MEMORANDUM

TO: **Board of Trustees**
FROM: **Benefit Review Committee**
DATE: **March 27, 2025**
SUBJECT: **Report of the Benefit Review Committee Meeting held on March 27, 2025**

A meeting of the Benefit Review Committee of the Board of Trustees was held in the Oak Brook IMRF office on Thursday, March 27, 2025. Present at the meeting were Committee members Copper, Cycholl, Isaac, Miller, Stefan, and Townsend. Staff members present were Shuliga, Beyer, Grossman, Seputis, Hatfield, Dixon, and Hollyfield.

(25-03-01) (Roll call)

Trustee Miller presided as chairperson and called the meeting to order at 1:03 p.m. Committee members Copper, Cycholl, Isaac, Miller, Stefan, and Townsend were present for visual roll call.

(25-03-02) Public Comment

None

(25-03-03) Litigation Update
Associate General Counsel Beyer presented an update regarding pending or recently concluded litigation. No final action was taken.

(25-03-04) Disability Department Annual Report
Customer Service Director Seputis presented the Disability Department Annual Report. No final action was taken.

(25-03-05) Public Comment

None

(25-03-06) Approval of the committee meeting minutes from December 19, 2024

Motion: Copper
Second: Stefan
Ayes: Copper, Cycholl, Isaac, Miller, Stefan, and Townsend
Nays: None
Motion Passed: 6-0

(25-03-07) Keith Gardner – Denial of Total and Permanent Disability Benefits
Written materials including medical records, member, employer, and physician questionnaires; video evidence, and a written statement of claim from the member were provided to the committee members for review prior to the hearing. Keith Gardner appeared in person with his wife, Shauna, to provide testimony. The Committee also heard testimony from staff.

At the conclusion of his hearing, Mr. Gardner introduced additional documents for the Committee's consideration. Based on this additional evidence, a motion was made to remand the matter to staff for additional consideration. Staff is to request any and all

additional documentation from Mr. Gardner which he would like to be considered, which must be received by IMRF no later than April 4, 2025. Staff will review the information and refer to the medical consultants for consideration. Staff is to present the updated information at the next Benefit Review Committee meeting.

Motion: Copper
Second: Townsend
Ayes: Copper, Cycholl, Isaac, Miller, Stefan, and Townsend
Nays: None
Motion Passed: 6-0

(25-03-08) Findings and Conclusion of the IMRF Hearing Officer – Karl Pannier

Staff Attorney Grossman 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. Staff is to negotiate a repayment agreement up to a five-year term of repayment.

Motion: Copper
Second: Isaac
Ayes: Copper, Cycholl, Isaac, Miller, Stefan, and Townsend
Nays: None
Motion Passed: 6-0

(25-03-09) Findings and Conclusion of the IMRF Hearing Officer – Karl Johnson

Staff Attorney Grossman 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. Staff is to negotiate a repayment agreement up to a twenty-year term of repayment.

Motion: Townsend
Second: Copper
Ayes: Copper, Cycholl, Isaac, Miller, Stefan, and Townsend
Nays: None
Motion Passed: 6-0

(25-03-10) Adjournment

Trustee Copper made a motion to adjourn at 3:31 p.m. Seconded by Trustee Isaac. Motion passed by unanimous voice vote.

ILLINOIS MUNICIPAL RETIREMENT FUND

IN THE MATTER OF KARL L. PANNIER	**)**	**#153-2851**
FROM A DECISION OF THE ILINOIS MUNICIPAL	**)**	**Susan Davis Brunner**
RETIREMENT FUND ADMINISTRATIVE STAFF	**)**	**Hearing Officer**

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

Until his last day of employment in September of 2023, KARL L. PANNIER #190-0149 (hereinafter referred to as "PANNIER") was an employee of St. Clair County (hereinafter referred to as "St. Clair"), an IMRF employer. While working at St. Clair, PANNIER was an active participant in the Illinois Municipal Retirement Fund (hereinafter referred to as "IMRF"), and his IMRF participation was terminated effective September 8, 2023. Prior to working for St. Clair, PANNIER worked for Washington County, where he was also an IMRF participant. PANNIER filed an application for his IMRF pension on August 7, 2023, and a termination of IMRF participation form was submitted by St. Clair on September 8, 2023. PANNIER began receiving his retirement annuity payment effective October 1, 2023.

During a one-week period between October 12th and 18th, 2023, PANNIER worked two or three days as an independent contractor for the Southern Illinois Law Enforcement Commission Multi-Regional Training Mobile Team Unit #14 (hereinafter referred to as MTU), an IMRF employer ER #09509. PANNIER was hired at the MTU as an instructor and paid pursuant to a separate written contract per course. PANNIER was not reenrolled in IMRF and did not receive any IMRF benefits due to his work at MTU. During August of 2024, IMRF conducted a compliance review of MTU and learned that PANNIER worked for MTU during October of 2023, and retroactively denied his August 2023 application for pension on the basis that PANNIER had worked for an IMRF employer within 60 days of his annuity start date and had not fully separated from work.

On May 29, 2020, the IMRF Board of Trustees passed Board Resolution 2020-05-10(a) pertaining to the need to have a complete separation from service in order to be eligible to receive retirement benefits. This Resolution clarified the requirements for the separation of service and was to be effective beginning January 1, 2021. The Resolution was amended on November 19, 2021 (Resolution 2021-11-12(c)) to further clarify its requirements (the 2020 and 2021 resolutions hereinafter referred to together as the "Resolution"). The Pension Code does not expressly require a sixty-day waiting period before returning to work after one's pension start date, but the Resolutions do.

Therefore, IMRF staff determined that PANNIER had returned to work prior to the completion of the sixty-day waiting period required by IMRF resolution, since his

effective pension date had been October 1, 2023. IMRF staff determined that PANNIER was no longer eligible to receive the retirement benefits he had been paid from October 1, 2023, through October 31, 2023. IMRF further determined that PANNIER was required to pay back all benefit payments he had been paid during October of 2023, an amount not specified in the Statements of Claim, but testimony revealed the amount sought from PANNIER is slightly less than $5000.00. PANNIER maintains that he only received $3755.62 after taxes. IMRF states that because PANNIER has not worked for MTU or any other IMRF employer at any time since the one-week period during October of 2023, his correct pension date should be effective as of November 1, 2023, instead of October 1, 2023, since PANNIER had fully separated from his work with St. Clair for a period of at least 60 days only after the November 1st start date.

PANNIER now appeals the IMRF Administrative Staff Determination. The appeal hearing was heard remotely before Hearing Officer Susan Davis Brunner on February 24, 2025. PANNIER appeared on behalf of himself, as well as Scott Williams, Amy Eggeneyer, and Kevin Schmoll of MTU. Attorney Kristen Grossman appeared on behalf of IMRF.

PANNIER maintains that the sixty-day waiting period should not apply to him because although he was aware that there was a necessary sixty-day waiting period before returning to work, he did not think it applied to him since he only returned to work as an independent contractor. PANNIER also maintains that IMRF did an insufficient job of transmitting and dispersing information to announce to employees and employers that there was a new Resolution that stated that the sixty-day waiting period was being enforced and would now apply to independent contractors in addition to employees. PANNIER states that when he retired, he watched a retirement video on the IMRF website, which never mentioned the separation from work rule or the new Resolution. He also maintains that although some part of the separation from work rule may have been written in small print on his retirement forms, when he signed the forms with his human resources representative, PANNIER was only told to "sign here" on each form, and no one cautioned him regarding the specifics of the Resolution or the separation from work rule. PANNIER also states that he only returned to work for two or three days because he was doing a favor at the request of MTU and believed that his pension would not be affected since he was not a part-time or full-time employee. PANNIER argues that the sixty-day rule should not apply to him when he did not return to work in the usual sense and only worked for a few days. In addition, PANNIER maintains that the sixty-day waiting period should not apply to him, as his less than one-week instructor job was not eligible for IMRF participation, and he received no IMRF pension credit. Similarly, Scott Williams of MTU testified that at the time, he did not know that the sixty-day rule now also applied to independent contractors because of the Resolution. Williams said that because of the nature of MTU, he hired independent contractors all the time and had never had an issue before PANNIER'S case. WILLIAMS stated that as both a director at MTU and as the IMRF agent, he did not receive sufficient information from IMRF to apprise him that the Resolution stated that the separation from work rule that Williams already knew about and followed, now applied to independent contractors. Williams

stressed that he believed he was following IMRF'S rules by asking PANNIER to work a few days for MTU, and felt responsible for the problem it has now caused PANNIER.

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 nor the individual employee will run afoul of the law. IMRF also maintains that the Resolution did not add a new requirement by adding a sixty-day waiting period but just clarified what is meant by the undefined term "separation from service" that was already present in section 7-141(a) of the Pension Code and who was affected by the requirement.

ISSUES TO BE REVIEWED

Whether IMRF is authorized to allow PANNIER to keep pension benefits he was paid during October of 2023 when he retired effective October 1, 2023, but was asked to return to work for a few days as an independent contractor for MTU as a favor, when he was not eligible for IMRF benefits and did not know that the 60 day separation from work applied to his work as an independent contractor.

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 Resolution 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 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.

At issue here is whether the IMRF'S determination that an employee must wait sixty days before working in any capacity for any IMRF employer, a requirement that is not expressly stipulated in the Pension Code, is a legal exercise of IMRF'S rulemaking authority in managing and maintaining the Pension Fund, and whether this requirement applies to PANNIER. The Pension Code in 7-141 requires an employee to be separated from service from all IMRF employers but does not define the term "separated from

service". The Resolution states that an employee who does not wait sixty days before working for any IMRF employer even if it is not the same one, has not fully separated from service and that even making plans to work within that time-period means you are not separated from work.

PANNIER maintains that he believed the sixty-day waiting period applied only when a retiree is returning for full-time or part-time work as an employee. Moreover, he states that he was only helping at the request of MTU and only agreed to do so because he believed it would not affect his pension. IMRF acknowledges that PANNIER was only working temporarily for MUT at its request but maintains that it has no legal authority or ability under the Pension Code to ignore the code requirements and allow PANNIER to receive pension benefits when he had not fully separated from his employment before working again, as defined and required by IMRF in its Resolution. IMRF asserts that it must abide by the Pension Code and the IMRF Resolution 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 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 Resolution, 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 2020 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".* Section F of the 2021 Resolution similarly provides that the sixty-day waiting period begins upon 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. In this case, the return to work rules established by the IMRF Board will apply."

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 the same or another 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 part-time or full-time work after retirement as an employee. IMRF has determined that 7-141a requires separation from one's employer as well as any IMRF employer, and that it includes work performed as an independent contractor. 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 60 days before returning to work ensures that an employee has complied with the Pension Code and 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.

IMRF maintains that information pertaining to the sixty-day separation from work requirement 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. IMRF also asserts that PANNIER was also given specific written information from IMRF regarding the need to separate for 60 days as it was printed on his benefits application, which he signed and agreed to when he retired. 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 for 60 days before working again and to contact IMRF before working again after retirement. PANNIER concedes that he may have received and/or filled out and signed certain forms that contained warnings about waiting 60 days before working, but PANNIER maintains that

he and MTU either did not receive or understand the limitations about working as an independent contractor for an IMRF employer within the sixty-day waiting period, since the sixty-day separation from work rule had not been enforced against independent contractors prior to the passage of the Resolution.

It is noteworthy that although much of the IMRF information pertaining to the sixty-day waiting period is directed and disseminated solely to employers and warns all IMRF employers not to hire recent retirees without first contacting IMRF, the penalty is directed to the employee who is mistaken or violates the sixty-day rule. In this case, PANNIER and Williams both testified that they were aware of the sixty-day rule, but either because of mistake or lack of information, did not realize that the rule now applied to independent contractors. However, the IMRF Resolution puts all the responsibility only upon the retiree to determine whether any kind of work violates the sixty-day rule. As it stands now, the retiree cannot legally rely on anyone; not even an IMRF agent on the telephone, even though the correct information may not be easy or possible to find. The Resolution places no duty upon either IMRF or the employer to discover mistakes or violations.

In response, IMRF maintains that it has no legal authority or ability under the Pension Code to ignore the code requirements or the Resolution and allow PANNIER to receive any portion of the pension benefits he received during October of 2023 when he had not fully separated from his employment before working again, as defined and required by the Resolution. IMRF asserts that it must abide by the Pension Code and the IMRF Resolution. The Resolution expressly requires a retroactive pension denial, and IMRF has interpreted this to mean the denial must go back to the time it was first approved

This Hearing Officer can find no legal mechanism upon which to recommend that the IMRF Board is legally required to allow PANNIER to keep all, or any portion of the annuity benefits he received during October of 2023, even though PANNIER only received $3755.62 after taxes. Nor does this Hearing Officer have the authority to recommend an equitable solution to the Board as this is the Board's sole decision to make. The Pension Code provides no express legal authority to IMRF that allows it to remedy its mistakes or the mistakes of employers and employees by ignoring IMRF rules and Resolutions.

For all the above reasons, I recommend that the Board AFFIRM the IMRF staff decision to retroactively amend PANNIER'S annuity start date to November 1, 2023. PANNIER is subject to the terms of the Resolution and the Memo which clarify what is required for an employee to be considered fully separated from work. Upon his termination of employment from St. Clair and active IMRF participation, PANNIER was required to stop working for all IMRF employers in any capacity, including as an independent contractor, with no plans for future work and then wait sixty days after the beginning of his annuity period on October 1, 2023, before working for any IMRF employer.

Staff is authorized to calculate the amount to be repaid as a result of the violation, and negotiate a repayment agreement with PANNIER for a term not to exceed five years.

Susan D Brunner February 28, 2025

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings of Fact and Conclusions of Law are adopted this 28th day of March 2025, 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 KARL JOHNSON	**)**	**#171-2649**
FROM A DECISION OF THE ILINOIS MUNICIPAL	**)**	**Susan Davis Brunner**
RETIREMENT FUND ADMINISTRATIVE STAFF	**)**	**Hearing Officer**

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

Until his last day of employment in November 28, 2014, KARL JOHNSON #171-2649 (hereinafter referred to as "JOHNSON") was an employee of Knox County (hereinafter referred to as "Knox") ER #03025, an IMRF employer. At all times while working at Knox, JOHNSON was an active participant in the Illinois Municipal Retirement Fund (hereinafter referred to as "IMRF"). JOHNSON worked for Knox during two separate periods, from 1988 to November 2000 and again from 2007 to 2014. On May 28, 2014, Knox passed a resolution to adopt an Early Retirement Incentive (hereinafter referred to as ERI) program. JOHNSON filed an application to retire pursuant to the ERI program during November of 2014, at which time he purchased five years of ERI service credit. The ERI was approved, and Knox filed a termination of IMRF participation for JOHNSON during November of 2014. JOHNSON began receiving his enhanced ERI annuity payment effective December 1, 2014.

Beginning in August of 2020, JOHNSON began working part-time as a teacher for the Monmouth-Roseville School District (hereinafter referred to as Monmouth), an IMRF employer ER #06718. JOHNSON states he was not reenrolled in IMRF or TRS or any other pension fund at that time and received no benefits. However, during November of 2024, JOHNSON telephoned IMRF to determine whether he could become a member of the Teachers" Retirement System of Illinois (hereinafter referred to as TRS) without jeopardizing his IMRF pension. After learning that JOHNSON had returned to work for Monmouth, IMRF conducted a review in 2024 and retroactively denied his November 2014 application for an ERI pension on the basis that JOHNSON had worked for an IMRF employer after retiring under an ERI program, which was expressly prohibited in 40 ILCS 5/7-141.1(g) of the Illinois Pension Code.

IMRF further determined that JOHNSON was required to pay back the portion of all retirement benefits he had received since 2014 that were attributable to his age or credit enhancement under the ERI program, an amount totaling more than $103,000.00. Per IMRF, since JOHNSON has continued to receive monthly enhanced benefits during the pendency of this hearing and Board decision, the amount it now requests from JOHNSON increases with each monthly enhanced annuity payment.

JOHNSON now appeals the IMRF Administrative Staff Determination and maintains that he did not know that working part-time for Monmouth would violate the prohibition

under the terms of his ERI retirement against returning to work for an IMRF employer. He maintains that he made very little money from Monmouth each year and did not know that because Monmouth was a member of TRS it qualified as an IMRF employer. JOHNSON acknowledges, however, that at the time he started working for Monmouth he did not even consider whether or not working for Monmouth violated the terms of his ERI annuity.

The appeal hearing was first heard remotely before Hearing Officer Susan Davis Brunner on February 27, 2025. JOHNSON appeared on behalf of himself, and Associate General Counsel Kristin Grossman appeared on behalf of IMRF.

ISSUES TO BE REVIEWED

Whether IMRF is authorized to allow JOHNSON to keep all or any portion of the pension benefits amount he received beginning December 1, 2014, that was attributable to his ERI credit or age enhancement when he retired under an ERI, but in 2020 returned to work part-time for Monmouth, an IMRF employer, but did not know this would be a violation of the terms of his ERI.

DISCUSSION AND ANALYSIS

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

Article 7 of 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 Resolution 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 grants the IMRF Board certain limited powers and duties, which are enumerated in sections 7-179 to 7-200. Section 7-178 states, "Board powers and

duties. The board shall have the powers and duties stated in Sections 7-179 to 7-200, inclusive, in addition to such other powers and duties provided in this Article." Section 7-17, expressly grants the Board the power to authorize and suspend annuities and benefits, but does not affirmatively grant the Board the power to rescind, amend or change the same.

IMRF is one of a group of thirteen public pension systems that are covered under the Illinois Retirement Systems Reciprocal Act (hereinafter referred to as The Reciprocal Act). The Reciprocal Act is optional and allows an employee to receive continuous pension credit by combining eligible service credit between the state's public retirement systems. Under the Reciprocal Act, when an employee retires, each system pays a separate monthly benefit and uses its own benefit formula to calculate the employee's pension amount. Service credit earned under any one of the reciprocal systems remains with that system so that there is no actual transfer and no merging of the credit. Therefore, when an employee retires, although each system exchanges information about the employee's service credit and earnings, the service credit and contributions remain with the original system. To retire under the Reciprocal Act, the participant must retire under all systems at the same time.

Section 5/7-141(a) of the Illinois Pension Code, which sets forth the conditions that generally apply when one retires, states as follows:

> *Retirement annuities - Conditions. Retirement annuities shall be payable as hereinafter set forth:*
> *(a) A participating employee who, regardless of cause, is separated from the service of all participating municipalities and instrumentalities thereof and participating instrumentalities shall be entitled to a retirement annuity provided:*
> *(1) He is at least age 55, or in the case of a person who is eligible to have his annuity calculated under Section 7-142.1, he is at least age 50;*
> *(2) He is not entitled to receive earnings for employment in a position requiring him, or entitling him to elect, to be a participating employee;*
> *(3) The amount of his annuity, before the application of paragraph (b) of Section 7-142 is at least $10 per month;*
> *(4) If he first became a participating employee after December 31, 1961, he has at least 8 years of service. This service requirement shall not apply to any participating employee, regardless of participation date, if the General Assembly terminates the Fund.*
> Section 7-141(b)(2)

Section 5/7-141(a) of the Pension Code makes clear the general rule 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." When an employee retires pursuant to 5/7-141(a), the Pension Code

provides rules that dictate when and how an annuitant is eligible to return to work. For example, Section 7-144 of the Pension Code, applies when an IMRF member has retired but then returns to work at a new IMRF eligible job. This section requires that the retirement annuity payments must be suspended before or simultaneous with the retiree's new employment unless specifically excepted by Section 7-137.1. The retiree who wants to return to work has no opportunity to refund the retirement benefits already received and no opportunity to reinstate the pension credit or change the retirement benefits previously elected. In this situation, the suspended annuity payments would begin again only after the new employment was terminated or the employee retired.

Section 5/7-141.1 of the Pension Code offers IMRF employers and participants the ability to have an ERI program. This section applies specifically to ERI annuities and provides that members of IMRF may establish up to five years of creditable service and age enhancements. The additional creditable service and the age enhancements can then be used to accelerate an employee's eligibility to receive a retirement annuity, allowing him or her to retire earlier than would otherwise have been possible. Pursuant to Section 5/7-141.1, participation in the statutory ERI program is voluntary but subject to certain specified eligibility requirements and conditions. Each member employer must pass a resolution approving the ERI program for its employees. In exchange for obtaining the benefits provided under the law, employees are required to file written applications and terminate their employment with their IMRF employer and make specified contributions based on the employee's rate of compensation and retirement contribution rate. In addition, as stated in 5/7-141.1(g) as follows, any employee who retires under an ERI program cannot thereafter return to service as an employee with an IMRF employer without forfeiting the age enhancement and creditable service obtained through the ERI program:

> *"An annuitant who has received any age enhancement or creditable service under this Section and thereafter accepts employment with or enters into a personal services contract with an employer under this Article thereby forfeits that age enhancement and creditable service; except that this restriction does not apply to (1) service in an elective office, so long as the annuitant does not participate in this Fund with respect to that office, (2) a person appointed as an officer under subsection (f) of Section 3–109 of this Code, and (3) a person appointed as an auxiliary police officer pursuant to Section 3.1–30–5 of the Illinois Municipal Code".*

IMRF states that the words of the statute are clear: an employee who retires under an ERI program cannot return to work for any IMRF employer. IMRF maintains that it no longer has the authority to continue to pay an enhanced retirement annuity to an employee who has returned to work for an IMRF employer. IMRF further states that Section 5/7-141(g) is also clear that the penalty for returning to work for an IMRF employer is a forfeit of the age enhancement and creditable service benefits received through the ERI.

In the case of Prazen v. Shoop, the Court stated that Section 5/7-141.1(g)the Pension Code was clear as to the events that would result in a forfeiture of plaintiff's early retirement pension: one must first fit the definition of an "employee" and then be paid for the performance of a personal services contract by an IMRF employer as defined in the Pension Code. (see Prazen v. Shoop, Ill. S.Ct. 115035, October, 2013). In Prazen, the Court held that IMRF did not have the authority to determine that the plaintiff, who was employed by ECL corporation, was an "employee" of the municipality that had hired ECL. In Prazen, the Court found that neither the phrase "employment with" nor "personal services contract with" was ambiguous. The Court stated that the term "employee" is defined in section 5/7-109(1)(a)(1) as any person who is either paid "for the performance of personal services or official duties out of the general fund of a municipality" or paid by a fund controlled by the municipality, or by an instrumentality thereof, or a participating instrumentality, including, in counties, the fees or earnings of any county fee office". The Court reasoned that the definition of employee provided in the Pension Code was clear, and did not include plaintiff, who had no contract with the municipality.
In this case, there is no dispute by the parties that JOHNSON had an employment contract with Monmouth, an IMRF employer, for personal services, and satisfies the definition of employee provided in Article 7, section 109 (1)(a) (1).

JOHNSON argues that he was only employed part-time as a Latin teacher for Monmouth and only earned approximately $12,000 per year. He maintains that he would have volunteered his services had he known that it would affect his ERI. JOHNSON further argues that Monmouth never notified him that the school district was an employer that participated in IMRF as a reciprocal partner through TRS and thereby defined as an IMRF employer. JOHNSON asserts that Monmouth should have had a duty to ask him or ascertain whether he was an IMRF retiree or participant prior to hiring him.

IMRF 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 and emailed to employers and employees and provide information regarding current IMRF rules and any changes to these rules made by Board resolution or memo. JOHNSON was also given specific written information from IMRF regarding the prohibition against ever returning to work for an IMRF employer as it was printed in bold lettering on his ERI benefits application, which he signed and agreed to.

In addition, Section 5.20(C) of the IMRF Authorized Agent's Manual (Manual) applies to IMRF members who are planning to retire pursuant to an ERI and warns them in bold letters in subsection 16 titled "Return to work for an IMRF employer prohibited" that *"Once a member retires under an ERI he or she must contact IMRF if the member returns to employment or compensated elected office with a unit of government that participates in IMRF. This applies even if the member is considering independent contract work with a unit of government or work covered by another retirement plan (for example, as a teacher).*

If a member retires under the ERI and he or she returns to work for any IMRF employer in any capacity, he or she will:

a. *Lose the ERI enhancements and*

b. *Pay IMRF the difference between the ERI enhanced pension and the pension the member would have received without the ERI less the amount the member paid for the ERI.*

If the member would not have been entitled to a pension without an ERI, i.e., the member was less than age 55 at retirement:

a. *He or she would be required to repay IMRF for all pension payments received up to age 55 less the amount the member paid.*

b. *When the member again retires, the member's pension will be recalculated without the enhancements.*

JOHNSON concedes that forms he filled out or was given may have contained these warnings, but states that no verbal explanation or warning was given to him by his IMRF authorized agent, and he was only told where he should sign on each form. JOHNSON also maintains that since his retirement in 2014, he has received very little information from IMRF except an occasional newsletter in the mail, and nothing to further explain or remind him not to work for an IMRF employer. IMRF states that the admonishment is written in bold letters on each pension benefit statement it regularly sends to JOHNSON, and IMRF also disseminated this information through numerous channels accessible to JOHNSON and to Monmouth, but JOHNSON and Monmouth either did not read the information or understand the limitations about working for an IMRF employer after retiring with an ERI.

It is noteworthy that although much of the IMRF information pertaining to the rules regarding an ERI retiree's return to work is directed and disseminated to employers and the information warns all IMRF employers not to hire a retirees with an ERI annuity, the Pension Code provides no penalty for an employer who is mistaken or violates the rule. Instead, the Pension Code in 5/7-141.1(g) puts all the responsibility upon the retiree to determine whether an employer is an IMRF employer and whether a return to employment violates the IMRF return-to-work rules. Moreover, the Pension Code places no duty upon the employer to discover mistakes or violations within any time limit. In this case, the violation was not discovered until years after JOHNSON'S retirement when he telephoned IMRF in 2024 to make sure his ERI pension would not be jeopardized if he joined TRS. Because of the length of time since his retirement, the repayment amount is now more than $103,000.00. In response, IMRF states that this is unfortunate, but maintains that IMRF has no legal authority or ability under the Pension Code to ignore the code requirements or the Pension Code and allow JOHNSON to keep any portion of the enhanced pension benefits he received since his 2014 retirement. IMRF asserts that it must abide by the Pension Code and the IMRF Resolution. The Resolution expressly requires a retroactive denial of his ERI pension, and the denial must go back to the time the ERI was first approved.

Unfortunately, this Hearing Officer can find no legal mechanism upon which to recommend that the IMRF Board is allowed to let JOHNSON keep all, or any portion of the enhanced annuity benefits and credits he received since he retired. Nor does this Hearing Officer have the authority to recommend an equitable solution to the Board. The Pension Code provides no express legal authority to IMRF that allows it to remedy the mistakes of employers and employees when the Pension Code and the IMRF rules and Resolutions state otherwise.

For all the above reasons, I recommend that the Board AFFIRM the IMRF staff decision to require JOHNSON to pay back the portion of all retirement benefits he has received since 2014 that were attributable to his age or credit enhancement under the ERI program, an amount totaling more than $103,000.00. JOHNSON is subject to the terms of the Pension Code that states clearly that this is the penalty for returning to work for an IMRF employer after retiring under an ERI.

Staff is authorized to calculate the amount to be repaid as a result of the violation, and negotiate a repayment agreement with JOHNSON for a term not to exceed twenty years.

Susan D Brunner March 3, 2025

SUSAN DAVIS BRUNNER, Hearing Officer

These Findings of Fact and Conclusions of Law are adopted this 28th day of March 2025, 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