MEMORANDUM

TO: **Board of Trustees**
FROM: **Benefit Review Committee**
DATE: **August 18, 2022**
SUBJECT: **Report of the Benefit Review Committee Meeting held on August 18, 2022**

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, August 18, 2022. Present at the meeting were Committee members Copper, Kuehne, Miller, and Stefan. Staff members present were Shuliga, Carter, Janicki Clark, Davis, Seputis, Claussen, Dixon, Rockett, and Osipczuk.

(22-08-01) (Roll call)

Trustee Stefan presided as chairperson and called the meeting to order at 1:03 p.m. Committee members Copper, Kuehne, Stefan, and Miller were present for roll call. Trustee Mitchell was absent.

(22-08-02) Approval of the committee meeting minutes from May 26, 2022

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

(22-08-03) Curtis Lackner – Denial of Total and Permanent Disability

Written materials including medical records, member, employer, and physician questionnaires; and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Mr. Lackner appeared for the hearing via videoconference and provided testimony to the Committee.

After deliberation, the Committee recommends that the Board affirm the staff decision denying total and permanent disability benefits. The Committee finds that Mr. Lackner's own physician released him to sedimentary work meaning there is no physician who has opined that Mr. Lackner is totally and permanently disabled. Mr. Lackner admitted that he has not sought any employment after terminating from the school district. Therefore, the Committee finds that Mr. Lackner does not meet the eligibility requirements for total and permanent disability benefits as set forth in Section 7-150.

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

(22-08-04) Findings and Conclusion of the IMRF Hearing Officer – Vernon Township

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

(22-08-05) Paul Timmerman – Denial of Temporary Disability

Written materials including medical records, member, employer, and physician questionnaires; and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Mr. Timmerman appeared for the hearing via videoconference and provided testimony to the Committee. Prior to the hearing, Mr. Timmerman submitted new medical evidence alleging that a different medical condition caused his disability. The Committee chair advised Mr. Timmerman that only the original application for shortness of breath would be considered today with any new conditions needing to be raised with a new disability application.

After deliberation, the Committee recommends that the Board affirm the staff decision denying total and permanent disability benefits. The Committee finds that there is no objective evidence showing that shortness of breath is preventing Mr. Timmerman from performing his job duties. The Committee is persuaded by the FCE findings showing that Mr. Timmerman can perform the physical requirements of the job. Additionally, Mr. Timmerman admitted that, if the hearing was limited to shortness of breath, he was not entitled to disability benefits. Therefore, the Committee finds that Mr. Timmerman does not meet the eligibility requirements for temporary disability benefits as set forth in Section 7-146.

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

(22-08-06) Findings and Conclusion of the IMRF Hearing Officer – Marcia Gillespie

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. Trustee Miller noted that he believed the employer violated its duty under the Pension Code when it approached Ms. Gillespie to return to employment even though it knew she was seeking to retire. Trustee Miller stated that it is inequitable and inconsistent with IMRF's authority under the return to work provisions of the Pension Code to charge the prepayment liability entirely to the member.

After further discussion, a motion was made to recommend affirming the separation of service violation, to assign 50% of the prepayment liability to the employer, and to make a recommendation to the legislative committee regarding clarification that the previous employer liability legislation applies to situations like this. The recommended findings and decision are attached hereto.

Motion: Miller
Second: Copper
Ayes: Copper, Kuehne, Miller
Nays: Stefan
Absent: Mitchell
Motion Passed: 3-1

(22-08-07) Approval of Write-Off of Surviving Spouse Benefits – George Lanning

Associate General Counsel Shuliga presented the staff recommendation to write off the overpayment of surviving spouse benefits paid to George Lanning in the amount of $19,182.90.

After further discussion, a motion was made to recommend the write-off of surviving spouse benefits in the amount of $19,182.90 erroneously paid to George Lanning due to the murky marriage history, the processing errors that occurred in 1987, and the unlikelihood of collecting the overpayment.

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

(22-08-08) Litigation Update
Associate General Counsel Shuliga presented an update regarding pending or recently concluded litigation. No final action was taken.

(22-08-09) Public Comment

None

(22-08-10) Adjournment

Trustee Miller made a motion to adjourn at 2:46 p.m. Seconded by Trustee Kuehne. Motion passed by unanimous voice vote.

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF VERNON TOWNSHIP	**)**	
IMRF EMPLOYER ,	**)**	**E.R. # 4150**
(re: GARY RAUPP MID #: 198-3012)	**)**	
FROM A DECISION OF THE ILINOIS MUNICIPAL	**)**	**Susan Davis Brunner**
RETIREMENT FUND ADMINISTRATIVE STAFF	**)**	**Hearing Officer**

STATEMENT OF THE CASE

Until his retirement effective January 1, 2022, **GARY RAUPP MID #: 198-3012** (hereinafter referred to as "RAUPP") was an employee of **VERNON TOWNSHIP** (hereinafter referred to as "VERNON"). On January 21, 2022, the **ILLINOIS MUNICIPAL RETIREMENT FUND** (hereinafter referred to as "IMRF") sent an Accelerated Payment Invoice to VERNON in the amount of thirteen thousand and twelve and 37/100 ($13,012.37) dollars based on increases to RAUPP'S salary during his final rate of earnings period. Shortly thereafter VERNON requested a review of and exemption from the accelerated payment and submitted IMRF Form 7.20 but no box was checked as a basis for the exemption. 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 allowable reasons. VERNON then requested a hearing to appeal the Administrative Staff Determination denying the accelerated payment exemption on the basis that RAUPP had only received minor merit and cost of living salary increases, if any, and that those minor increases, when coupled with the required increase to his salary caused by a $3000.00 stipend from the State of Illinois, and from a change in payment schedule from once monthly to twice monthly that occurred during RAUPP'S final rate of earnings period.

The appeal was heard remotely before Hearing Officer Susan Davis Brunner on August 1, 2022. City Manager Todd Gedville appeared on behalf of VERNON, and ELIZABETH CARTER and VLADIMIR SHULIGA appeared on behalf of IMRF.

FACTUAL BACKGROUND

RAUPP was employed by VERNON until his retirement in January 2022. RAUPP was an active participant of IMRF and received yearly IMRF credit for each year he worked. On January 21, 2022, the IMRF sent an Accelerated Payment Invoice to VERNON in the amount of thirteen thousand and twelve and 37/100 ($13,012.37) dollars. The AP Invoice stated that based on RAUPP'S final rate of earnings period preceding his date of retirement, his earned wages during the twelve-month period from 1/2018 through 12/2018 was one hundred and thirty thousand, two hundred and ninety-six and 53/100 ($130,296.53) dollars, which was more than 6% greater than his earned wages from the previous twelve-month period of one hundred and seventeen thousand, six hundred and fifty-eight and 14/100 ($117,658.14) 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 $13,012.37. Therefore, based on actuarial assumptions and tables, IMRF determined that due to the increases in salary RAUPP earned during the forty-eight months final rate of earnings period occurring immediately prior to his January 2022 retirement date, VERNON was required to pay a $13,012.37 accelerated payment.

On February 25, 2022, VERNON 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 maintained that the increase in RAUPP'S 2018 salary was due to a one-time stipend for $3000.00 paid by the State to RAUPP in 2018 due to a change in payment schedule that caused the November 2017 payment to be unusually small and caused part of RAUPP'S 2017 salary to be paid in 2018. VERNON stated that the State of Illinois required it to treat the stipend as salary. The request for exemption was denied by the IMRF Administrative Staff because there was no evidence

that the increases in RAUPP'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. VERNON then requested a hearing to appeal the Administrative Staff Determination to the IMRF Board of Trustees.

ISSUES TO BE REVIEWED

Whether VERNON can be exempted from an accelerated payment when increases in RAUPP'S reportable earned wages during a twelve-month period within the final rate of earnings period has occurred not because there has been an actual significant salary increase, but because the employee received a one-time stipend from the State which VERNON was required to treat as additional salary, and also because VERNON changed its payment schedule, inadvertently resulting in an increase in RAUPP'S salary for January, 2018 and a decrease in salary for November 2017.

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 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 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 also adopted the "Authorized Agent's Manual" (hereinafter referred to as the Manual), which it uses to provide guidance regarding IMRF rules. The resolutions and the Manual therefore constitute 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, 2013 IL App (2d) 120456; also see Illinois RSA No. 3, Inc. v. Department of Central Management Services, 348 Ill. App. 3d 72, 77 (2004)).

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. 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.

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 1/2018-12/2018 earnings with 1/2017-12/2017 earnings triggered the necessity for an accelerated payment.

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)".

VERNON argues that it should be exempt from any accelerated payment even though there is not an express exemption because RAUPP'S salary increases were minimal, if any, and did not exceed the statutory amount. It maintains that the additional pay increases earned by RAUPP were not under its control, because the State of Illinois paid a $3000.00 stipend to RAUPP and required VERNON to add it to his reportable income. VERNON maintains that it should not be penalized when RAUPP'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. VERNON also argues that what appeared to be an increase in RAUPP'S earned salary was actually just a change in payment schedule from once a month to twice a month beginning November 2017. 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 there is no listed exemption in 40 ILCS 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 RAUPP'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, the twelve months periods from 1/2018 to 12/2018, when compared with the twelve months period immediately preceding it, shows that RAUPP'S increase in earnings was sufficient to trigger the need for an accelerated payment. Section 7-172(k) applies unless there is an express exemption set forth

in the Code. The State of Illinois paid RAUPP a stipend that was to be included in his reportable earned wages, and there is no allowable exemption provided in the Pension Code for stipends paid to an employee by the State. There is also no statutory exemption provided when an employer's payroll changes inadvertently result in unusual fluctuations to an employee's reportable wages. Nor has VERNON provided any evidence of any applicable exemption. Therefore, there is no exemption listed in 5/7-172(k) that allows IMRF to exempt VERNON from this accelerated payment invoice.

SUSAN DAVIS BRUNNER
IMRF Hearing Officer
August 8, 2022

These Findings of Fact and Conclusions of Law are adopted this 19th day of August, 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:	)	
Marcia Gillespie (MID# 191-4477)	)	
	)	
[Appeal of separation of service violation]	)	Hearing held August 1, 2022
	)	

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

Until her last day of employment on July 31, 2021, MARCIA GILLESPIE MID # 191-4477 (hereinafter referred to as "GILLESPIE") was an employee of the Jacksonville School District #117 (hereinafter referred to as "Jacksonville"). Beginning in August of 1999, and throughout her employment at Jacksonville, GILLESPIE had been an active participant in the Illinois Municipal Retirement Fund (hereinafter referred to as "IMRF"). Although GILLESPIE did not fill out an application for her retirement benefits at the time, Jacksonville submitted a form to IMRF on August 31, 2021, terminating GILLESPIE'S IMRF active participation as of July 31, 2021.

On the Termination of IMRF Participation (IMRF Form e6.41), Jacksonville stated the termination type as "Terminating Participation and Employment", as well as indicated a termination reason as "Retirement". Upon receipt of the form, IMRF records were updated to indicate that GILLESPIE was no longer employed by Jacksonville.

During December of 2021, IMRF sent GILLESPIE a letter with information regarding her status as an inactive vested IMRF member and her eligibility for pension benefits. GILLESPIE then applied for her IMRF pension on December 22, 2021. GILLESPIE subsequently began receiving her retirement annuity payments retroactive to her stated pension start date of August 1, 2021.

Jacksonville then asked GILLESPIE to return or continue to work on a temporary, part-time basis during the late summer and early fall of 2021. She worked for Jacksonville in that capacity until January 31, 2022. While working part-time for Jacksonville GILLESPIE was paid as an employee, but she was not reenrolled in IMRF and did not receive any IMRF benefits.

On May 29, 2020, the IMRF Board of Trustees passed the first Board Resolution 2020-05-10(a) (Resolution 2020-5-10) pertaining to the need to have a complete separation from service for 60 days in order to be eligible to receive retirement benefits. This Resolution clarified the IMRF separation of service requirements and became effective on January 1, 2021. The Resolution was amended on November 19, 2021 (Resolution 2021-11-12(c)) to further clarify its requirements.

During January of 2022, IMRF learned of GILLESPIE'S continued work for Jacksonville and IMRF staff subsequently determined that GILLESPIE was no longer eligible for the retirement benefits she had received retroactive to August 1, 2021, since both of the Resolutions (the 2020 and 2021 Resolutions hereinafter referred to as the "Resolutions") required her to be fully separated from her employment with Jacksonville for any other IMRF employer for 60 days before she was eligible to work again and receive benefits. Therefore, IMRF determined that GILLESPIE could not work in any capacity for any IMRF employer until at least 60 days after August 1, 2021, which was the first day of her retirement and the first day of her annuity period. IMRF further stated that since GILLESPIE had not fully separated from employment, she was required to pay back all benefit payments she had been paid retroactive to August 1, 2021, an amount totaling $4,995.97.

GILLESPIE now appeals the IMRF Administrative Staff Determination and maintains that the sixty-day waiting period should not apply to her, as her limited employment with Jacksonville after her July 31, 2021 retirement was only as a part-time employee working less than 600 hours with no eligibility for IMRF participation or pension credit. In addition, GILLESPIE argues that IMRF failed to sufficiently inform employees and

employers about the new separation from work policy and that Jacksonville failed to inform her of the same. IMRF argues that the Pension Code and the Internal Revenue Service (hereinafter referred to as "IRS") require an employee to be separated from service before receiving retirement annuities and the sixty-day waiting period ensures that neither IMRF or the individual employee will run afoul of the law. IMRF also maintains that it is not adding a new requirement by adding a sixty-day waiting period but is just clarifying what is meant by the undefined term "separation from service" that was already present in section 7-141(a) of the Pension Code.

The appeal was heard remotely before Hearing Officer Susan Davis Brunner on August 1, 2022, at 10:00 a.m. Amy Jackson of Rammelkamp Bradley appeared on behalf of GILLESPIE. Attorneys Vladimir Shuliga and Elizabeth Carter appeared on behalf of IMRF.

ISSUES TO BE REVIEWED

At issue in this case is whether IMRF'S 2020 and 2021 Resolutions setting forth the requirement that an individual employee cannot receive retirement benefits from one's employer unless they have not worked for or made plans to work for any IMRF employer in any capacity for at least 60 days after the retirement start date applies to GILLESPIE who did not know about the Resolutions or the 60 day waiting period requirement, and only worked part-time and for a short period of time for Jacksonville after her retirement.

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 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 also adopted the "Authorized Agent's Manual" (hereinafter referred to as the Manual), which it uses to provide guidance regarding IMRF rules. The resolutions and the Manual therefore constitute 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, 2013 IL App (2d) 120456; also see Illinois RSA No. 3, Inc. v. Department of Central Management Services, 348 Ill. App. 3d 72, 77 (2004)).

Section 7-141(a) of the Pension Code provides that an employee may only receive a retirement annuity once they are "separated from the service of all participating municipalities and instrumentalities thereof and participating instrumentalities."
The phrase "separation from service" is not expressly defined in the Pension Code. IMRF has stated that the requirement that one must "separate from service" before receiving a retirement annuity arises from the requirements set forth in both the Pension Code and also the U.S. Tax Code. IMRF also states that IRS rules require IMRF to pay retirement benefits only to those members that have legitimately retired and terminated employment and if a member retires and is then reemployed without a bona fide separation of service, it raises qualification issues for the plan. Treas. Reg. § 1.401-1(a)(2)(i); Rev. Rul. 74-254, 1974-1 C.B. 94. Therefore, in order to retain its legal status and comply with federal law, IMRF maintains that by requiring the sixty-day waiting period after retirement before working for any IMRF employer, it is doing what is necessary to comport with the law

and be certain there has been a bona fide separation from work so IMRF can maintain its qualified plan status.

The 2020 Resolution regarding the separation of service provides as follows:

> *WHEREAS, Section 7-198 of the Illinois Pension Code authorizes the Board of Trustees of the Illinois Municipal Retirement Fund (IMRF) to establish rules necessary or desirable for the efficient administration of the Fund; and*
>
> *WHEREAS, Section 7-141 of the Illinois Pension Code conditions the payment of a retirement annuity on an employee's separation of service from all IMRF participating employers; and*
>
> *WHEREAS, the Internal Revenue Service has ruled that individuals who retire with the explicit understanding with their employer that they will continue working are not separating from service with the employer are not legitimately retired; and*
>
> *WHEREAS, in order to preserve IMRF's qualified plan status under the Internal Revenue Code, IMRF may not pay a retirement annuity to an employee who has not legitimately separated from service*
>
> *"1. In order for a member to qualify to receive a retirement annuity the member must separate from the service of all IMRF employers. Moving from a qualifying IMRF position to a temporary or part-time position at an IMRF employer, or becoming a leased employee or an independent contractor of an IMRF employer, is not sufficient to constitute a bona fide separation of service.*
> *2. A member may never prearrange continued employment as a common law employee, leased employee or independent contractor with an IMRF employer at the time of retirement from that employer. Such arrangement does not constitute a bona de separation of service and such individuals would not be eligible to receive an IMRF pension.*
> *3. IMRF will suspend the retirement annuity of a member who returns to employment or service with an IMRF employer earlier than sixty (60) days from their annuity start date. The suspension will begin on the first day of the month following the reemployment. This is true regardless of the number of hours worked, or whether the retiree is employed as an independent contractor.*
> *4. Retirees who have received one or more retirement annuity payments after returning to service in violation of this policy will be required to return such payment(s) to IMRF. In the case of hardship, staff is permitted to enter into a repayment plan with the elected retiree, for a term not to exceed eight years.*
> ***After sixty (60) days from the annuity start date**, retirees may return to service with an IMRF employer, provided that there was no pre-arranged agreement to return to employment before retirement. In this case, the return-to-work rules established by the IMRF Board will apply".*

On May 29, 2020, IMRF issued and disseminated a General Memorandum #686 (hereinafter referred to as the "Memo"), that clarifies and reiterates the requirements set forth in the Resolution. In addition, the IMRF requirements regarding a "Separation of Service" are provided in the IMRF Manual.

An additional clarifying Resolution was passed by the Board on November 19, 2021, which states as follows:

> *WHEREAS, Section 7-198 of the Illinois Pension Code authorizes the Board of Trustees of the Illinois Municipal Retirement Fund (IMRF) to establish rules necessary or desirable for the efficient administration of the Fund; and*
>
> *WHEREAS, Section 7-141 of the Illinois Pension Code conditions the payment of a retirement annuity on an employee's separation of service from all IMRF participating employers; and*
>
> *WHEREAS, the Internal Revenue Service has ruled that individuals who retire with the explicit understanding with their employer that they will continue working are not separating from service with the employer are not legitimately retired; and*
>
> *WHEREAS, in order to preserve IMRF's qualified plan status under the Internal Revenue Code, IMRF may not pay a retirement annuity to an employee who has not legitimately separated from service with their IMRF employer; and*
>
> *WHEREAS, the Internal Revenue Service has provided guidance that an individual under the age of 59 ½ who receives retirement payments without a bona fide separation of service has received an in-service distribution and may be subject to early distribution tax penalties under the Internal Revenue Codes; and*
>
> *WHEREAS, it is necessary to adopt rules consistent with Internal Revenue Service rules and regulations.*
>
> *THEREFORE BE IT RESOLVED that the following administrative rules be and are hereby adopted by the Board of Trustees:*
>
> *A. In order for a member to qualify to receive a retirement annuity, the member must separate from the service of all IMRF employers. Moving from a qualifying IMRF position to a temporary or part-time position at an IMRF employer, or becoming a leased employee or an independent contractor of an IMRF employer, is not sufficient to constitute a bona fide separation from service.*
> *B. A member may never prearrange continued employment as a common law employee, leased employee or independent contractor with an IMRF employer at the time of retirement from that employer. Such arrangement does not constitute a bona fide separation of service and such individuals would not be eligible to receive an IMRF pension.*
> *C. IMRF will retroactively deny the retirement annuity application of a member who returns to employment or service with an IMRF employer earlier than sixty (60) days from their annuity start date. This is true regardless of the number of hours worked, or whether the retiree is employed as an independent contractor.*

D. Retirees who have received one or more retirement annuity payments after returning to service in violation of this policy will be required to return such payment(s) to IMRF. In the case of hardship, staff is permitted to enter into a repayment plan with the effected retiree, for a term not to exceed eight years.

E. Upon the conclusion of the employment or service arrangement, a retiree may become re-qualified to receive a pension. The pension may be effective the first of the month following the conclusion of service. The member must re-apply for the pension and their pension will be recalculated under the terms of the Pension Code.

F. After sixty (60) days from the annuity start date, retirees may return to service with an IMRF employer, provided that there was no pre-arranged agreement to return to employment before retirement. In this case, the return to work rules established by the IMRF Board will apply.

G. Elected officials and officials appointed to an elected office are not eligible to receive a retirement annuity while serving in that office if the individual has received IMRF service credit for service in that elected office. Any retiree, however, may be elected or appointed to an elected office and remain eligible for their retirement annuity as long as the retiree has never earned service credit for service in that elected office.

H. A retiree may be appointed to a governing body position at an IMRF employer and remain eligible for their retirement annuity as long as the retiree has never earned service credit for service in that appointed office.

These rules will take effect as of January 1, 2021. This resolution will have prospective effect to individuals with termination dates on or after the date that these rules take effect.

GILLESPIE argues that since her work for Jacksonville after July 31, 2021, did not qualify for IMRF participation or prior service credit, she should not be barred from collecting retirement benefits retroactive to August 1, 2021. GILLESPIE further maintains that neither IMRF nor Jacksonville sufficiently informed her that the new IMRF Resolutions barred her from collecting retirement benefits from Jacksonville unless and until she stopped working for all IMRF employers for 60 days. GILLESPIE does not dispute that, as stated above, the IMRF Resolutions require her to wait 60 days before working or planning to work for an IMRF employer, or that normally the rules provided in resolutions should be applied. Rather, she maintains that she did not know about the Resolutions and was not informed by IMRF or Jacksonville that there was a prohibition against working for an IMRF employer less than 60 days after retiring, and that therefore, the rule should not apply to her. GILLESPIE also opines that she is not even certain whether Jacksonville had even received this information from IMRF. GILLESPIE states that had she known, she would not have started working for Jacksonville again in late August, since it was less than 60 days after her August 1, 2021, pension start date.

IMRF states that it was essential for it to set clear rules in its Resolutions and Memo in order to preserve IMRF's qualified plan status under the Internal Revenue Code. IMRF may not pay a retirement annuity to an employee who has not legitimately separated from service. IMRF maintains that it passed the Resolution because the IRS has stated that separation from service requires that an employee "stops performing service for the employer and there is not the explicit understanding between the employer and employee that upon retirement the employee will immediately return to service with the employer." The "Whereas" clause of the IMRF resolution states that the Internal Revenue Service has ruled that individuals who retire with the explicit understanding with their employer that they will continue working are not separating from service with the employer are not legitimately retired. IMRF further maintains that it may not pay a retirement annuity to an employee who has not separated from service with any and all IMRF employers. For purposes of this Hearing Officer's written Recommendations for the IMRF Board of Trustees, the written IRS and US tax rules, regulations, letters and laws relied upon by IMRF will be taken as true, as this administrative hearing is not the arena to interpret or determine federal or state tax law.

IMRF maintains that by passing the Resolutions, it has not changed the statutory requirement that one must separate from work in order to receive benefits. Rather, IMRF asserts that the Resolutions were passed to clarify what is necessary to comply with the requirement and when the sixty-day waiting period begins. IMRF has determined that one's retirement for purposes of the Pension Code begins upon the beginning of the annuity period, as indicated by the date of the first annuity payment. Section 4 of the Resolution specifically requires that the 60 days begins after the annuity start date: "*After sixty (60) days from the annuity start date, retirees may return to service with an IMRF employer, provided that there was no pre-arranged agreement to return to employment before retirement"*.

IMRF also maintains that this information was sufficiently disseminated to employers and employees through many channels. IMRF depends on authorized agents who are

available to provide information and answers to questions as requested. IMRF also argues it has a detailed website, brochures, handouts, newsletters, which are mailed to employers and employees and provide information regarding current IMRF rules and any changes to these rules made by Board resolution or memo, including the Resolutions. GILLESPIE was also given specific written information from IMRF regarding the need to separate for 60 days in a letter mailed to her in December 2021, and this was also printed on her benefits application, which she signed and agreed to in December. In addition, Section 5.20 (a) of the IMRF Authorized Agent's Manual (Manual) applies to IMRF members who are planning to retire and warns them of the need to fully separate from employment with any IMRF employer before working again and to contact IMRF before working again after retirement.

Although it is unfortunate that GILLESPIE did not receive the information about the sixty-day waiting period and did not know of its requirements, IMRF disseminated this information through numerous channels accessible to GILLESPIE and Jacksonville, some of which were admittedly received and signed by GILLESPIE. IMRF must abide by the law, and the IMRF Resolutions and rules it has deemed necessary to enforce the statutory requirements and cannot carve out an exception to the law as this is the responsibility of the legislature.

IMRF has stated that it is in receipt of prior IRS decisions that state that the IMRF'S legal status would be in jeopardy if the tax court deems an IMRF employee had not legally retired and/or had never intended to retire. It is then reasonable for IMRF to determine the best way to ensure that IMRF and the pensions of all the other employees are protected. It is up to IMRF to determine if there has been an adequate separation from service, as required by 7-141 of the Pension Code. Section 7-141(a) requires the employee to be "separated from the service of all participating municipalities and instrumentalities…" There is nothing in this section to suggest that this requirement does not apply to those who retire but then work part-time or temporarily with an IMRF employer. The section could have stated that the need to separate from service only applies to the job from which one is retiring but did not do so. Nor does the statute state

that it only applies to full time work after retirement. IMRF has determined that 7-141 a requires separation from one's employer as well as any IMRF employer. By passing the Resolution, IMRF has not changed the requirement that one must separate from work but has clarified what is necessary to comply with the requirement. Per the Resolution, IMRF has determined that having the limited waiting period of sixty days before returning to work ensures that an employee has complied with the Pension Code and also with the IRS and tax laws. IMRF has also determined that an employee may not make prior plans with an IMRF employer to work after one's retirement, presumably in order to prevent against a later determination that an employee's prior plans to work are actually an indication that the employee never intended to retire. These are reasonable decisions within the authority of the IMRF Board to administer the Fund in a manner that comports with the law. IMRF has been the arbiter in the past in deciding whether there has been a bona fide retirement, and this is part of its authority under the Pension Code.

Lastly, it is incumbent upon all IMRF employers, through their authorized agents, to "perform all duties related to the administration of [IMRF] as requested by the Fund and the governing body of [the authorized agent's] municipality." 40 ILCS 5/7-135(b)(7). When Jacksonville submitted GILLESPIE's IMRF termination of participation form, it indicated that GILLESPIE was retiring and that she no longer worked for Jacksonville. This form was submitted at or around the time that GILLESPIE returned to employment. Jacksonville made no attempts to amend the termination form to reflect that GILLESPIE still worked for Jacksonville in a non-IMRF participating position. It was not until July 18, 2022, that Jacksonville submitted a revised termination form. This constituted a failure of Jacksonville to inform IMRF of the information it needs to make its administrative determinations.

For all the above reasons I recommend that the Board AFFIRM the IMRF staff decision stating that GILLESPIE is subject to the terms of the Resolutions and the Memo which clarify what is required for an employee to be considered fully separated from work. Upon her retirement, GILLESPIE was required to stop working for all IMRF employers in any capacity with no plans for future work and then wait sixty days after the beginning of her annuity period before working

for any IMRF employer. Therefore, GILLESPIE was not eligible to receive the $4995.97 in retirement benefits she was paid for the period from August 1, 2021, to through January 31, 2022, as she had not fully separated from work as required for 60 days when she continued to work for Jacksonville through January 31, 2022. Therefore, even though GILLESPIE did not intend to violate the sixty-day separation from work requirement, and even though she was not aware of the Resolutions or requirement, she was not eligible for benefits until February 1, 2022, and therefore must repay the retirement benefits she received prior to that time.

Based upon Jacksonville's failure to notify IMRF of the circumstances of GILLESPIE's employment and its failure to apply the rules disseminated to it through IMRF employer communications and IMRF's website, Jacksonville should be liable for 50% of the prepayment amount. *See, e.g.*, 40 ILCS 5/7-144(a-5) (stating that employers who knowingly fail to notify the Board of a retiree return to work may be liable for up to one half of the prepayment charged). Thus, the amount of $2,497.99 is charged to GILLESPIE's account, and the amount of $2,497.98 is charged to Jacksonville. 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 19th day of August 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