half of the prepayment, or an amount not to exceed \$3,985.75.

13. The term knowingly means that the "[School District] is consciously aware that [its] conduct is practically certain to cause the result." *See People v. Dorsey*, 2016 IL App (4th) 140734, ¶ 34.

14. The Board concludes that by not properly calculating the total number of hours worked by Lemke, the School District was consciously aware that its conduct was practically certain to cause the School District to fail in its obligation to notify IMRF that Lemke returned to work in a qualifying position.

15. At all times relevant to this appeal, Section 7-135(b)(1) of the Illinois Pension

Code (40 ILCS 5/7-135(b)(1)) provided that one of the duties of IMRF Authorized Agents is, “[t]o certify to the fund whether or not a given person is authorized to participate in the fund.”

16. The School District, through its Authorized Agent, has always had a duty to notify IMRF of every employee that was employed by the School District in an IMRF qualifying position and to enroll those employees in IMRF.

17. The School District has failed to show by a preponderance of the evidence that it did not knowingly fail to notify the Board to suspend Lemke’s annuity after she returned to work in an IMRF qualifying position.

IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the Petitioners, Catherine Lemke and Huntley School District #158, HEREBY ORDERS as follows:

The administrative staff determination that Catherine Lemke has returned to work in an IMRF qualifying position and received a prepayment of retirement annuity benefits an amount not to exceed \$7,971.50 is hereby affirmed. Huntley School District #158 is required to enroll Lemke in IMRF participation as of February 23, 2018. Staff is directed to calculate the final prepayment amount, and permit Lemke to repay one-half of that amount over a ten-year period. Additionally, the School District knowingly failed to notify the Board to suspend the retirement annuity once Lemke returned to work in an IMRF qualifying position, thereby making the School District liable for one-half of the prepayment. The School District is required to repay an amount not to exceed \$3,985.75 to

IMRF.

This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (*See* 40 ILCS 5/7-220).

These Findings of Fact and Conclusions of Law are adopted this 26th day of February 2021, by the following roll call vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Being parties to these proceedings.

President, Board of Trustees
Illinois Municipal Retirement Fund

ATTEST:

Secretary, Board of Trustees
Illinois Municipal Retirement Fund

**BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND**

In the Matter of:)
Shirley A. Buss (MID# 174-8781))
and Washington County (ER# 3072))
) Hearing held February 25, 2021
[Appeal of return to work violation])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the IMRF Non-Disability Appeal Procedures, the Benefit Review Committee met on February 25, 2021 to hear the appeals of Shirley A. Buss (“Buss”) and Washington County (the “County”) regarding an IMRF staff determination that Buss returned to work in an IMRF qualifying position with the County in violation of the Illinois Pension Code. Buss and the County were given proper notice of the hearing.

Introduction

Buss participated in the Illinois Municipal Retirement Fund (“IMRF”) with the Oakdale Community Consolidated School District #1 until her retirement in May 2015. Shortly thereafter, Buss began employment with Washington County while continuing to collect her IMRF retirement benefits. In June 2020, Buss contacted IMRF to report that, one year previously, she had exceeded the hourly standard for IMRF participation. After conducting a factual investigation, IMRF determined that, because she had exceeded the hourly standard for IMRF participation, Buss’ retirement benefits must be suspended beginning May 1, 2019. She was also notified that she was required to be retroactively enrolled in IMRF as of that date. Additionally, IMRF staff determined that Buss accrued a prepayment of \$7,094.01 as of July 2020¹. Buss requested to continue receiving her pension during the pendency of this appeal and has remained employed by the County.

¹ As of February 2021, the prepayment amount is \$9,741.72.

Both Buss and the County appealed the IMRF staff determination.

Buss does not dispute that she worked more than 999 hours in a year but states that the overage was due to taking on extra hours due to the office being short-staffed. She further states that she did not realize that this caused her to exceed the hourly standard. The County similarly asserts that there was no intention for Buss to exceed the hourly standard, and that she only did so inadvertently while covering work for other employees. The County claims that it has, at all times, been aware of the return to work rules for retirees. The School District denies that it can be held liable under Section 7-144(a-5) for any portion of the prepayment charged to Buss. (40 ILCS 5/7-144(a-5))²

Administrative Hearing Procedure

Buss appeared via video conference and explained the basis for her appeal. The County appeared via video conference through attorney Crystal May. Committee Chairperson Natalie Copper presided over the hearing. Committee members Tom Kuehne, Dave Miller, Tracie Mitchell, and Peter Stefan were also present. IMRF Trustee Gwen Henry was present. IMRF staff present at the hearing included Beth Janicki Clark, IMRF General Counsel, Vladimir Shuliga, IMRF Associate General Counsel, Elizabeth Carter, Staff Attorney, Larice Davis, IMRF paralegal, Amy Claussen, Benefits Manager, and

² Section 7-144(a-5) provides, in pertinent part:

If any annuitant under this Article must be considered a participating employee per the provisions of subsection (a) of this Section, and the participating municipality or participating instrumentality that employs or re-employs that annuitant knowingly fails to notify the Board to suspend the annuity, the participating municipality or participating instrumentality may be required to reimburse the Fund for an amount up to one-half of the total of any annuity payments made to the annuitant after the date the annuity should have been suspended, as determined by the Board.

(40 ILCS 5/7-144(a-5))

Dawn Seputis, Customer Service Director.

Copies of all documentation submitted as evidence by IMRF staff, Buss, and the County at this hearing were received into evidence as Board Exhibits, pages 1 through 50.

As a result of the February 25, 2021 hearing and the written documentation received, the Board of Trustees of IMRF finds and determines as follows:

I. EVIDENCE AND TESTIMONY

Review of Written Documentation and Testimony

1. Buss is an IMRF annuitant who earned her IMRF service through Oakdale Community Consolidated School District #1, where she terminated in May 2015. (Board Exhibits, p. 3).

2. Buss began drawing her IMRF pension in June 2015. (Board Exhibits, p. 3; Testimony of Buss).

3. That same month, on June 8, 2015, Buss began employment at Washington County. (Board Exhibits, p. 3; Testimony of Buss).

4. While working for the County, Buss was required to work less than 999 hours annually in order to continue receiving her retirement benefit. (Board Exhibits, pp. 3, 133).

5. On May 29, 2019, IMRF sent Buss a notice reminding her to track her hours and advising of the consequences of violating the return to work rules. (Board Exhibits pp. 10-11).

6. On or around June 8, 2020, Buss contacted IMRF to report that she exceeded the hourly standard in the prior period ending June 7, 2019. (Board Exhibits, pp. 4, 43; Testimony of Buss).

7. IMRF staff reviewed Buss' time sheets from June 8, 2018 to June 7, 2019,

which showed that she had exceeded 1000 hours of work as of April 2019. (Board Exhibits, pp. 13-38).

8. On July 21, 2020, IMRF notified Buss and the County that Buss had returned to qualified IMRF employment while receiving a pension as of April 2019. (Board Exhibits, pp. 39-42).

9. IMRF determined that Buss received a total prepayment of \$7,094.01 as of July 2020, which constituted the retirement pension payments Buss received while working in an IMRF qualifying position with the County. (Board Exhibits, pp. 39-42).

10. Through February 2021, the total prepayment amount is \$9,741.72. (Testimony of Carter).

11. Buss has not terminated employment with the County. (Testimony of Buss and May).

12. Buss testified that she worked part-time for the County since her retirement. (Testimony of Buss).

13. Buss testified that she kept track of hours to ensure that she was not working over the 1000-hour limit.³ (Testimony of Buss).

14. Buss further testified that she only exceeded the hourly standard in one year as a result of covering for an absent employee of the office. (Testimony of Buss).

15. Attorney for the County testified that the County has no meaningful process to track retiree or employee hours to ensure IMRF compliance. (Testimony of May).

16. Attorney testified that the County did not intend for Buss to exceed the hourly standard in any year. (Testimony of Attorney).

³ The Committee found Buss' testimony to be credible and persuasive.

17. The County admitted that the hourly overage was an error and an oversight on their part. (Board Exhibits, p. 44).

II. FINDINGS OF FACT

1. The undisputed evidence shows that Buss returned to work with the County and first exceeded 1000-hours worked over a 12-month period in April 2019. She has continued to work the County and has not terminated employment as of February 25, 2021.

2. Buss received retirement annuity benefits at all relevant times, including the period beginning May 1, 2019.

3. Buss tracked her hours but did not timely notify IMRF when she met the hourly standard.

4. The County did not re-enroll Buss in IMRF and did not notify IMRF to suspend Buss' annuity during the period that Buss had returned to work in a qualifying position.

5. The County knew or should have known that Buss was an IMRF annuitant.

6. The County knew or should have known the number of hours that Buss worked but did not enroll Buss as required under the Pension Code.

7. Between May 1, 2019 and February 1, 2021, Buss received a prepayment of retirement annuity benefits not exceeding \$9,741.72.

III. CONCLUSIONS OF LAW

8. The Board of Trustees of IMRF has jurisdiction over this appeal pursuant to Sections 7-146, 7-179, and 7-200 of the Illinois Pension Code (40 ILCS 5/7-146, 7-179, and 7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code (40 ILCS 5/7-198).

9. Buss returned to work in an IMRF qualifying position beginning in April 2019

and has remained employed in this position through the present.

10. IMRF has a fiduciary duty to only pay those benefits authorized by the Illinois Pension Code. Therefore, the prepayment must be repaid to IMRF in an amount not exceeding \$9,741.72, representing amounts paid through February 2021.

11. Pursuant to the terms of Section 7-144(a-5) the County knowingly failed to notify IMRF to suspend Buss' annuity and to re-enroll her when she returned to work in a qualifying position, thereby making the County liable for one-half of the prepayment, or an amount not to exceed \$4,870.86.

12. The term knowingly means that the "[County] is consciously aware that [its] conduct is practically certain to cause the result." *See People v. Dorsey*, 2016 IL App (4th) 140734, ¶ 34.

13. The Board concludes that by choosing not to calculate the total number of hours worked by Buss, the County was consciously aware that its conduct was practically certain to cause the County to fail in its obligation to notify IMRF that Buss returned to work in a qualifying position.

14. At all times relevant to this appeal, Section 7-135(b)(1) of the Illinois Pension Code (40 ILCS 5/7-135(b)(1)) provided that one of the duties of IMRF Authorized Agents is, "[t]o certify to the fund whether or not a given person is authorized to participate in the fund."

15. The County, through its Authorized Agent, has always had a duty to notify IMRF of every employee that was employed by the County in an IMRF qualifying position and to enroll those employees in IMRF.

16. The County has failed to show by a preponderance of the evidence that it did not knowingly fail to notify the Board to suspend Buss' annuity after she returned to work in an IMRF qualifying position.

IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the Petitioners, Shirley A. Buss and Washington County, HEREBY ORDERS as follows:

The administrative staff determination that Shirley A. Buss has returned to work in an IMRF qualifying position and received a prepayment of retirement annuity benefits an amount not to exceed \$9,741.72 is hereby affirmed. Washington County is required to enroll Buss in IMRF participation as of May 1, 2019 and Buss must remain enrolled until her termination of employment. If Buss continues employment with the County, beginning March 1, 2021, her pension will be suspended in accordance with 40 ILCS 5/7-144. Staff is directed to calculate the final prepayment amount, and permit Buss to repay one-half of that amount over a ten-year period. Additionally, the County knowingly failed to notify the Board to suspend the retirement annuity once Buss returned to work in an IMRF qualifying position, thereby making the County liable for one-half of the prepayment. The County is required to repay an amount not to exceed \$4,870.86 to IMRF.

This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (*See* 40 ILCS 5/7-220).

These Findings of Fact and Conclusions of Law are adopted this 26th day of February 2021, by the following roll call vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Being parties to these proceedings.

President, Board of Trustees
Illinois Municipal Retirement Fund

ATTEST:

Secretary, Board of Trustees
Illinois Municipal Retirement Fund

**BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND**

In the Matter of:)
Deer Park Community)
Consolidated Elementary School)
District #82 (Harsted))
[Appeal from a Staff Denial of an)
Accelerated Payment Exemption])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

On August 5, 2020, the Illinois Municipal Retirement Fund (“IMRF”) invoiced Deer Park Community Consolidated Elementary School District #82 (“School District #82”) for an Accelerated Payment (“AP”) assessment in the amount of \$12,131.42, pertaining to wages that were paid to Robert C. Harsted during the period of August 2016 through July 2017. **Supporting Documents at page 5.** IMRF issued the AP Assessment pursuant to Public Act 97-609, which added Section 7-172(k) to the Illinois Pension Code. [40 ILCS 5/7-172(k)].¹ On August 17, 2020, School District #82 timely filed a Request for an Accelerated Payment Exemption. **Supporting Documents at pages 8-18.**

¹ Section 7-172(k) of the Illinois Pension Code provides, in pertinent part, as follows:

“If the amount of a participating employee's reported earnings for any of the 12-month periods used to determine the final rate of earnings exceeds the employee's 12 month reported earnings with the same employer for the previous year by the greater of 6% or 1.5 times the annual increase in the Consumer Price Index-U, ... the participating municipality or participating instrumentality that paid those earnings shall pay to the Fund, in addition to any other contributions required under this Article, the present value of the increase in the pension resulting from the portion of the increase in reported earnings that is in excess of the greater of 6% or 1.5 times the annual increase in the Consumer Price Index-U, as determined by the Fund.” [40 ILCS 5/7-172(k)].

On September 1, 2020, IMRF staff issued an Administrative Staff Determination denying School District #82's request. **Supporting Documents at page 22.** Subsequently, School District #82 timely appealed the Staff Determination. **Supporting Documents at page 23.**

Pursuant to the IMRF Non-Disability Appeal Procedures, School District #82 waived a hearing and chose to rely on the documentation that they submitted to IMRF. Therefore, on February 3, 2021, this appeal was submitted to Michael B. Weinstein, the duly designated IMRF Hearing Officer. Copies of all documentation submitted as evidence were received into evidence as **Supporting Documents pages 1-98, which includes a four-page Cover Memo from the IMRF Associate General Counsel.**

After giving due consideration to the documentation admitted into evidence, the Board of Trustees of IMRF finds and determines as follows:

I. EVIDENCE AND TESTIMONY

Review of Written Documentation

1. School District #82 was invoiced the amount of \$12,131.42, pertaining to wages that were paid to Robert C. Harsted during the period of August 2016 through July 2017. **Supporting Documents at page 5.**

2. School District #82 timely requested an Accelerated Payment Exemption, asserting that Mr. Harsted's earnings increase for the fiscal year in question did not exceed the 6% limitation found in Section 7-172(k) of the Illinois Pension Code since the earnings increase resulted from a two-month

period (August and September 2015) in which Mr. Harsted did not receive any compensation from the School District since he had filed for Workers' Compensation and was off work under doctor's orders. **Supporting Documents at pages 8-18; 23; 80-98.**

3. School District #82 further argues that the purpose of the accelerated payment statute is not satisfied under these factual circumstances. **Supporting Documents at page 48; 80-83.**

4. Thus, Mr. Harsted received wages of \$39,402.34 in the twelve-month period from August 2016 to July 2017. In the previous twelve-month period, from August 2015 to July 2016 he received reported wages of \$31,644.08. Thus, he received an increase in wages of approximately 24.52% during the former period as compared to the latter period. **Supporting Documents at page 21.**

5. Unfortunately, Section 7-172(k) of the Illinois Pension Code does not contain an exemption that would encompass the above-noted scenario. Furthermore, the accelerated payments statute does not require that an employer intend to "spike" an employee's pension. The only requirement is that earnings during any twelve-month period, during an individual's final rate of earnings period, not be greater than 6% over the preceding twelve-month period. **40 ILCS 5/7-172(k).**²

² The School District seemingly acknowledges the absence of an applicable exemption under Section 7-172(k) since it did not identify any qualifying exemption on the Request for Exemption form. **Supporting Documents at page 9-10.**

II. FINDINGS OF FACT

1. The Board finds as fact items 1-5, above.

2. Deer Park Community Consolidated Elementary School District #82 is an IMRF employer and, as such, is subject to the provisions of Section 7-172(k) of the Illinois Pension Code [40 ILCS 5/7-172(k)], commonly known as the “accelerated payments” statute.

3. School District #82 did not intend to “spike” Mr. Harsted’s pension when it did not pay him wages while he was off work due to a job-related injury.

4. Nevertheless, it is undisputed that the Illinois General Assembly, in enacting Section 7-172(k), did not provide an exemption that would cover School District #82’s situation.

5. On the other hand, Section 7-172(k) has been amended to include a new exemption that addresses earnings increases resulting from payments for unused vacation time.

III. CONCLUSIONS OF LAW

1. The Board of Trustees of IMRF (“Board”) has jurisdiction over School District #82’s appeal pursuant to Sections 7-172(k), 7-198 and 7-200 of the Illinois Pension Code [40 ILCS 5/7-172(k), 5/7-198 and 5/7-200], as well as under the Non-Disability Appeal Procedures that have been adopted by the Board.

2. Illinois courts have, on many occasions, noted that a fundamental rule of statutory construction is to give effect to the legislative intent and that

the language of a statute is the best indication of the legislature's intent. e.g., *Murray v. Chicago Youth Center*, 224 Ill.2d 213, 235, 309 Ill.Dec. 310, 864 N.E.2d 176 (2007).

3. Furthermore, a statute's language must be given its plain and ordinary meaning, and courts, as well as administrative agencies such as IMRF, are not free to construe a statute in a manner that changes that meaning. *Id.*

4. Therefore, if the statutory language is clear and unambiguous, courts and administrative agencies must give effect to that plain and ordinary meaning, without resorting to other canons or aids of statutory interpretation. *Id.*

5. Additionally, it is well-established, with respect to statutory construction, that the expression of certain exceptions in a statute will be construed as an exclusion of all others. *State v. Mikusch, et al.*, 138 Ill.2d 242, 250, 562 N.E.2d 168, 149 Ill.Dec. 704 (1990)

6. Section 7-172(k) of the Illinois Pension Code does not provide for an exemption with respect to the facts present in this appeal.

7. Furthermore, the legislature, in amending the accelerated payments statute to add a new exemption pertaining to unused vacation time, has reinforced its prior determination to forego an exemption that would cover School District #82's situation.

8. In considering the totality of the evidence and resolving any conflicts

therein, the Board of Trustees of IMRF hereby finds that School District #82 has not met its burden of proving that it is entitled to an exemption to the accelerated payment requirements, as provided in Section 7-172(k) of the Illinois Pension Code.

IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, IT IS HEREBY ORDERED by the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the accelerated payment appeal of Deer Park Community Consolidated Elementary School District #82, as follows:

The administrative staff determination denying School District #82's appeal is hereby affirmed, and the School District must pay the Accelerated Payment invoice of \$12,131.42, plus any applicable interest, within three (3) years after receipt of said invoice.

This is a final administrative decision which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220).

These Findings and Conclusions of Law are adopted this ____ day of _____, 2021, by the following roll call vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Being parties to these proceedings.

President, Board of Trustees
Illinois Municipal Retirement Fund

ATTEST:

Secretary, Board of Trustees
Illinois Municipal Retirement Fund

**BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND**

In the Matter of:)
Robinson Community Unit)
School District #2 (Cooley))
[Appeal from a Staff Denial of an) Hearing held February 3, 2021
Accelerated Payment Exemption])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

On June 26, 2020, the Illinois Municipal Retirement Fund (“IMRF”) invoiced Robinson Community Unit School District #2 (“School District #2”) for an Accelerated Payment (“AP”) assessment in the amount of \$7,272.42, pertaining to wages that were paid to Debra A. Cooley during the period of June 2013 through May 2014. **Supporting Documents at page 5.** IMRF issued the AP Assessment pursuant to Public Act 97-609, which added Section 7-172(k) to the Illinois Pension Code. [40 ILCS 5/7-172(k)].¹ On July 16, 2020, School District #2 timely filed a Request for a Review of the AP invoice. **Supporting Documents at pages 8-18.**

¹ Section 7-172(k) of the Illinois Pension Code provides, in pertinent part, as follows:

“If the amount of a participating employee's reported earnings for any of the 12-month periods used to determine the final rate of earnings exceeds the employee's 12 month reported earnings with the same employer for the previous year by the greater of 6% or 1.5 times the annual increase in the Consumer Price Index-U, ... the participating municipality or participating instrumentality that paid those earnings shall pay to the Fund, in addition to any other contributions required under this Article, the present value of the increase in the pension resulting from the portion of the increase in reported earnings that is in excess of the greater of 6% or 1.5 times the annual increase in the Consumer Price Index-U, as determined by the Fund.” [40 ILCS 5/7-172(k)].

On August 31, 2020, IMRF staff issued an Administrative Staff Determination denying School District #2's Request for an Accelerated Payment Exemption. **Supporting Documentation at 23.** Subsequently, School District #2 timely appealed the Staff Determination.

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on February 3, 2021, before Michael B. Weinstein, the duly designated IMRF Hearing Officer. Copies of all documentation submitted as evidence at this hearing were received into evidence as **Supporting Documentation, pages 1-33, which includes a four-page Cover Memo from the IMRF Associate General Counsel.** Subsequently, on the day of the hearing, the School District filed an additional sixteen pages of documentation, labeled pages 34 through 49. Although deemed a "late submission" under the Non-Disability Appeal Procedures, these latter documents were also admitted into evidence, without objection.

School District #2 was given proper notice of the hearing. Mr. Gary R. Oxford, Jr., the School District's bookkeeper, appeared on behalf of the District and explained the factual basis for the District's appeal. Also present at the hearing, in addition to the Hearing Officer, were Vladimir Shuliga, Associate General Counsel for IMRF, Elizabeth Carter, IMRF Staff Attorney, Larice Davis, IMRF paralegal and Carolyn Clifford, an attorney with law firm of Ottosen DiNolfo Hasenbalg and Castaldo, Ltd.

As a result of this hearing, the Board of Trustees of IMRF finds and

determines as follows:

I. EVIDENCE AND TESTIMONY

Review of Written Documentation and the Parties' Presentations

1. School District #2 was invoiced the amount of \$7,272.42, representing an AP assessment, with respect to the wages that were paid to Debra A. Cooley from June 2013 through May 2014. **Supporting Documentation at page 5.**

2. School District #2 requested review of the invoice, asserting that Ms. Cooley's earnings increase for the fiscal year in question did not exceed the 6% limitation found in Section 7-172(k) of the Illinois Pension Code since the earnings increase resulted from a personnel policy adopted by the District's Board of Education prior to January 1, 2012. **Supporting Documentation at pages 10-18; 31; 34-49.**

3. Specifically, School District #2 argues that in 2013 the District decided, that in order to comply with the Fair Labor Standards Act, and upon the advice of its human resources firm, it would no longer permit nine-month employees, such as Ms. Cooley, to be "salaried" employees. **Supporting Documentation at pages 31; 35-49.** Instead, the employees would turn in timesheets for each pay period and would be paid for the actual hours worked at the applicable hourly rate over the 9-month school year. **Supporting documentation at page 48.**

4. As a result of this change, Ms. Cooley received wages of \$36,003.59

in the twelve-month period from June 2013 to May 2014. In the previous twelve-month period, from June 2012 to May 2013 she received reported wages of \$30,769.48. Thus, she received an increase in wages of approximately 17% during the former period as compared to the latter period. **Supporting Documentation at pages 5; 13-15.**

5. Unfortunately, Section 7-172(k) of the Illinois Pension Code does not contain an exemption that would encompass the above-noted scenario. Furthermore, the accelerated payments statute does not require that an employer intend to “spike” an employee’s pension. The only requirement is that earnings during any twelve month period, during an individual’s final rate of earnings period, not be greater than 6% over the preceding 12 month period.

40 ILCS 5/7-172(k).²

II. FINDINGS OF FACT

1. The Board finds as fact items 1-5, above.
2. Robinson Community Unit School District #2 is an IMRF employer and, as such, is subject to the provisions of Section 7-172(k) of the Illinois Pension Code [40 ILCS 5/7-172(k)], commonly known as the “accelerated payments” statute.

² With respect to the District’s claimed exemption, Section 7-172(k) of the Illinois Pension Code provides that, “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). This exemption does not apply to the facts present in this matter.

3. School District #2 did not intend to “spike” Ms. Cooley’s pension when it adopted a revised personnel policy that employees such as Ms. Cooley cease being “salaried” employees and instead turn in timesheets for each pay period and would be paid for the actual hours worked at the applicable hourly rate over the 9-month school year.

4. Nevertheless, the undisputed evidence shows that the Illinois General Assembly, in enacting Section 7-172(k), did not provide an exemption that would cover School District #2’s situation.

5. On the other hand, Section 7-172(k) has been amended to include a new exemption that addresses earnings increases resulting from payments for unused vacation time.

III. CONCLUSIONS OF LAW

1. The Board of Trustees of IMRF (“Board”) has jurisdiction over School District #2’s appeal pursuant to Sections 7-172(k), 7-198 and 7-200 of the Illinois Pension Code [40 ILCS 5/7-172(k), 5/7-198 and 5/7-200], as well as under the Non-Disability Appeal Procedures that have been adopted by the Board.

2. Illinois courts have, on many occasions, noted that the most fundamental rule of statutory construction is to give effect to the legislative intent and that the language of a statute is the best indication of the legislature's intent. e.g., *Murray v. Chicago Youth Center*, 224 Ill.2d 213, 235, 309 Ill.Dec. 310, 864 N.E.2d 176 (2007).

3. Furthermore, a statute's language must be given its plain and ordinary meaning, and courts, as well as administrative agencies such as IMRF, are not free to construe a statute in a manner that changes that meaning. *Id.*

4. Therefore, if the statutory language is clear and unambiguous, courts and administrative agencies, must give effect to that plain and ordinary meaning, without resorting to other canons or aids of statutory interpretation. *Id.*

5. Additionally, it is well-established, with respect to statutory construction, that the expression of certain exceptions in a statute will be construed as an exclusion of all others. *State v. Mikusch, et al.*, 138 Ill.2d 242, 250, 562 N.E.2d 168, 149 Ill.Dec. 704 (1990)

6. Section 7-172(k) of the Illinois Pension Code provides for an exemption to the accelerated payment assessment based upon a personnel policy, adopted prior to January 1, 2012, that allows payments in excess of the 6% limitation. However, School District #2's policy with respect to payments to employees such as Ms. Cooley does not fall within this exemption or any of the other enumerated exemptions.

7. Moreover, the legislature, in amending the accelerated payments statute to add a new exemption pertaining to unused vacation time, has reinforced its prior determination to forego an exemption that would cover School District #2's situation.

8. Therefore, the payments made to Ms. Cooley do not fall within any of the exemptions currently provided within the accelerated payments statute.

9. In considering the totality of the evidence and resolving any conflicts therein, the Board of Trustees of IMRF hereby finds that School District #2 has not met its burden of proving that it is entitled to an exemption to the accelerated payment requirements, as provided in Section 7-172(k) of the Illinois Pension Code.

IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, IT IS HEREBY ORDERED by the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the accelerated payment appeal of Robinson Community Unit School District #2, as follows:

The administrative staff determination denying School District #2's appeal is hereby affirmed, and the School District must pay the Accelerated Payment invoice of \$7,272.42, plus any applicable interest, within three (3) years after receipt of said invoice.

This is a final administrative decision which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220).

These Findings and Conclusions of Law are adopted this ____ day of _____, 2021, by the following roll call vote:

AYES: _____

NAYS: _____

ABSTAIN: _____

ABSENT: _____

Being parties to these proceedings.

President, Board of Trustees
Illinois Municipal Retirement Fund

ATTEST:

Secretary, Board of Trustees
Illinois Municipal Retirement Fund