

MEMORANDUM

TO: Board of Trustees
FROM: Benefit Review Committee
DATE: March 24, 2022
SUBJECT: Report of the Benefit Review Committee Meeting held on March 24, 2022

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, March 24, 2022. Present at the meeting were Committee members Copper, Kuehne, Miller, Mitchell, and Stefan. Staff members present were Shuliga, Carter, Janicki Clark, Davis, Dixon, Rockett, Claussen, Osipczuk, Hollyfield, Meade, Wilson, and Hatfield.

(22-03-01) (Roll call)

Trustee Stefan presided as chairperson and called the meeting to order at 1:00 p.m. Committee members Copper, Kuehne, Miller, Stefan, and Mitchell were present for roll call.

(22-03-02) Approval of the committee meeting minutes from February 10, 2022

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

(22-03-03) James Principe – Denial of Temporary Disability

This matter was previously before the Committee at its December 2021 meeting. Additional written materials including medical records and surveillance reports were provided to the committee members for review prior to the hearing. Prior to the hearing, Mr. Principe's new attorney, Barbara Bell, requested a continuance of the hearing given how recently she was retained.

The Committee recommends granting the continuance to the May BRC meeting for the next hearing in Mr. Principe's appeal.

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

(22-03-06) Findings and Conclusion of the IMRF Hearing Officer – Thomas Pollard

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

(22-03-10) Findings and Conclusion of the IMRF Hearing Officer – St. Charles Library District

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

(22-03-04) Kevin Gill – Denial of Temporary Disability

This matter was previously before the Committee at its December 2021 meeting. Additional written materials including medical records were provided to the committee members for review prior to the hearing. Mr. Gill appeared for the hearing via telephone and testified before the Committee.

After deliberation, the Committee recommends that the Board reverse the staff decision denying total and permanent disability benefits. The Committee finds that Mr. Gill’s testimony is credible and persuasive. Based on the medical records and testimony in this matter, the Committee finds that Mr. Gill meets the eligibility requirements for total and permanent disability benefits as set forth in Section 7-150.

Motion: Copper
Second: Kuehne
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None
Absent: None

Motion Passed: 5-0

(22-03-07) Findings and Conclusion of the IMRF Hearing Officer – Russell Zohfeld

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

(22-03-08) Findings and Conclusion of the IMRF Hearing Officer – Kody Moore

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

(22-03-09) Findings and Conclusion of the IMRF Hearing Officer – Geunyoung Pak

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: Copper

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

(22-03-05) Gayle Price – Return to Work Violation

Mrs. Price appeared with her husband Charlie Price before the Committee. Andy Piper, the Authorized Agent for North Suburban Special Education District n/k/a TrueNorth Educational Cooperative 804, appeared before the committee via videoconference. The Committee received and reviewed the written submissions from the member and IMRF staff prior to the hearing. The Committee heard testimony from Gayle Price, Charlie Price, and Andy Piper.

After deliberation, the Committee recommends that the Board affirm the staff determination that Mrs. Price violated the return to work rules; accrued a total prepayment of \$26,016.01; and that the employer is liable for one half of the prepayment. Finally, the committee recommends that Mrs. Price’s portion of the prepayment be recovered over a 10-year period. The Committee recommends that the Board adopt the attached findings and conclusions setting forth the basis of its decision.

Additionally, Trustee Miller expressed his frustration that the Board’s authority to assign liability to the employer being limited to 50% where the employer has all of the necessary information and tools to track the number of hours worked by its staff. Therefore, Trustee Miller requests that the legislative committee evaluate whether the statute can be updated to allow for up to 100% employer liability.

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

(22-03-12) Findings and Conclusion of the IMRF Hearing Officer – Thomas Barwin

Staff Attorney Carter 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: Copper
Ayes: Copper, Kuehne, Miller, Mitchell, Stefan
Nays: None

Absent: None
Motion Passed: 5-0

(22-03-13) Findings and Conclusion of the IMRF Hearing Officer – Jeffrey Boaden

Staff Attorney Carter 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: Copper
Second: Miller
Ayes: Copper, Miller, Stefan
Nays: Kuehne, Mitchell
Absent: None
Motion Passed: 3-2

(22-03-11) Findings and Conclusion of the IMRF Hearing Officer – Ruth McGee

Staff Attorney Carter 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 defer this matter to allow staff to gather additional documentation that may reflect Mrs. McGee's marital status at the times relevant to this appeal. This matter to be set for the May Benefit Review Committee meeting.

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

(22-03-14) Litigation Update

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

(22-03-15) Public Comment

None

(22-03-16) Adjournment

Trustee Copper made a motion to adjourn at 4:31 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:)
Gayle D. Price (MID# 177-3766))
and North Suburban Special Education)
District (ER# 5293))
[Appeal of return to work violation]) Hearing held March 24, 2022

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the IMRF Non-Disability Appeal Procedures, the Benefit Review Committee met on March 24, 2022, to hear the appeal of Gayle Price (“Price”) and the North Suburban Special Education District, a/k/a TrueNorth Educational Cooperative 804 (the “District”) regarding an IMRF staff determination that Price returned to work in an IMRF-qualifying position with the District in violation of the Illinois Pension Code. Price and the District were given proper notice of the hearing.

Introduction

Price participated in the Illinois Municipal Retirement Fund (“IMRF”) with the District from August 2001 to June 2018. She retired from IMRF effective July 1, 2018. In August 2018, Price began employment with the District while continuing to collect her IMRF retirement benefits. IMRF staff conducted an employer compliance review of the District in October 2021 and found that Price had exceeded the hourly standard, thereby qualifying her for IMRF participation, beginning on June 1, 2020. IMRF determined that Price’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 Price accrued a prepayment of \$47,347.96¹ as of November 2021. Price continued to

¹ Based on additional information received at hearing, this amount was reduced to \$26,016.01.

be in an IMRF qualifying position until leaving employment with the District in March 2021. While both Price and the District were served with the staff determination, only Price submitted an appeal.

Price does not dispute that she worked more than 599 hours in a year but argues that she attempted to follow the return to work rules but miscounted her hours. She further argues that the District did not assist her in tracking her hours, but that they were aware that she was an IMRF annuitant. The District admits that their system did not catch the overage in hours worked and that the District could be liable for a portion of the prepayment charged to Price. (40 ILCS 5/7-144(a-5))² The District argues, however, that the prepayment charged is excessive based on the circumstances.

Administrative Hearing Procedure

Price appeared in person with her husband, Charlie Price, and explained the basis for her appeal. Andy Piper (“Piper”), IMRF Authorized Agent for the District, appeared on behalf of the District appeared via video conference. Committee Chairperson Peter Stefan presided over the hearing. Committee members Natalie Copper, Tom Kuehne, Dave Miller, and Tracie Mitchell were also present. IMRF staff present at the hearing included Beth Janicki Clark, IMRF General Counsel, Vladimir Shuliga, IMRF Associate General

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))

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 and Price at this hearing were received into evidence as Board Exhibits, pages 1 through 118. The day before the hearing, on March 24, 2022, Price submitted additional documents in support of her appeal. The IMRF Board granted leave to submit these documents for consideration, which are incorporated into the record as Board Exhibits, pages 119 through 125. The District also submitted a letter on March 24, 2022, which was considered by the Board.

As a result of the March 24, 2022 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. Price is an IMRF annuitant who first retired and began drawing an IMRF pension in July 2018. (Board Exhibits, pp. 3, 10; Testimony of Price).
2. Price began working for her former employer, the North Suburban Special Education District, on August 16, 2018. (Board Exhibits, pp. 3, 133; Testimony of Price).
3. While working for the District, Price knew that she was required to work less than 599 hours annually in order to continue receiving her retirement benefit. (Board Exhibits, pp. 3, 62-63; Testimony of Price).
4. On October 14, 2021, an IMRF employer compliance review determined that Price had returned to work beginning in May 2020, when she first exceeded the 600-hour standard for IMRF qualification with the District, and should have been enrolled in IMRF participation as of June 1, 2020. (Board Exhibits, pp. 3, 12-13).

5. On May 20, 2020, IMRF notified Price that due to her return to work, 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 District. (Board Exhibits, pp. 1, 14-15).

6. IMRF determined that Price received a total prepayment of \$47,347.96³ as of November 2021, which constituted the retirement pension payments Price received while working in an IMRF-qualifying position with the District. (Board Exhibits, pp. 4, 41-42).

7. On March 19, 2021, Price terminated employment with the District. (Board Exhibits, p. 125; Testimony of Price).

8. Price testified that she attempted to keep track of hours to ensure that she was not working over the 600-hour limit.⁴ (Testimony of Price).

9. Price further testified that she made a mistake in the counting of her hours worked, which caused her to exceed the hourly standard. (Testimony of Price).

10. Price does not dispute, and in fact admitted, that she did exceed 600 hours of work in at least two years, beginning as of June 1, 2020. (Testimony of Price).

11. Piper testified that the District was aware that Price was an IMRF retiree upon her hire in August 2018. (Testimony of Piper).

12. Piper testified that the District did not intend for Price to exceed the hourly standard in any year, but that their system did not catch the overage of hours worked. (Testimony of Puma).

13. Piper testified that, had a non-retiree been hired to the same position occupied

³ Through her termination date on March 19, 2021, the adjusted prepayment amount is \$26,016.01.

⁴ The Committee found Price's testimony to be credible and persuasive.

by Price, that individual would have been enrolled in IMRF if the position met the hourly standard. (Testimony of Piper).

14. Piper testified that the District received notices from IMRF relating to retirees, such as Price, relating to their number of hours worked. (Testimony of Piper).

15. IMRF staff testified that the corrected prepayment amount for the period from June 2020 through March 2021, is \$26,016.01. (Testimony of Carter).

II. FINDINGS OF FACT

1. The undisputed evidence shows that Price returned to work with the District and first exceeded 600-hours worked over a 12-month period in May 2020, and should have been enrolled in IMRF as of June 1, 2020. She continued to work in an IMRF-qualifying position until March 19, 2021.

2. Between June 1, 2020, and March 19, 2021, Price received retirement annuity benefits.

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

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

5. In any case, the District was aware of the number of hours that Price worked but did not enroll Price as required under the Pension Code.

6. The District paid Price on an hourly basis and kept records related to the number of hours that she worked in order to accurately pay her wages.

7. Between June 1, 2020, and March 19, 2021, Price received a prepayment of retirement annuity benefits not exceeding \$26,016.01.

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. Price returned to work in an IMRF qualifying position beginning on June 1, 2020, and remained in a qualifying position until March 19, 2021.

10. Section 7-144(a) of the Pension Code requires that the pension of an annuitant who returns to work and exceeds the

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 to exceed \$26,016.01.

12. Pursuant to the terms of Section 7-144(a-5) the District knowingly failed to notify IMRF to suspend Price's annuity and to re-enroll her when she returned to work in a qualifying position, thereby making the District liable for one-half of the prepayment, or an amount not to exceed \$13,008.01.

13. The term knowingly means that the "[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 choosing not to review the total number of hours worked by Price, the District was consciously aware that its conduct was practically certain to cause the District to fail in its obligation to notify IMRF that Price 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 District, through its Authorized Agent, has always had a duty to notify IMRF of every employee that was employed by the District in an IMRF qualifying position and to enroll those employees in IMRF.

17. The District has failed to show by a preponderance of the evidence that it did not knowingly fail to notify the Board to suspend Price’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, Gayle Price and the North Suburban Special Education District, HEREBY ORDERS as follows:

The administrative staff determination that Gayle Price returned to work in an IMRF qualifying position and received a prepayment of retirement annuity benefits an amount not to exceed \$26,016.01 is hereby affirmed. Staff is directed to calculate the final prepayment amount, and permit Price to repay one-half of that amount over a ten-year period. Additionally, the District knowingly failed to notify the Board to suspend the retirement annuity once Price returned to work in an IMRF qualifying position, thereby making the District liable for one-half of the prepayment. The District is required to repay an amount not to exceed \$13,008.01 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 25th day of March 2022, 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)
Thomas W. Pollard (MID# 159-0473))
) Hearing February 22, 2022
[Appeal of Ineligibility for ERI])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Thomas W. Pollard, an employee for the Village of Bedford Park and member of the Illinois Municipal Retirement System (“IMRF”), appealed an IMRF staff determination that he was not eligible for the Early Retirement Incentive (“ERI”) offered by the Village under Section 7-141.1 of the Illinois Pension Code (40 ILCS 5/7-141.1).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on February 22, 2022, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Pollard was given proper notice of the hearing and appeared at the hearing with his attorney, David A. Johnson. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Pollard were admitted into evidence for the administrative record as **Pollard Supporting Documents** (pages 1 through 171) (hereinafter, “**Documents**”). Testimony was received from Pollard, who testified under oath and were subject to cross examination. As a result of the hearing, the Board of Trustees of IMRF finds and determines as follows:

A. REVIEW OF APPLICABLE STATUTES / IMRF LEGAL INTERPRETATION

1. Section 7-141.1 of the Illinois Pension Code provides an “Early Retirement Incentive” (“ERI”) program that IMRF employers may, in their sole discretion, adopt with a goal to create cost savings by targeting highly paid senior employees to retire early. (40 ILCS 5/7-141.1(a))

2. To be eligible for an ERI, an employee must have attained age 50 and have at least 20 years of creditable service *in the Fund* by his or her retirement date, “without the use of any creditable service established under this Section.” (40 ILCS 5/7-141.1(c)(4) and (5)) Under ERI, eligible employees may then purchase five years of service to receive an “age enhancement” which permits retirement prior to age 55. [emphasis added] (40 ILCS 5/7-141.1(c)(4) and (5))

3. Section 7-104 defines “Fund” for purposes of its use in Article 7 as the “Illinois Municipal Retirement Fund” (40 ILCS 5/7-104).

4. Under Section 7-113, the term “creditable service” means “[a]ll periods of prior service or current service for which credits are granted under the provisions of Section 7-139 [40 ILCS 5/7-139].” (40 ILCS 5/7-113)

5. Section 7-139 provides a list of sources of creditable service for participating employees in IMRF. This list includes current service and prior service with an IMRF participating municipality or instrumentality, as well as service for certain periods of disability, leaves of absence, military service, and service transferred from another pension fund under Articles 4, 5, 8, 14, or 16 of the Illinois Pension Code. (40 ILCS 5/7-139)

6. Reciprocal service credit is provided under Article 20 of the Illinois Pension Code in the Retirement Systems Reciprocal Act. Specifically, Section 20-114 provides that benefits to an employee who has credit in more than one reciprocal system are “limited only to a retirement annuity and survivor’s annuity, and to the pension credit established for such purposes.”¹ (40 ILCS 5/20-114)

7. IMRF Legal Interpretation 212 regarding “ERI and Reciprocal Service” (dated February 8, 2021) states that reciprocal service may not be used to meet the 20-year requirement to be eligible for the IMRF early retirement incentive. (See Documents, pp. 40-41)

¹ Illinois Municipal Retirement Fund (“IMRF”) is a reciprocal system under Section 7-215 of the Illinois Pension Code (40 ILCS 5/7-215).

8. According to IMRF Legal Interpretation 212, because the term “Fund,” as used in Section 7-141.1(c)(4), means “IMRF,” only “Fund” (“IMRF”) credit may count toward the 20-year requirement under ERI and may not include any service with a reciprocal retirement fund. (See Documents, p. 40)

9. IMRF Legal Interpretation 212 acknowledged the historical practice of allowing members to use their reciprocal service for ERI eligibility and thus set forth a transition to no longer allowing the use of reciprocal service in ERI. Specifically, participating employers with cost studies dated prior to January 1, 2021 that include employees using reciprocal service to meet the 20-year requirement must open the window prior to August 31, 2021, in order for any employee using reciprocal service to meet the eligibility requirements and retire under ERI. However, for any ERI enacted by a participating employer after August 31, 2021, or ERI cost study dated after January 1, 2021, no employee may use reciprocal service to achieve 20 years of service for ERI. (See Documents, pp. 40-41)

B. FINDINGS OF FACT

10. Pollard became a police officer for the Village of Bedford Park on June 28, 2008. Because the Village did not meet the population requirement to establish an Article 3 police pension fund, Pollard was enrolled in IMRF as a participant at the time of hire. As of the date of hearing, Pollard has thirteen years and eight months of creditable service with IMRF. (40 ILCS 5/3-101 and 3-103)² (See Documents, pp. 5 and 65)

11. Prior to his employment with the Village, Pollard testified that he worked as a corrections officer for Cook County. During his employment with Cook County, he was enrolled in the County Employees’ and Officers’ Annuity and Benefit Fund of Cook County (“CCPF”) in

² The Village of Bedford Park continues to enroll its police officers in IMRF and does not have an Article 3 police pension fund to date.

which he earned over twelve years of creditable service.³ When he left employment with Cook County in 2008, Pollard testified that he took a refund of his contributions from CCPF. At hearing, Pollard stated that he has repaid the CCPF refund to reestablish creditable service. (See **Documents**, pp. 5, 44-45, and 65)

12. In November 2020, the Village explored the option of offering an ERI program to its employees by requesting an estimate of the cost of the program from IMRF. According to an email exchange between Marilyn Curnutte, the Village Chief Administrative Officer – Finance, and Paul Parise at IMRF, this inquiry was at the request of the Village’s police and firefighter union representatives. (See **Documents**, p. 75)

13. IMRF actuaries prepared the cost estimate which was sent to the Village on November 5, 2020 with an assumed opening date of December 31, 2020. The cover letter transmitting the cost estimate included a summary of the provisions for ERI, including the following excerpt outlining the eligibility of members to retire under ERI:

To be eligible to retire under ERI, a Tier 1 member must be at least age 50 years old and have 20 or more years of IMRF service credit by their date of retirement. The 20 years of service *can include service credit earned with another IMRF employer and/or reciprocal service credit*. These ERI requirements apply to regular Tier 1 IMRF members, Sheriff’s Law Enforcement Personnel (SLEP) members, and Elected County Officials (CFO). [emphasis added] (See **Documents**, pp. 9-26, 78)

14. The December 2020 IMRF cost estimate sent to the Village included the member data used in the analysis of the individual Village employees who would be eligible for ERI, noting their salary, total service and ERI cost. Notably, Pollard was not included in the list of eligible employees used in the cost estimate. (See **Documents**, pp. 9-26)

15. The Village did not open the ERI program on December 31, 2020. On January 25, 2021, Curnutte contacted Parise via email regarding the status of the ERI program. In her email, Curnutte stated:

³ County Employees’ and Officers’ Annuity and Benefit Fund of Cook County (“CCPF”) was created and is governed by Article 9 of the Illinois Pension Code (40 ILCS 5/9-101 *et seq.*). CCPF is a reciprocal system under Section 9-223 of the Illinois Pension Code (40 ILCS 5/9-223).

Still working on the ERI and we have a Police Officer (IMRF member ID 159-0473) [Pollard] who is not on the current ERI eligibility list because he has only worked for the Village for 12 ½ years. However, he worked for Cook County prior to working for Bedford Park. He said that he is in the process of converting his Cook County time into IMRF time. Do you know how this would work? We were not aware that non-IMRF time could be converted. *Also, once the conversion process is completed and he has over 20 years of IMRF service credit, would he be eligible for the ERI?* [emphasis added] (See **Documents**, p. 93)

16. On the same day, Parise responded to Curnutte's question regarding Pollard's service with Cook County, stating, "Service with another Illinois pension may count towards the 20 years for ERI with the Village." (See **Documents**, p. 93)

17. On March 19, 2021, Parise sent Curnutte two IMRF booklets. One booklet, entitled "IMRF Early Retirement Incentive" (revised June 2008), specifically stated that a member can use reciprocal service credit to meet the service requirement for IMRF ERI. (See **Documents**, pp. 95, 103)

18. On April 12, 2021, Pollard sent an email to Tom Hansen, Chief of Police for the Village, stating he would be taking advantage of ERI and planning to retire early.⁴ He further advised Chief Hansen that he had contacted IMRF on that same day, and "due to my reciprocal years being used I was told that my type of estimate takes 60 to 90 days to complete." (See **Documents**, p. 171)

19. On July 8, 2021, Curnutte advised Parise that the Village was moving forward with the ERI and requested a second cost study from IMRF. Curnutte specifically requested this second cost study include an updated eligibility list and cost analysis for a September 1, 2021 to August 31, 2022 ERI timeframe. (See **Documents**, p. 134)

20. IMRF provided the second ERI cost study to the Village on July 9, 2021, and again on July 12, 2021, with revisions requested by the Village regarding the eligible employees

⁴ In an email dated September 10, 2021, from Pollard to Curnutte, Pollard stated his intended retirement date is June 30, 2022. Further, Pollard stated in this email that he had submitted an irrevocable retirement letter to the Village Board as required by the Village's August 9, 2021 directive. (See **Documents**, pp. 162, 170-171)

and applicable salary. Again, Pollard was not included in the list of eligible employees used in either version of the second cost estimate. (See Documents, pp. 27-34, 131-132)

21. On August 5, 2021, the Village of Bedford Park Board of Trustees passed a resolution adopting an ERI program with an opening date of September 1, 2021, pursuant to Section 7-141.1 of the Illinois Pension Code (40 ILCS 5/7-141.1). The resolution adopted by the Village Board was on a standard form provided by IMRF which confirmed that employees “must have attained age 50 and have at least 20 years of creditable service by his or her retirement date” in order to participate in the ERI window. (See Documents, p. 35)

22. The Village hosted two webinars for its employees on August 10 and 12, 2021, presented by Parise, to discuss the IMRF ERI program and answer questions, which Pollard stated he attended. (See Documents, pp. 44 and 144-160)

23. Thereafter, on August 20, 2021, Lisa Foley, IMRF Senior Member Service Representative, sent Pollard a letter, in follow up to a telephone conversation they had regarding his pension estimate request. Foley advised Pollard:

Unfortunately, reciprocal service can no longer be used to meet the 20 year requirement to retire using the Early Retirement Incentive. I am sorry that information was not explained to you when you requested the estimate.

Foley also provided Pollard a copy of IMRF Legal Interpretation 212 (dated February 8, 2021) with this correspondence. (See Documents, pp. 39-41)

24. Just before the Village’s ERI window opened, Pollard sought assistance from Parise regarding his IMRF ERI issue on August 30, 2021. On September 3, 2021, IMRF General Counsel Beth Janicki Clark prepared a written response to Pollard on his ERI inquiry, advising him that, “Reciprocal service credit in funds other than IMRF cannot be considered to meet the 20-year service requirement. You have approximately thirteen years of IMRF service credit, and therefore are ineligible for the program.” (See Documents, pp. 42-43)

25. IMRF staff admitted that previous communications to Pollard had incorrectly informed Pollard that reciprocal service credit could be used to meet the twenty-year service requirement under ERI. (See Documents, p. 5)

26. On September 7, 2021, Pollard timely appealed the IMRF Staff Determination by letter to IMRF Associate General Counsel Shuliga. (See Documents, pp. 44-45) On September 14, 2021, IMRF Associate General Counsel Shuliga provided correspondence to Pollard, acknowledging receipt of the appeal and providing a copy of the IMRF appeal procedures. (See Documents, pp. 59-64)

27. Attorney Johnson filed his client's Statement of Claim and supporting exhibits with IMRF on December 13, 2021. Pollard primarily argues that the plain language of Section 7-141.1(c)(4) does not limit the use of reciprocal service to satisfy the 20-year eligibility requirement. It is Pollard's position that even if the provision was ambiguous, the statute should be construed in favor of the member. Furthermore, given IMRF's historical policy to permit members to use reciprocal credit to satisfy the 20-year service requirement for ERI, Pollard argues that IMRF's current interpretation diminishes and impairs his benefits under the Pension Protection Clause of the Illinois Constitution. (40 ILCS 5/7-141.1(c)(4); Ill. Const. Art. XIII §5). (See Documents, pp. 65-171)

C. CONCLUSIONS OF LAW

28. The Board of Trustees of the Illinois Municipal Retirement Fund has jurisdiction over this appeal pursuant to Section 7-179 of the Illinois Pension Code (40 ILCS 5/7-179), 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).

29. The Board has a fiduciary duty to administer the Fund in accordance with the applicable provisions of the Illinois Pension Code. (40 ILCS 5/1-109)

30. To be eligible for ERI, Section 7-141.1(c)(4) specifically requires at least 20 years of creditable service "in the Fund" by the date of retirement. Reciprocal service is not

service “in the Fund,” as the “Fund” as defined by Section 7-104 is “IMRF.” Pollard’s only service credit in the Fund (“IMRF”) is the service he has earned through his employment with the Village of Bedford Park, which as of the date of hearing is thirteen years and eight months. (40 ILCS 5/7-104; 7-141.1(c)(4))

31. Furthermore, only service credit established under Section 7-139 may be used to calculate whether a member has twenty years of creditable service as required for ERI under Section 7-141.1(c)(4). Pollard has not established or earned additional service credit under Section 7-139. Pollard’s service earned with CCPF, an Article 9 fund, is reciprocal service credit under Article 20, but is not, by definition, “established under Section 7-139.” (40 ILCS 5/7-141.1(c)(4) and 7-139; 40 ILCS 5/20-101 *et seq.*)

32. While IMRF has previously permitted the use of reciprocal service credit to meet the 20-year eligibility requirement to retire under ERI, IMRF exceeded its authority under the Illinois Pension Code to permit such use. IMRF is obligated to properly implement the provisions of the Illinois Pension Code, despite its error in prior interpretations of these provisions.

D. 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, HEREBY ORDERS as follows:

1. The administrative staff determination that IMRF member Thomas W. Pollard is ineligible to retire under the Early Retirement Incentive window established by the Village of Bedford Park from September 1, 2021 to August 31, 2022, under Section 7-141.1 of the Illinois Pension Code (40 ILCS 5/7-141.1), is hereby AFFIRMED.

2. This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220; 735 ILCS 5/3-101)

These Findings of Fact and Conclusions of Law are adopted this _____ day of March, 2022, 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)
Russell V. Zohfeld (MID# 188-6174))
) Hearing February 22, 2022
 [Appeal for Reinstatement and)
 Transfer of Service Credit])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Russell V. Zohfeld, a former participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit he earned from 2002 to 2007 as a Radio Operator through the Village of Midlothian did not qualify for reinstatement and transfer to an Article 3 pension fund because the position did not involve “police duties” under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on February 22, 2022, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Zohfeld was given proper notice of the hearing and appeared at the hearing. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Zohfeld were admitted into evidence for the administrative record as **Zohfeld Supporting Documents** (pages 1 through 39) (hereinafter, “**Documents**”). Testimony was received from Zohfeld, who testified under oath and was subject to cross examination. As a result of the hearing, the Board of Trustees of IMRF finds and determines as follows:

A. REVIEW OF APPLICABLE STATUTES AND CASE LAW

1. Section 7-139.14 of the Illinois Pension Code provides a six-month window for an active police officer participating in an Article 3 police pension fund to transfer three specific types of IMRF service credit to that Article 3 fund: (a) IMRF service as a sheriff’s law enforcement employee; (b) IMRF service by a person employed by a participating municipality to

perform police duties; or (c) IMRF service as a law enforcement officer employed on a full-time basis by a forest preserve district. (40 ILCS 5/7-139.14)

2. Section 3-106 of the Illinois Pension Code provides, in relevant part, that a “police officer” is “any person . . . appointed to the police force of a police department and sworn and commissioned to perform police duties.” (40 ILCS 5/3-106)

3. Section 7-109 of the Illinois Pension Code provides a definition of “employee” for purposes of IMRF membership. Subsection (2)(b) of Section 7-109 specifically states that “employee” does not include persons who are designated by their municipality to perform “police duties,” with the exception of the head of a police department or chief of police under certain limited circumstances. (40 ILCS 5/7-109)

4. “Police duties,” as the term is used in the Illinois Pension Code, are performed by individuals who are appointed to a police department, and sworn and commissioned to perform such duties. “Generally, police duties encompass a wide variety of law enforcement and order-maintenance functions including arrest, crime prevention and deterrence, crowd control, investigation, providing aid, and creating and maintaining a feeling of security.” (See IMRF Legal Interpretation 182, **Documents**, pp 6-7; 40 ILCS 5/3-106; also see *Fraternal Order of Police Lodge No. 109 v. Illinois Labor Relations Board*, 189 Ill. App. 3d 914, 918 (2nd Dist. 1989))

B. FINDINGS OF FACT

5. Zohfeld enrolled as a participant in IMRF on April 14, 2002. On the IMRF enrollment form, the Village stated Zohfeld had been hired by its Police Department as a full-time Radio Operator, having previously served part-time. (See **Documents**, p. 8)

6. Zohfeld explained at hearing, as well as in his request for appeal and Statement of Claim submitted on December 2 and 20, 2021, that the Village’s enrollment form inaccurately reflected his position with the Village. Zohfeld stated that simultaneously while working as an

emergency dispatcher, he held a dual assignment working as a part-time police officer for the Village beginning March 8, 2004. (See **Documents**, pp. 10, 15-16 and 30)

7. Zohfeld stated that in his role as part-time police officer, he handled walk-in calls for service, as well as patrol duties. On January 29, 2005, Zohfeld became certified as a part-time law enforcement officer by the Illinois Law Enforcement Training and Standards Board. Furthermore, Zohfeld testified at hearing that he was awarded the Illinois State Police Medal of Honor in 2006 for an officer-involved shooting that occurred in December 2005. (See **Documents**, pp. 15, 17)

8. According to information provided by the Village's Police Chief, Daniel Delaney, Radio Operators (Police Dispatchers) were not sworn or commissioned positions. There were not testing processes or swearing in of personnel for these positions, as the Village does with its sworn police officers. Furthermore, there is no evidence in the record indicating that the Radio Operator position held by Zohfeld involved "police duties." (See **Documents**, p. 12)

9. At hearing, Zohfeld was questioned about his reported IMRF wages during the timeframe of 2002 to 2007. Zohfeld was unsure if the reported wages included both his position as a Radio Operator and his part-time position as a police officer.¹ (See **Documents**, p. 24)

10. On August 1, 2007, Zohfeld terminated IMRF participation. On August 12, 2007, he was appointed as a sworn police officer with the Village of Midlothian Police Department. Zohfeld is currently a member of the Midlothian Police Pension Fund with over 14 years of service.² (See **Documents**, pp. 9-10)

¹ Because the Midlothian Police Pension Fund was in existence during Zohfeld's entire tenure with the Village, any hours worked or wages earned while performing police duties would have been specifically excluded from IMRF. (40 ILCS 5/7-109(2)(b)). Furthermore, had Zohfeld worked in a qualifying position as a police officer beginning March 2004, he would have been enrolled in the Article 3 fund.

² Also see Illinois Department of Insurance Annual Statement for the Midlothian Police Pension Fund for Fiscal Year ending April 30, 2021, p. 41 (available at [Pension Annual Statement System \(illinois.gov\)](https://www.pensionannualstatement.com/illinois.gov)).

C. CONCLUSIONS OF LAW

11. The Board of Trustees of the Illinois Municipal Retirement Fund has jurisdiction over this appeal pursuant to Section 7-179 of the Illinois Pension Code (40 ILCS 5/7-179), 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).

12. The Board has a fiduciary duty to administer the Fund in accordance with applicable provisions of the Illinois Pension Code. (40 ILCS 5/1-109)

13. In order to transfer IMRF service to an Article 3 police pension fund under Section 7-139.14 of the Illinois Pension Code, the service must qualify under one of the three enumerated types of service set forth in the statute. (40 ILCS 5/7-139.14)

14. As used in various sections of Article 7, IMRF applies the Article 3 definition of “police officer.” According to IMRF Legal Interpretation 182, “[s]omeone who performs ‘police duties’ is defined as someone ‘who is appointed to the police force of a police department and sworn and commissioned to perform police duties.’” Thus, individuals who are not sworn and commissioned to perform police duties, including law enforcement and arrest functions, are not individuals who perform “police duties” under Article 7 of the Illinois Pension Code. (See Documents, pp. 6-7)

15. Zohfeld’s IMRF service with the Village of Midlothian as a Radio Operator was neither “service as a sheriff’s law enforcement employee” nor service as a “law enforcement officer employed on a full-time basis by a forest preserve district.” (40 ILCS 5/7-139.14)

16. Furthermore, Zohfeld’s IMRF service with the Village of Midlothian as a Radio Operator was not as a “person employed by a participating municipality to perform police duties.” (40 ILCS 5/3-106; 7-139.14)

17. Section 7-109 of the Illinois Pension Code specifically excludes from IMRF participation any person who is “designated by the governing body of a municipality in which a

pension fund is required by law to be established for policemen or firemen, respectively, as performing police or fire protection duties.” (40 ILCS 5/7-109)

18. As a Radio Operator, Zohfeld was not sworn or commissioned as a police officer; there was no evidence presented that while in his Radio Operator role that he carried a firearm and had the power to arrest and place a suspect into custody. In short, Zohfeld did not perform “police duties” as a Radio Operator for the Village of Midlothian.

19. Any “police duties” performed and wages earned by Zohfeld in his secondary role for the Village of Midlothian as a part-time police officer were not eligible for IMRF credit, and there is no evidence in the record that supports a finding that the wages reported to IMRF from 2002 to 2007 included wages earned by Zohfeld as a part-time police officer. (See Documents, p. 10)

20. Instead, the Village considered Zohfeld a civilian employee in his Radio Operator role who qualified for IMRF membership. Upon his appointment as a full-time sworn and commissioned police officer for the Village in August 2007, Zohfeld’s membership in IMRF properly terminated because he was no longer qualified as an “employee” under Section 7-109. Thereafter, he became a member of the Village’s Article 3 police pension fund as a “police officer” performing “police duties” under Section 3-106. (40 ILCS 5/3-106 and 7-109) (See Documents, p. 9)

D. 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, HEREBY ORDERS as follows:

1. The administrative staff determination that former IMRF participant Russell V. Zohfeld did not qualify for reinstatement and transfer of service credit he earned from 2002 to 2007 as a Radio Operator through the Village of Midlothian to an Article 3 pension fund because

the position did not involve “police duties” under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14) is hereby AFFIRMED.

2. This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220; 735 ILCS 5/3-101)

These Findings of Fact and Conclusions of Law are adopted this _____ day of March, 2022, 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)
Kody Moore (MID# 110-1652))
) February 23, 2022
 [Appeal for Reinstatement and)
 Transfer of Service Credit])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kody Moore, a participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit he earned from 2012 to 2015 as a Corrections Officer through Wayne County did not qualify for reinstatement and transfer to an Article 3 pension fund under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14) because he was not an active participant in an Article 3 pension fund at the time he applied for the transfer.

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing opportunity on February 23, 2022, was provided by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Moore was given proper notice of the hearing but failed to appear at the hearing. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Moore were admitted into evidence for the administrative record as **Moore Supporting Documents** (pages 1 through 22) (hereinafter, “**Documents**”). As a result of this review, the Board of Trustees of IMRF finds and determines as follows:

A. REVIEW OF APPLICABLE STATUTES AND CASE LAW

1. Section 7-139.14 of the Illinois Pension Code provides a six-month window for *an active police officer participating in an Article 3 police pension fund* to transfer three specific types of IMRF service credit to that Article 3 fund: (a) IMRF service as a sheriff’s law

enforcement employee; (b) IMRF service by a person employed by a participating municipality to perform police duties; or (c) IMRF service as a law enforcement officer employed on a full-time basis by a forest preserve district. [emphasis added] (40 ILCS 5/7-139.14)

2. Section 3-106 of the Illinois Pension Code provides, in relevant part, that a “police officer” is “any person . . . appointed to the police force of a police department and sworn and commissioned to perform police duties.” (40 ILCS 5/3-106)

B. FINDINGS OF FACT

3. Moore enrolled as a participant in IMRF on September 17, 2012 through his employment with Wayne County. On the IMRF enrollment form, the County stated his position was Correctional Officer. (See Documents, p. 4)

4. On May 29, 2015, Moore terminated IMRF participation and thereafter took a refund of his accrued IMRF service in June of 2015. On March 30, 2016, he was appointed as a sworn police officer with the City of Fairfield Police Department. As of April 30, 2021, Moore was a member of the Fairfield Police Pension Fund with over five years of service.¹ (See Documents, pp. 5-6)

5. According to headlines for Thursday, October 14, 2021, posted online by WFIW 104.9 FM in Fairfield, Illinois, Moore tendered his resignation from the Fairfield Police Department on October 13, 2021. The report online stated:

The city accepted and will not require two-weeks notice in an effort to allow [Moore] to assume a new position as quickly as possible.² (See Documents, p. 19)

6. On December 6, 2021, IMRF notified Moore by letter that he did not meet the requirements for buying service to transfer to an Article 3 police pension fund, because he was

¹ Also see Illinois Department of Insurance Annual Statement for the Fairfield Police Pension Fund for Fiscal Year ending April 30, 2021, p. 30 (available at [Pension Annual Statement System \(illinois.gov\)](#)). IMRF confirmed with the Fairfield Police Pension Fund that Moore terminated participation with the Article 3 fund in October 2021. (See Documents, p. 2)

² The online version is available at [Headlines for Thursday, October 14th | WFIW \(wfiwradio.com\)](#).

not currently an active member of an Article 3 fund at the time of his application on November 24, 2001. (See Documents, pp. 7 and 9)

7. Moore timely appealed the IMRF staff decision by letter dated December 6, 2021, in which Moore explained:

It was beyond my control. I gave the city a two week notice but due to Mayor saying they didn't need my notice they removed me from schedule. I was making the 25th my last day with the city police department and the 26th my first day with Wayne Co. Sheriffs Department.³ (See Documents, p. 10)

8. On December 13, 2021, IMRF Associate General Counsel Shuliga provided correspondence to Moore, acknowledging receipt of the appeal and providing a copy of the IMRF appeal procedures. (See Documents, pp. 12-17)

9. Moore submitted his Statement of Claim on December 13, 2021, in which he clarified that his last scheduled day with the Fairfield Police Department should have been October 25, 2021, and his first day at the Wayne County Sheriffs Department was October 26, 2021. (See Documents, p. 18)

C. CONCLUSIONS OF LAW

10. The Board of Trustees of the Illinois Municipal Retirement Fund has jurisdiction over this appeal pursuant to Section 7-179 of the Illinois Pension Code (40 ILCS 5/7-179), 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).

11. The Board has a fiduciary duty to administer the Fund in accordance with applicable provisions of the Illinois Pension Code. (40 ILCS 5/1-109)

12. In order to transfer IMRF service to an Article 3 police pension fund under Section 7-139.14(a) of the Illinois Pension Code, the individual must be “an active member of a pension fund established under Article 3.” (40 ILCS 5/7-139.14(a))

³ As of October 26, 2021, Moore is again enrolled in IMRF with Wayne County as a participant in the sheriff's law enforcement personnel (“SLEP”) plan. (See Documents, p. 3)

13. Moore submitted his application to IMRF for transfer under Section 7-139.14 on November 24, 2021. On that date, he was not an active member of the Fairfield Police Pension Fund or any other Article 3 fund.

D. 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, HEREBY ORDERS as follows:

1. The administrative staff determination that IMRF participant Kody Moore did not qualify for reinstatement and transfer of service credit he earned from 2012 to 2015 as a Correctional Officer through Wayne County to an Article 3 pension fund under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14) because he was not an active participant in an Article 3 pension fund is hereby AFFIRMED.

2. This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220; 735 ILCS 5/3-101)

These Findings of Fact and Conclusions of Law are adopted this _____ day of March, 2022, 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)
Geunyoung Pak (MID# 217-1246))
) February 22, 2022
 [Appeal for Reinstatement and)
 Transfer of Service Credit])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Geunyoung Pak, a former participant in the Illinois Municipal Retirement Fund (“IMRF”), appealed an IMRF staff determination that service credit he earned from 2014 to 2015 as a Correctional Officer through Lake County did not qualify for reinstatement and transfer to an Article 3 pension fund because the position did not involve “police duties” under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14).

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing opportunity was provided on February 22, 2022, by video conference, before Carolyn Welch Clifford, one of the IMRF Administrative Hearing Officers. Pak was given proper notice of the hearing and declined the hearing opportunity. Associate General Counsel Vladimir Shuliga appeared on behalf of IMRF.

Copies of all documentation submitted by IMRF and Pak were admitted into evidence for the administrative record as **Pak Supporting Documents** (pages 1 through 22) (hereinafter, “**Documents**”). As a result of this review, the Board of Trustees of IMRF finds and determines as follows:

A. REVIEW OF APPLICABLE STATUTES AND CASE LAW

1. Section 7-139.14 of the Illinois Pension Code provides a six-month window for an active police officer participating in an Article 3 police pension fund to transfer three specific types of IMRF service credit to that Article 3 fund: (a) IMRF service as a sheriff’s law enforcement employee; (b) IMRF service by a person employed by a participating municipality to

perform police duties; or (c) IMRF service as a law enforcement officer employed on a full-time basis by a forest preserve district. (40 ILCS 5/7-139.14)

2. Section 3-106 of the Illinois Pension Code provides, in relevant part, that a “police officer” is “any person . . . appointed to the police force of a police department and sworn and commissioned to perform police duties.” (40 ILCS 5/3-106)

3. Section 7-109.3 sets forth the definition for Sheriff’s Law Enforcement Employees (SLEP), which includes:

- (1) A county sheriff and all deputies, other than special deputies, employed on a full time basis in the office of the sheriff.
- (2) A person who has elected to participate in this Fund under Section 3-109.1 of this Code, and who is employed by a participating municipality to perform police duties.
- (3) A law enforcement officer employed on a full time basis by a Forest Preserve District, provided that such officer shall be deemed a “sheriff’s law enforcement employee” for the purposes of this Article, and service in that capacity shall be deemed to be service as a sheriff’s law enforcement employee, only if the board of commissioners of the District have so elected by adoption of an affirmative resolution. Such election, once made, may not be rescinded.
- (4) A person not eligible to participate in a fund established under Article 3 of this Code who is employed on a full-time basis by a participating municipality or participating instrumentality to perform police duties at an airport, but only if the governing authority of the employer has approved sheriff’s law enforcement employee status for its airport police employees by adoption of an affirmative resolution. Such approval, once given, may not be rescinded.
- (5) A person first hired on or after January 1, 2011 who (i) is employed by a participating municipality that has both 30 or more full-time police officers and 50 or more full-time firefighters and has not established a fund under Article 3 or Article 4 of this Code and (ii) is employed on a full-time basis by that participating municipality to perform police duties or firefighting and EMS duties; but only if the governing authority of that municipality has approved sheriff’s law enforcement employee status for its police officer or firefighter employees by adoption of an affirmative resolution. The resolution must specify that SLEP status shall be applicable to such employment occurring on or after the adoption of the resolution. Such resolution shall be irrevocable, but shall automatically terminate upon the establishment of an Article 3 or 4 fund by the municipality. (40 ILCS 5/7-109.3)

4. Section 7-109 of the Illinois Pension Code provides a definition of “employee” for purposes of IMRF membership. Subsection (2)(b) of Section 7-109 specifically states that “employee” does not include persons who are designated by their municipality to perform “police

duties,” with the exception of the head of a police department or chief of police under certain limited circumstances. (40 ILCS 5/7-109)

5. “Police duties,” as the term is used in the Illinois Pension Code, are performed by individuals who are appointed to a police department, and sworn and commissioned to perform such duties. “Generally, police duties encompass a wide variety of law enforcement and order-maintenance functions including arrest, crime prevention and deterrence, crowd control, investigation, providing aid, and creating and maintaining a feeling of security.” (See IMRF Legal Interpretation 182, Documents, pp 7-8; 40 ILCS 5/3-106; also see *Fraternal Order of Police Lodge No. 109 v. Illinois Labor Relations Board*, 189 Ill. App. 3d 914, 918 (2nd Dist. 1989))

B. FINDINGS OF FACT

6. Pak enrolled as a participant in IMRF on November 17, 2014. On the IMRF enrollment form, the County stated Pak had been hired as a Correctional Officer and was specifically enrolled in the *Regular IMRF Plan* as a Tier 2 participant. (See Documents, p. 9)

7. According to Pak’s appeal received on September 28, 2021, Pak explained that he was employed by the Lake County Sheriff’s Office as a full-time certified Correctional Officer from November 17, 2014 to December 29, 2016.¹ (See Documents, p. 16)

8. Pak explained in his appeal that in his Correctional Officer position:

I served and protected individuals within Lake County’s legal justice system. I policed rules and regulations within the jails, supervised inmate activity, and assisted with escort and transport to and from court visits. Furthermore, during my employment for this Sheriff’s Law Enforcement organization, I contributed to Illinois Municipal Retirement Fund. (See Documents, p. 16)

9. However, there is no evidence that Pak was deputized as a full-time sheriff or deputy for the County; the fact that he was not enrolled in SLEP during his time as a Correctional

¹ IMRF records show Pak’s participation dates as November 17, 2014 to December 30, 2015. (See Documents, p. 10)

Officer for the County supports a conclusion that he did not qualify for the SLEP program in this position.

10. Furthermore, there is no evidence in the record that Correctional Officers carried firearms, made arrests, took suspects into custody, or performed other law enforcement duties. The record is devoid of information regarding the job description for Correctional Officers, and there is no indication whether the position required specific police training. While Pak states his position was “certified,” there is no documentation of certification to support his statement in the record.

11. On December 30, 2015, Pak terminated IMRF participation and took a refund of his contributions in January of 2021. On January 4, 2016, he was appointed as a sworn police officer with the City of Rolling Meadows Police Department. Pak is currently a member of the Rolling Meadows Police Pension Fund with over 5 years of service.² (See **Documents**, pp. 10-11)

C. CONCLUSIONS OF LAW

12. The Board of Trustees of the Illinois Municipal Retirement Fund has jurisdiction over this appeal pursuant to Section 7-179 of the Illinois Pension Code (40 ILCS 5/7-179), 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).

13. The Board has a fiduciary duty to administer the Fund in accordance with applicable provisions of the Illinois Pension Code. (40 ILCS 5/1-109)

14. In order to transfer IMRF service to an Article 3 police pension fund under Section 7-139.14 of the Illinois Pension Code, the service must qualify under one of the three enumerated types of service set forth in the statute. (40 ILCS 5/7-139.14)

² Also see Illinois Department of Insurance Annual Statement for the Rolling Meadows Police Pension Fund for Fiscal Year ending December 31, 2020, p. 45 (available at [Pension Annual Statement System \(illinois.gov\)](https://www.pensionannualstatement.com/illinois)).

15. As used in various sections of Article 7, IMRF applies the Article 3 definition of “police officer.” According to IMRF Legal Interpretation 182, “[s]omeone who performs ‘police duties’ is defined as someone ‘who is appointed to the police force of a police department and sworn and commissioned to perform police duties.’” Thus, individuals who are not sworn and commissioned to perform police duties, including law enforcement and arrest functions, are not individuals who perform “police duties” under Article 7 of the Illinois Pension Code. (See Documents, pp. 6-7)

16. Pak’s IMRF service with Lake County as a Correctional Officer was neither “service as a sheriff’s law enforcement employee” nor service as a “law enforcement officer employed on a full-time basis by a forest preserve district.” (40 ILCS 5/7-139.14)

17. Furthermore, Pak’s IMRF service with Lake County as a Correctional Officer was not as a “person employed by a participating municipality to perform police duties.” (40 ILCS 5/3-106; 7-139.14)

18. As a Correctional Officer, Pak was not deputized or sworn as a law enforcement officer; there was no evidence presented that while in his Correctional Officer role that he carried a firearm and had the power to arrest and place a suspect into custody. In short, the record does not support a conclusion that Pak performed “police duties” as a Correctional Officer for Lake County.

19. Instead, the County considered Pak a civilian employee in his Correctional Officer role who qualified for IMRF membership in its Regular (not SLEP) Plan. (See Documents, p. 9)

D. 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, HEREBY ORDERS as follows:

1. The administrative staff determination that former IMRF participant Geunyoung Pak did not qualify for reinstatement and transfer of service credit he earned from 2014 to 2015 as a Correctional Officer through Lake County to an Article 3 pension fund because the position did not involve “police duties” under Section 7-139.14 of the Illinois Pension Code (40 ILCS 5/7-139.14) is hereby AFFIRMED.

2. This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (40 ILCS 5/7-220; 735 ILCS 5/3-101)

These Findings of Fact and Conclusions of Law are adopted this _____ day of March,
2022, 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

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF THOMAS W. BARWIN,) #204-5150
re: DENIAL OF BENEFITS)
FROM A DECISION OF THE ILINOIS MUNICIPAL) Susan Davis Brunner
RETIREMENT FUND ADMINISTRATIVE STAFF) Hearing Officer

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

THOMAS W. BARWIN, #204-5150 (hereinafter referred to as “BARWIN”) was employed by the Village of Oak Park (hereinafter referred to as “Oak Park”) from 2006 through December 2012 at which time he was terminated from his job and his active participation in IMRF. In or around April of 2012, BARWIN and Oak Park negotiated a severance agreement and in April BARWIN received a lump sum severance payment from Oak Park, but after April 2012, he worked no additional hours and received no additional payments or salary from Oak Park or any other IMRF employer.

During September of 2021, BARWIN contacted IMRF regarding what he believed to be omitted service credit from May 2012 through December 2012. BARWIN maintained that his lump sum payment actually reflected his paid monthly salary for the months of May through the end of December 2012, and so he should have received service credit for those months. IMRF maintained that service credit could only be earned during the month that the employee worked and earned the payment. IMRF therefore, denied his request for service credit for the months of May through December 2012, as it found that after his lump sum payment in April 2012, BARWIN worked no additional hours and earned no additional salary and therefore, earned no service credit. BARWIN requested a review and reversal of this decision, which was denied, and requested a hearing to appeal the Administrative Staff Determination to the IMRF Board of Trustees.

The appeal was scheduled to be heard remotely before Hearing Officer Susan Davis Brunner on February 28, 2022, at 12:00 p.m. However, BARWIN failed to appear for the hearing and at 12:22 p.m. the remote hearing session was concluded. Vladimir Shuliga (hereinafter referred to as SHULIGA), Associate General Counsel, and ELIZABETH CARTER (hereinafter referred to as CARTER), appeared on behalf of IMRF. Since no remote hearing was held this appeal will be based on the records already received, including the parties’ Statements of Claims, all memoranda, and all other supporting documents and exhibits provided.

ISSUES TO BE REVIEWED

Whether the Pension Code or IMRF rules require or allow service credit to be given to BARWIN for the months of May through December of 2012, when he was terminated effective December 31, 2012, but worked no hours after April 2012, received no payments after his lump sum payment in April 2012, and his IMRF employer reported no wages earned by BARWIN after April 2012.

DISCUSSION AND ANALYSIS

Based on the Findings of Fact, the Illinois Pension Code and IMRF Rules and Procedures, the Board of Trustees of the IMRF has jurisdiction over this appeal.

Article 7 of the Illinois Pension Code (40 ILCS 5/7 et seq; hereinafter referred to as the Pension Code) authorizes the Illinois Municipal Retirement Fund to provide retirement, disability, and death benefits to the employees of participating local governments and school districts in Illinois. The Pension Code also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. Although the IMRF is not an administrative agency and does not have formal regulations set forth in the Illinois Administrative Code, the IMRF Board of Trustees (IMRF Board) has authority to make “administrative decisions on participation and coverage, which are necessary for carrying out the intent of this fund in accordance with the provisions of this Article.” 40 ILCS 5/7-200 (West 2010). The IMRF Board has adopted the “Authorized Agent’s Manual,” which it uses to provide guidance regarding IMRF rules. The Authorized Agent’s Manual therefore constitutes the IMRF’S “administrative rules.” Administrative rules interpreting a statute can be used by the court as guides but are binding on the court only to the degree that they follow the statute. (see *Stevens v. Oakbrook*, 990 N.E.2d 802 IL App (2d) 2013; also see *Illinois RSA No. 3, Inc. v. Department of Central Management Services*, 348 Ill. App. 3d 72, 77 (2004)).

Section 7-139 of the Pension Code states that IMRF service credit should be given for each day that corresponds to the date the earnings are earned and payable to the IMRF participant. The same section describes when service credit that was not given contemporaneously can be applied for and granted at a later date, as either retroactive or omitted service credit, but only if the employee is an active IMRF participant at the time of the application and otherwise qualifies.

Section 7-139(a) and (a)(2), in pertinent part, state as follows:

“Credits and creditable service to employees.

(a) Each participating employee shall be granted credits and creditable service, for purposes of determining the amount of any annuity or benefit to which he or a beneficiary is entitled, as follows:

2. For current service, each participating employee shall be credited with:

a. Additional credits of amounts equal to each payment of additional contributions received from him under Section 7-173, as of the date the corresponding payment of earnings is payable to him...

(b) Normal credits of amounts equal to each payment of normal contributions received from him, as of the date the corresponding payment of earnings is payable to him, and normal contributions made for the purpose of establishing out-of-state service credits as permitted under the conditions set forth in paragraph 6 of this subsection (a).”

Section 7-139(b)(1) of the Pension Code further describes when creditable service is earned:

(b)(1) “One month of creditable service shall be allowed for each month for which a participating employee made contributions as required under Section 7-173, or for which creditable service is otherwise granted hereunder. Not more than 1 month of service shall be credited and counted for 1 calendar month, and not more than 1 year of service shall be credited and counted for any calendar year. A calendar month means a nominal month beginning on the first day thereof, and a calendar year means a year beginning January 1 and ending December 31.”

The IMRF Manual similarly defines Creditable Service as: “Also known as service credit, service, or pension credits. Service is credited monthly while a member is working, when on an IMRF authorized leave of absence, or receiving disability benefits. However, in this case BARWIN did not work any additional hours and was not on an authorized leave or receiving disability benefits.

The Pension Code in 7-139 and section 6.40(5) of the Manual, as follows in part, provides that in certain circumstances, retroactive service credit and omitted service credit may be given. Section 7-139 of the Pension Code in section, in paragraph (a) (12) defines omitted service and provides for omitted credit service to be given when:

“Any employee who was employed by a participating employer in a position that required participation, but who was not enrolled in the Fund, may establish such credits under the following conditions: (a) Application for such credits is received by the Board while the employee is an active participant of the Fund or a reciprocal retirement system; (b) Eligibility for participation and earnings are verified by the Authorized Agent of the participating employer for which the service was rendered.”

As defined above by the Pension Code and Manual, BARWIN is not eligible for Omitted service credit as this was not a situation where BARWIN should have been enrolled in IMRF but was not. BARWIN had been properly enrolled in IMRF during 2012 but did not earn any service credits from May through December.

In addition, the same sections of the Pension Code and the IMRF Manual also describe the specific situations when an employee can be given Retroactive Service Credit.

Section 6.40 provides, in part, as follows:

4. Retroactive - ”Application for Retroactive Service Credit” (Form 6.04, Exhibit 6G)

Certain groups of members who rendered qualifying service prior to their enrollment in IMRF may obtain past service by submitting Form 6.04 ”Application for Retroactive Service Credit” (view Exhibit 6G) and paying the required contributions plus interest.

Form 6.04 must be filed while the applicant is still participating in IMRF or covered by a reciprocal retirement system.

BARWIN is not eligible for retroactive service credit for the months of May through December as he had already been enrolled in IMRF but did not render any qualifying service credits. The Pension Code and the Manual provide that service is only credited monthly while a member is working, or when on an IMRF authorized leave of absence,

or when receiving disability benefits, all of which are not applicable to BARWIN. Moreover, in addition to other reasons discussed herein, BARWIN is not eligible to receive either omitted or reciprocal service credit as he has not been an active IMRF participant or worked for an IMRF employer since 2012 and did not apply until 2021.

BARWIN argues that he should be given IMRF service credit for the months of May 2012 through December 2012 even though he worked no hours and received no payments for work done during those months. He merely argues that the earlier payment he received during April 2012, because it was a larger lump sum payment, should be somehow divided and reallocated as and for payments made and service credit earned for each of the eight months from May through December. Oak Park did not report any earned income during those months, and BARWIN is not arguing that he actually worked any hours during those months after April of 2012. BARWIN has not presented sufficient evidence to show that he is entitled to any service credit for May through December 2012, or that Oak Park's failure to report any earnings was somehow incorrect, unreasonable, or not based on the law or the negotiated severance agreement. Therefore, without a determination by the employer that BARWIN has reportable earnings and is eligible for IMRF service credit for the months of May through December, IMRF has no authority to do so. Oak Park made the lump sum payment and reported BARWIN'S earned wages during April of 2012, and therefore, that is the last month that he earned service credit. The requirements set forth in section 7-139(a)(12) (a) and (b) are mandatory, and IMRF has no authority to override the decision by Oak Park to make one lump sum payment of reportable wages in April, especially when the evidence shows otherwise.

IMRF derives its powers from the Pension Code and has no legal authority to change the requirements of the Pension Code and the applicable IMRF rules. The Pension Code provides the correct method for determining omitted service credit eligibility, and IMRF must obey the law. As the Court stated in the case of Wood Dale Fire Protection District, 395 Ill. App. 3d at 527-28 "an administrative agency's authority derives from its enabling statute, and the agency has no inherent or common-law authority. Consequently, if an agency's rules go beyond the scope of the legislative grant of authority or conflict with the enabling statute, the rules are invalid". The Pension Code provides no applicable legal exception to the requirements of section 7-139(a)(12), which requires that the employee earns service credit when the wages are earned and payments are made and reported as earnings by the employer. Salary or lump sum payments cannot be arbitrarily divided into smaller amounts so an employee can receive additional IMRF service credit. IMRF eligibility and earnings must be verified by the participating employer and BARWIN has not shown that he worked any days or months during May through December or that Oak Park incorrectly paid his April check as a lump sum payment or failed to comply with a written agreement. Oak Park has not reported any earnings or payments during May through December 2012. Therefore, BARWIN has not shown that he is eligible for any current, omitted, or retroactive service credit for those months.

I recommend that the Board affirm the IMRF staff decision that determined that BARWIN was ineligible for IMRF service credit for any of the months from May through December of 2012.

IMRF is authorized by statute and must abide by that statute. IMRF has not been given the legal authority to determine that an agreed payment made to BARWIN in April was really supposed to be divided into separate payments for April through December. The law provides that service credit corresponds to the date the wages are earned and the payment is made. The employer must verify the hours and months of employment for service credit and Oak Park last reported earned wages for BARWIN in April of 2012. There was insufficient evidence presented at the hearing to find that BARWIN had any reportable earnings after April 2012.

/s/ Susan Brunner 3/15/22

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings of Fact and Conclusions of Law are adopted this 25th day of March, 2022, 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

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF JEFFREY W. BOADEN,) #144-2958
re: DENIAL OF IMRF BENEFITS)
FROM A DECISION OF THE ILINOIS MUNICIPAL) Susan Davis Brunner
RETIREMENT FUND ADMINISTRATIVE STAFF) Hearing Officer

STATEMENT OF THE CASE

JEFFREY BOADEN, #144-2958 (hereinafter referred to as “BOADEN”) served as the elected Road Commissioner (hereinafter referred to as “Road Commissioner”) for the **Buckhart Township** (hereinafter referred to as “Buckhart”) from May 2013 through May 2021. Prior to and up until he began serving as the elected Road Commissioner, BOADEN worked for Buckhart in a non-elected road commission position and in that capacity, beginning October 2007, BOADEN became an active participant in the **ILLINOIS MUNICIPAL RETIREMENT FUND** (hereinafter referred to as “IMRF”) and made IMRF contributions as required. After he was elected as Road Commissioner BOADEN did not fill out any new IMRF forms and did not notify IMRF at any time while in office that he no longer worked for Buckhart in his non-elected position or that he had begun serving in an elected position, BOADEN continued to make IMRF contributions until May of 2021, at which time his elected position ended.

In July of 2021, shortly after BOADEN terminated working for any IMRF employer in any capacity and a new Road Commissioner was elected and began serving in the position, the IMRF Authorized Agent for Buckhart telephoned IMRF. During this phone conversation IMRF learned that from 2013 to 2021 BOADEN had actually been working in an elected position and not his original non-elected Buckhart position. IMRF determined that BOADEN had not filled out any of the required forms necessary to be eligible for IMRF participation when serving in his elected position, and therefore, had not properly elected to participate in IMRF during his elected tenure or employment with an IMRF employer as required by Illinois statute. IMRF determined that BOADEN was, therefore, ineligible for IMRF participation during the period he had served in that elected position from May 2013 through May 2021 and withdrew IMRF service credit initially given to BOADEN from May 2013 through May 2021. BOADEN now appeals the IMRF staff decision denying him IMRF participation and IMRF service credit hours for the period of May 2013 through May 2021.

The appeal was heard remotely before Hearing Officer Susan Davis Brunner on January 31, 2022. Attorney David R. Fines, BOADEN, current and/or former Buckhart Trustees Bruce Brockelsby and James Dowdy, and Buckhart Superintendent Nancy Whitlow

appeared on behalf of BOADEN. Vladimir Shuliga, Associate General Counsel, appeared on behalf of IMRF.

FACTUAL BACKGROUND

After hearing oral argument and presentation of evidence by HOIS and IMRF, and reviewing the Statements of Claim and written exhibits tendered by the parties, the HO makes the following findings of fact:

1. BOADEN first became an active IMRF participant in 2007 when he started working for Buckhart in a non-elected position working for its road commission.
2. BOADEN was elected to be Road Commissioner beginning May of 2013 and remained in elected office until May of 2021.
3. BOADEN did not notify IMRF at any time during his tenure that he had changed his job from a non-elected position to an elected position and did not file any forms or written documents or notices with IMRF that requested he be able to participate in IMRF in his elected position.
4. On May 15, 2021, BOADEN terminated his employment with Buckhart and terminated his participation in IMRF. Form 6.41 terminating his participation was filed with IMRF in July of 2021 after it was signed by the IMRF Authorized Agent Nancy Whitlow.
5. On September 13, 2021, after he was no longer serving in his elected office, BOADEN submitted form 6.21 to IMRF seeking to qualify his elected Road Commissioner position for active IMRF participation.
6. IMRF denied his eligibility for IMRF participation on July 21, 2021, on the basis that BOADEN had not notified IMRF that he had ceased working in his non-elected position and had not filed a required written request to participate in IMRF in his elected Road Commissioner position while still working for an IMRF employer as required by law.
7. BOADEN requested a review and reversal of this decision and requested a hearing to appeal the Administrative Staff Determination to the IMRF Board of Trustees.

ISSUES TO BE REVIEWED

Whether there was sufficient legal and evidentiary basis for IMRF to terminate BOADEN'S IMRF participation, effective May, 2013, and remove all service credit from 2013 through 2021, or whether, given that BOADEN had been an IMRF participant since 2007 in his non-elected Buckhart position, and Buckhart has conceded that it made a mistake and not BOADEN, he was eligible for IMRF participation and is now entitled to IMRF service credits and benefits accruing from May 2013 through May 2021, even though he did not notify IMRF that he had terminated his non-elective position and even though he did not timely fill out IMRF forms electing to participate in IMRF participation in the elected position at any time during his elected tenure or while working for an IMRF employer.

DISCUSSION AND ANALYSIS

Based on the Findings of Fact, the Illinois Pension Code and IMRF Rules and Procedures, the Board of Trustees of the IMRF has jurisdiction over this appeal.

Article 7 of the Illinois Pension Code (40 ILCS 5/7 et seq; hereinafter referred to as the Pension Code) authorizes the Illinois Municipal Retirement Fund to provide retirement, disability, and death benefits to the employees of participating local governments and school districts in Illinois. The Pension Code also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. Although the IMRF is not an administrative agency and does not have formal regulations set forth in the Illinois Administrative Code, the IMRF Board of Trustees has authority to make “administrative decisions on participation and coverage, which are necessary for carrying out the intent of this fund in accordance with the provisions of this Article.” 40 ILCS 5/7-200 (West 2010). The IMRF Board has adopted the “Authorized Agent’s Manual,” which it uses to provide guidance regarding IMRF rules. The Authorized Agent’s Manual therefore constitutes the IMRF’s “administrative rules.” However, administrative rules interpreting a statute are given deference, and can be used by the court as guides, but are binding on the court only to the degree that they follow the statute. (see *Stevens v. Oakbrook*, 2013 IL App (2d) 120456).

Section 5/7-109(c) of the Pension Code includes elected officials in its definition of employees as follows:

“Employee” means any person who:

© Holds an elective office in a municipality.

Section 5/7-110 then defines a participating employee as being, “Any person included within this fund, and eligible to benefits therefrom, as provided in Section 7-137.”

While IMRF participation is mandatory for some employees, it is optional for certain qualifying elected officials. The Pension Code and IMRF Manual in 3.65(E) provides that IMRF participation is not mandatory for elected officials, but that elected officials who work 600/1000 hours have the option to participate in IMRF. This differs from other non-elected employees, who must be enrolled in IMRF if he or she works the 600/1000 minimum hours. In this case, as an elected Buckhart Road Commissioner, it is not disputed that BOADEN’s participation in IMRF was voluntary and not mandatory. Therefore, BOADEN was only eligible for IMRF participation as long as he complied with statutory requirements and IMRF rules.

Section 5/7-137 provides that elected officials who were first elected to office prior to August 26, 2016 are eligible for IMRF participation. Section 5/7-137 requires, however, that eligible elected officials must first meet certain requirements to become eligible for participation in IMRF, and expressly excludes IMRF participation when certain listed requirements are not met. Specifically, section 5/7-137 (b)(2.5) requires, among other things, that an elected person must, with respect to that elected office and while still in office, file a written notice with the IMRF

Board electing to become an IMRF participant. 5/7-137, in pertinent part, states as follows:

“(b) The following described persons shall not be considered participating employees eligible for benefits from this fund, but shall be included within and be subject to this Article (each of the descriptions is not exclusive but is cumulative):

1. Any person who occupies an office or is employed in a position normally requiring performance of duty during less than 600 hours a year for a municipality (including all instrumentalities thereof) or a participating instrumentality. If a school treasurer performs services for more than one school district, the total number of hours of service normally required for the several school districts shall be considered to determine whether he qualifies under this paragraph;

2. Except as provided in items 2.5, 2.6, and 2.7, any person who holds elective office, unless he or she has elected while in that office in a written notice on file with the board to become a participating employee;

2.5. Except as provided in item 2.6, any person who holds elective office as a member of a county board, unless:

(i) the person was first elected as a member of a county board before the effective date of this amendatory Act of the 99th General Assembly;

(ii) the person has elected while in that office, in a written notice on file with the board, to become a participating employee;

(iii) the county board has filed the resolution required by subsection (a) of Section 7-137.2 of this Article; and

(iv) the person has submitted the required timesheets evidencing that the person has met the hourly standard as required by subsection (b) of Section 7-137.2 of this Article;

2.6. Any person who is an elected member of a county board and is first so elected on or after the effective date of this amendatory Act of the 99th General Assembly;

2.7. Any person who holds part-time office as a member of a governing body, whether he or she is elected or appointed, unless he or she (i) was elected or appointed to that office before the effective date of this amendatory Act of the 100th General Assembly and (ii) has elected while in that office in a written notice on file with the board to become a participating employee. An office as a member of a governing body shall be deemed to be part-time if it normally requires the performance of duty during less than 1000 hours a year for the governing body of the participating municipality or instrumentality...”

Section 7-139(b)(1) of the Pension Code provides that creditable service is: “ One month of creditable service shall be allowed for each month for which a participating employee made contributions as required under Section 7-173, or for which creditable service is otherwise granted hereunder. The Pension Code and the IMRF Manual provide that participation in IMRF is not optional for certain employees. If an employee meets IMRF qualification standards, he or she must participate. This participation cannot be excused by the employer or waived by the employee. Similarly, if a part-time employee works a sufficient number of hours per year, then participation in IMRF is required, with certain exceptions.

The Pension Code and the IMRF Resolutions and Manual all distinguish between employees whose positions require mandatory IMRF enrollment by the employer, and those employees who have the discretion to participate in the pension program. The Pension Code, in section 7-111.5 provides an opportunity for certain employees who should have been enrolled in IMRF due to their job position to earn omitted service credit. This section defines omitted service as being “the period of service with a participating municipality or participating instrumentality during which an employee was required to participate in the Fund but was not actually enrolled.” Since BOADEN’S participation in IMRF as an elected Road Commissioner was voluntary and not mandatory as required in this section, BOADEN is not entitled to Omitted Service credits for the years he served in elected office from 2013-2021.

Section 7-139(a)(7) of the Pension Code, as follows in part, also provides limited retroactive IMRF credit to employees who have the voluntary option to join IMRF. The Pension Code, the IMRF Manual, and Board Resolutions all provide that elected officials who satisfy certain requirements, are considered to be employees who have the option to participate in IMRF.

“7-139(a)(7). For retroactive service: Any employee who could have but did not elect to *become a participating employee, or who should have been a participant in the Municipal Public Utilities Annuity and Benefit Fund before that fund was superseded, may receive creditable service for the period of service not to exceed 50 months; however, a current or former elected or appointed official of a participating municipality may establish credit under this paragraph 7 for more than 50 months of service as an official of that municipality, if the excess over 50 months is approved by resolution of the governing body of the affected municipality filed with the Fund before January 1, 2002*”.

IMRF Resolution 1968-7273, which applies to elected positions and requires signed notice and forms to be filed with IMRF during the elected tenure, provides, in part, as follows:

1. *A member of a governing body shall receive creditable service for service as a member of the governing body upon the fulfillment of the following requirements: a. If he is in an elective position, he has elected to participate in the Fund. b. The duties of his position normally require performance of duty during 600 hours or more a year. c. The governing body of the municipality has adopted a resolution in form satisfactory to the Board finding that the jobs of the members of the governing body normally require performance of duty during 600 hours or more in a year. d. A certified copy of the resolution and appropriate reports of earnings are filed with the Fund.*
2. *Service credits presently granted to members of governing bodies shall not be affected by this resolution and members of governing bodies who are currently participating may continue to participate until June 30, 1969. Thereafter, a member of the governing body shall not be eligible to participate in the Fund until the required resolution is adopted and filed with the Fund.*

3. *A member of a governing body, upon becoming a participating employee, may establish current service credits retroactively, to the extent allowed by Section 7-173 of the Illinois Pension Code (50 months), as follows: a. If the governing body adopts the required resolution on or before June 30, 1969, from the date he makes application to establish the service credit to the date he became a member of the governing body. b. If the governing body does not adopt the required resolution on or before June 30, 1969, from the date he makes application to establish the service credit to the later of the date of adoption of the resolution or the date he became a member of the governing body*
4. *A member of a governing body of a municipality presently participating in the Fund shall be entitled to prior service as a member of the governing body upon fulfillment of the following requirements: a. If he is an elective position, he has elected to participate effective as of the effective date of participation by the municipality or the date he first became a member of the governing body, whichever is the later. If his first employment after the effective date is in a non-elective position, he need not elect to participate. b. The governing body approves the award of prior service and in doing so finds that the position normally required performance of duty during 600 or more hours a year.*
5. *A member of a governing body of a municipality beginning participation after the adoption of this resolution shall be entitled to service credit for prior service upon fulfillment of these requirements: a. If he is in an elective position, he has elected to participate in the Fund within 30 days after the effective date or the first date of service subsequent to the effective date, whichever is the later. If his first employment on or after the effective date is in a non-elective position, he need not elect to participate. b. A resolution has been adopted by the governing body finding that the positions of members of the governing body normally required performance of duty 600 hours or more a year and specifying the period of time prior to the effective date this was the case. c. A certified copy of the resolution was filed with the Fund within 90 days of the effective date. d. The service for which credit is requested is within the period specified in the resolution.*

Subsection 3.65(E) of the Manual, as provided below, lists many of the prerequisites for an elected official to be eligible for IMRF. It clarifies that IMRF participation is not mandatory for elected officials, but that elected officials who work the minimum number of hours required, have the option to participate in IMRF. It also requires, in 3.65 (E)(1) that any elected officials who want to participate in IMRF must first sign the "Election To Participate For Qualifying Position" form and the form will be filed with IMRF by the employer.

3.65 E. Elected Officials

1. Optional Participation

Paid elected officials are considered employees for IMRF purposes. Persons appointed to fill a vacancy in an elective office are classified as elected officials.

Elected officials whose positions meet the applicable annual hourly standard for participation may choose whether or not they want to participate in IMRF.

They may elect to participate (see [6.60 D. Relating to Participation by Elected Officials in IMRF](#)).

Effective January 1, 2018, all new governing body members must meet the 1,000 hour standard.

Employers with Internet access must enroll new members via Employer Access. If an elected official elects to participate in IMRF, IMRF requires the official's signature on the "Election To Participate For Qualifying Position" form. Therefore, as part of the online enrollment process, a pre-populated "Election To Participate For Qualifying Position" form is created. The employer will download the pre-populated form, sign it, have the elected official sign it and mail it to IMRF along with the signed enrollment form.

The election to participate cannot be rescinded. An elected official who elects to participate in IMRF is required to continue to participate if re-elected to subsequent terms of office.

If the elected position no longer qualifies for participation, the governing body should pass a resolution to terminate participation of the position. See [Form 6.64T, Exhibit HH](#) located in Section 6.

2. *Establishment of retroactive service*

When an elected official elects to participate, he or she may establish up to 50 months of service retroactively (see [6.60 D. Relating to Participation by Elected Officials in IMRF](#)).

Therefore, in order to avoid forfeiting any pension service credits, elected officials with a four-year term of office should decide at the beginning of their second term whether to join IMRF.

3. *Verification of Qualification to Participate*

IMRF is not in a position to determine the hourly requirements of members of a governing body.

It is the policy of the IMRF Board of Trustees to require that the governing body of the employer determine, by resolution that the position of an elected official qualifies for IMRF participation before an official in the position begins participation. (See paragraph 6.60 D. Relating to Participation by Elected Officials in IMRF, and [Form 6.64, Exhibit 6FF](#).)

Effective January 1, 2018, all new governing body members must meet the 1,000 hour standard.

Recertification of Positions

The IMRF Board also requires all employers with elected officials to re-certify the IMRF eligibility of their elected positions every two years.

A certified copy of the resolution should be filed with IMRF (See paragraph 6.60 D. Relating to Participation by Elected Officials in IMRF and [Form 6.64, Exhibit 6FF](#).)

In this case, both parties agree that as an elected Road Commissioner, BOADEN'S participation in IMRF was not mandatory. The Pension Code provides that he had the

option of participating in IMRF if he chose to do so. The Pension Code, IMRF rules and resolutions require that BOADEN notify IMRF by written form that he is that he is no longer working in his non-elected position for Buckhart and now elects to participate in IMRF in his new elected position as Road Commissioner. This was not done by BOADEN and this was not done by the Buckhart IMRF Authorized Agent, who states that she made the mistake of not providing the required notice and forms to IMRF and it was not BOADEN'S fault. BOADEN, Brockelsby, Dowdy and Whitlow all asserted that BOADEN is entitled to retroactive IMRF credit for the period 2013 to 2021, because he was already a participant in IMRF while employed in his non-elected position, and the only reason IMRF was not provided with the proper forms showing BOADEN's change in jobs and request to participate in IMRF in his elected position was solely due to the fault of Buckhart. BOADEN also maintains that in September of 2021, all necessary forms were filed with IMRF to correct the mistake and deem his elected position eligible for service credits, and that IMRF should provide the same remedy.

The Pension Code gives the authority to the IMRF to interpret the intent of the Pension Code, and make rules and regulations on participation and coverage it believes are necessary to efficiently administer the fund. To that end, the IMRF Board has passed numerous Resolutions and has adopted the Authorized Agent's Manual. In this case IMRF has determined that the Pension Code provides that IMRF must be notified in writing when an employee is no longer working in a specific IMRF job, and also needs to be notified when an employee seeks to participate in IMRF in an elected position. Without written notice, IMRF is not in the best position to determine an employee's eligibility for IMRF participation, especially when it is an elected position and the incumbent changes. In this case, since IMRF had no knowledge of BOADEN'S change in position, the proper forms were not filled out, and BOADEN did not know he was not eligible for IMRF even though he was making payments for what he thought would be his future benefits. The Pension Code clearly distinguishes elected officials who have an option to join IMRF if conditions are met, and other employees, who if the conditions are met, must be enrolled in IMRF. It is reasonable for IMRF to interpret the words of the Pension Code, in 5/7-137 as being mandatory, and requiring that written forms and notice be given to IMRF even if the failure to do so is not the fault of the employee and even if the employee had already been enrolled in IMRF in a non-elected position.

Nor is BOADEN eligible for either omitted service credit or retroactive credit at this time because his IMRF participation was not mandatory and he is no longer working for an IMRF employer. IMRF derives its powers from the Pension Code and has the legal authority to interpret and apply the requirements of the Pension Code, and to set forth those requirements through its applicable IMRF rules and resolutions. The correct method for determining retroactive service credit eligibility for elected officials has been set forth in the Pension Code, and by two IMRF resolutions and the IMRF Manual. IMRF must follow the Pension Code, and properly apply the resolutions and rules, unless the resolutions and rules conflict with or go beyond the intent of the law. As the Court stated in the case of Wood Dale Fire Protection District, 395 Ill. App. 3d at 527-28, "an administrative agency's authority derives from its enabling statute, and the agency has no inherent or common-law authority. Consequently, if an agency's rules go beyond the

scope of the legislative grant of authority or conflict with the enabling statute, the rules are invalid". The Pension Code provides that elected officials do not have a mandatory right to IMRF participation when certain conditions are met, but rather that the elected officials have only an optional right to participate as long as certain specified requirements are met, including the requirement that IMRF be given formal written notice that IMRF participation is to be terminated as to one job and that the elected employee is seeking to participate in a new elected position.

I recommend that the Board affirm the IMRF staff decision that determined that BOADEN was ineligible for IMRF participation and ineligible for retroactive service credit for the period of May, 2103 through May, 2021. IMRF is authorized by statute, and must abide by that statute, the IMRF resolutions, and rules set forth in the IMRF Manual.

/s/ Susan Davis Brunner _____

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings of Fact and Conclusions of Law are adopted this 25th day of March, 2022, 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

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF ST. CHARLES PUBLIC LIBRARY DISTRICT) IMRF EMPLOYER , (re: SUSAN MITCHELL) FROM A DECISION OF THE ILINOIS MUNICIPAL RETIREMENT FUND ADMINISTRATIVE STAFF)) **E.R. # 5393**) **MID #: 215-3895**) **Susan Davis Brunner**) **Hearing Officer**

STATEMENT OF THE CASE

Until her retirement in January of 2021, **SUSAN MITCHELL, MID # 215-3895** (hereinafter referred to as “MITCHELL”) was an employee of the **ST. CHARLES PUBLIC LIBRARY DISTRICT** (hereinafter referred to as “ST. CHARLES”). On January 28, 2021, the **ILLINOIS MUNICIPAL RETIREMENT FUND** (hereinafter referred to as “IMRF”) sent an Accelerated Payment Invoice to ST. CHARLES in the amount of six thousand, four hundred and fifty-two and 86/100 (\$6,452.86) dollars based on increases to MITCHELL’S salary during her final rate of earnings period. Shortly thereafter ST. CHARLES requested a review of and exemption from the accelerated payment and submitted IMRF Form 7.20 on the basis that any increases to MITCHELL’S salary were minimal and only the result of standard merit and cost of living increases. ST. CHARLES further argued that MITCHELL’S salary increases were caused by an Illinois state mandate requiring the minimum wage to be raised. This was denied by the IMRF Administrative Staff on the basis that the Illinois Pension Code 40 ILCS 5/et seq. (hereinafter referred to as the Pension Code) did not authorize an exemption to the accelerated invoice for any of these stated reasons. ST. CHARLES then requested a hearing to appeal the Administrative Staff Determination denying the accelerated payment exemption on the basis that MITCHELL had only received minor merit and cost of living salary increases and that those minor increases, when coupled with the required increase to her salary caused by changes to the state mandated minimum wage that occurred during MITCHELL’S final rate of earnings period.

The appeal was heard remotely via Go to Meeting before Hearing Officer Susan Davis Brunner on January 3, 2022. Human Resource Manager Cheryl Matthews and Library Director Edith Craig appeared on behalf of ST. CHARLES, and ELIZABETH CARTER and VLADIMIR SHULIGA appeared on behalf of IMRF.

FACTUAL BACKGROUND

MITCHELL was employed by ST. CHARLES until her retirement in January 2021. MITCHELL was an active participant of IMRF and received yearly IMRF credit for each year she worked. On January 28, 2021, the IMRF sent an Accelerated Payment Invoice to ST. CHARLES in the amount of six thousand, four hundred and fifty-two and 86/100

(\$6,452.86) dollars. The AP Invoice stated that based on MITCHELL'S final rate of earnings period preceding her date of retirement, her earned wages during the twelve-month period from 11/2017 through 10/2018 was forty-five thousand, two hundred and thirty-six and 71/100 (\$45,236.71) dollars, which was more than 6% greater than her earned wages from the previous twelve-month period of forty-one thousand, two hundred and twenty-nine and 52/100 (\$41,229.52) dollars. In addition, the AP Invoice stated that MITCHELL'S earned wages during the twelve-month period from 11/2019 through 10/2020 was forty-eight thousand, nine hundred and ninety-two and 08/100 (\$48,992.08) dollars, while her earned wages from the previous twelve-month period had been forty-three thousand, seven hundred and five and 38/100 (\$43,705.38) dollars. Based on actuarial assumptions and tables, the IMRF determined that the present value of the increase in the pension due to these increases in earned wages was \$6,452.86. Therefore, based on actuarial assumptions and tables, IMRF determined that due to the increases in salary MITCHELL earned during the forty-eight months final rate of earnings period occurring immediately prior to her January 2021 retirement date, ST. CHARLES was required to pay a \$6,452.86 accelerated payment.

On February 11, 2021, ST. CHARLES submitted IMRF Form 7.20 and requested an exemption to the accelerated payment. No statutory box was checked on the form, but the stated reason given for the exemption asserted that the salary increases were due to standard merit increases, other merit increases and cost of living increases. The request for exemption was denied by the IMRF Administrative Staff because there was no evidence that the increases in MITCHELL'S earned wages were due to any of the statutory exemptions provided in 5/7-172(k) of the Pension Code. IMRF determined, therefore, that there were no grounds for an exemption to the request for the accelerated payment.

ST. CHARLES requested a hearing to appeal the Administrative Staff Determination to the IMRF Board of Trustees, stating that MITCHELL did not receive any significant salary increase, but had only received standard cost of living and merit increases and increases resulting from Illinois's required statewide increase to the minimum wage.

ISSUES TO BE REVIEWED

Whether an employer can be exempted from an accelerated payment when increases in reportable earned wages during a twelve-month period within the final rate of earnings period, occurs as the result of minor merit and cost of living increases coupled with a statewide mandate that required an increase to the minimum wage to be earned by MITCHELL.

DISCUSSION AND ANALYSIS

Based on the Findings of Fact, the Illinois Pension Code and IMRF Rules and Procedures, the Board of Trustees of the IMRF has jurisdiction over this appeal.

Article 7 of the Illinois Pension Code authorizes the Illinois Municipal Retirement Fund to provide retirement, disability, and death benefits to the employees of participating local governments and school districts in Illinois. It also provides that the IMRF Board of Trustees may make rules and regulations for the IMRF to efficiently administer the fund. The revenue that is used to pay retirement benefits are paid under a defined benefit plan authorized by State law, and comes from three sources: employees contribute a percentage of each paycheck; governments and agencies contribute at fluctuating rates, depending on the pay and ages of their employees; and, the employee and employer contributions are invested, and any income that comes from these investments is also used to pay benefits. When an employee retires, IMRF averages the forty-eight months final rate of earnings period, and calculates the monthly pension amount. Once IMRF determines the monthly pension amount, it estimates how long the retiree will live and calculates a total pension cost. It subtracts the employee's contributions and takes the rest out of the employer's deposits.

The Pension Code and IMRF rules require government agencies to contribute over time at a pace that will cover pension costs if employees' salaries rise at a normal pace. However, when an employee's salary increases at the end of his or her career, the amount earned during the forty-eight months period increases, and the pay average of that forty-eight months period also increases, and neither the employee nor the employer has contributed enough to cover the increased pension. The Pension Code requires that when an employee retires, and an employer is left with this deficit to cover future retirees, it must pay more than usual to make up the difference. The Pension Code and the IMRF rules and manual make clear that the goal is to make the pension fund fully funded.

The Illinois Pension Code, in section 7-172(k) provides, in part, as follows:

“(k) 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, as established by the United States Department of Labor for the preceding September, 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 salary 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. This present value shall be computed on the basis of the actuarial assumptions and tables used in the most recent actuarial valuation of the Fund that is available at the time of the computation...”

In addition, the language provided above in the Pension Code is repeated and clarified in detail in IMRF Rule 720.E, Accelerated Payments as well as IMRF Rule 3-1-5, Employer Reporting and Contributions. Both rules state clearly that the excess earnings are based

upon a comparison of earnings received during the twelve months period just prior to the IMRF termination date with earnings received during any twelve months period within the final rate of earnings period. In this case, a comparison of 11/2017-10/2018 earnings with 11/2016-10/2017 earnings triggered the necessity for an accelerated payment as did a comparison of 11/2019-10/2020 earnings with the 11/2018-10/2019 earnings.

Moreover, section 3.96(A) of the IMRF Manual states, “The basic rule is that most forms of compensation for personal services paid during the employment relationship and through the first calendar month after termination of employment are included as IMRF earnings.” It then specifically states, in section 3.96 (B) that compensation for IMRF earning purposes includes: “All wages, salaries and fees paid to IMRF members by IMRF employers are considered IMRF earnings regardless of the source of the funds. Amounts paid from money derived from property taxes, miscellaneous revenues, federal grants, and state reimbursements should all be reported as IMRF earnings.” This section of the Manual clarifies that all payments to employees by employers are assumed to be reportable wages unless there is an express exception provided in the Pension Code or Manual for said payment.

The Pension Code expressly provides, in section 7-172(k) below, that certain earnings are excluded from an employee’s final rate of earnings when determining whether the 6% cap has been exceeded: earnings from overtime, promotion, increase in hours, increases paid pursuant to pre-2012 collective bargaining agreements and personnel policies. The list of exceptions set forth in 7-172(k) as follows does not include increases to IMRF reportable earnings caused by legislative changes to the minimum wage or cost of living or merit increases or a reduction of hours worked:

“...When assessing payment for any amount due under this subsection (k), the fund shall exclude earnings increases resulting from overload or overtime earnings.

When assessing payment for any amount due under this subsection (k), the fund shall exclude earnings increases resulting from payments for unused vacation time, but only for payments for unused vacation time made in the final 3 months of the final rate of earnings period.

When assessing payment for any amount due under this subsection (k), the fund shall also exclude earnings increases attributable to standard employment promotions resulting in increased responsibility and workload.

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 change made to this Section by Public Act 100-139 is a clarification of existing law and is intended to be retroactive to January 1, 2012 (the effective date of Public Act 97-609)".

ST. CHARLES argues that it should be exempt from any accelerated payment even though there is not an express exemption because MITCHELL'S merit and cost of living pay increases were minimal, if any, and did not exceed the statutory amount. It maintains that the additional pay increases earned by MITCHELL were not under its control, and it was forced to give pay increases because state law increased the minimum wage. ST. CHARLES maintains that it should not be penalized when MITCHELL'S salary increases that were under its control were well below the salary increase necessary for an accelerated payment, so it should not have to pay the accelerated payment. IMRF maintains that it has no legal authority to exempt an employer from an accelerated payment if it is not expressly provided in the Pension Code, and a statutory change to the minimum wage is not listed as an exemption in 40 ILCD 5/7-172(k).

I recommend that the IMRF staff decision denying the Accelerated Payment Exemption be AFFIRMED as the Illinois Pension Code, as well as the written IMRF Manual and rules are very clear that it is each of the four twelve-months periods immediately preceding MITCHELL'S termination date from IMRF participation that must be compared to the immediately preceding twelve-month period within the forty-eight months final rate of earnings period. Per IMRF rules and the Pension Code, each of the twelve months periods from 11/2017 to 10/2018, and from 11/2019 to 10/2020, when compared with the twelve months period immediately preceding it, shows that MITCHELL'S increase in earnings was sufficient to trigger the need for an accelerated payment. Section 7-172(k) applies unless there is an exemption set forth in the Code. The Pension Code and Manual specifically state that merit and cost of living increases are included in an individual's reportable earned wages. Moreover, at least at the present time there is no allowable exemption provided in the Pension Code for increases in earned wages resulting from statewide changes to the minimum wage. Therefore, there is no exemption listed in 5/7-172(k) that allows IMRF to exempt ST. CHARLES from this accelerated payment invoice.



SUSAN DAVIS BRUNNER, Hearing Officer 2/14/22

These Findings of Fact and Conclusions of Law are adopted this 25th day of March, 2022, 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