

**Municipal Police Employees' Retirement System
Minutes of the Legislative Committee Meeting
March 20, 2024**

The Legislative Committee of the Municipal Police Employees' Retirement System held a meeting on Wednesday, March 20, 2024 at the system's office at 7722 Office Park Boulevard in Baton Rouge, Louisiana.

A. Call to Order

The meeting was called to order by Major Raymond Burkart, Jr. (Chair) at 10:20am.

B. Roll Call

Members Present

Major Raymond Burkart, Jr, Chairman
Major (Retired) Kelly Gibson
Lt. (Retired) Chad King
Mayor Greg Cromer

Members Absent

Others Present

Mr. Benjamin Huxen II, MPERS Executive Director and General Counsel
Ms. Taylor Camp, MPERS, Chief Financial Officer
Ms. Emily Thurston, Accountant
Ms. Melissa Frazier, MPERS, Benefits Administrator
Ms. Ashlee McNeely, Executive Management Officer
Ms. Christie Ziadeh, (virtual)
Mr. David Barnes, NEPC, Investment Consultant
Ms. Sheri Morris - Daigle, Fisse, & Kessenich
Mr. Greg Curran - Curran Actuarial Consulting, Actuary
Mayor Gerard Landry, MPERS Board member
Lt. Tyrone Warren, MPERS Board member
Chief David Addison, MPERS Board member
Asst. Chief Jason DiMarco, MPERS Board member
Chief Christopher Wilrye, MPERS Board member
Chief Beth Westlake, MPERS Board member
Julius Roberson, State Treasurer Designee
Mr. Tyler Brannan, PhD, Curran Actuarial Consulting, Actuarial Analyst
Mr. Kenneth Herbold, Actuary for the LLA (virtual)
Mr. Shinji Hain, Analyst for the LLA (virtual)
Ms. Sarah Daniel (virtual)
Ms. Brook LeBoeuf (virtual)
Ms. Karen Correll (virtual)

Others Present (continued)

Mr. Robert Gauss, Tax Counsel with Ice Miller
Mr. Peter Landers, GGA (virtual)
Mr. Brad Kelly, GGA (virtual)
Mr. Joe Stamey, Attorney for RMI
Mr. Randall Keiser, Attorney for RMI
Derrick Johnson, LMA president and Mayor of Cheneyville
Patrick Cronan, General Manager of RMI
Richard Williams, Deputy Director of LMA
Mayor Ray Bourque from Broussard.

C. Public Comment

There were no public comments.

D. Approval of the December 13, 2023 Committee Meeting Minutes

**Motion by Major (Retired) Kelly Gibson, seconded by Lt. (Retired) Chad King, to approve the minutes of the meeting held December 13, 2023.
Without objection, the motion carried.**

E. New Business

1. Presentation by Ice Miller on Qualification Considerations, Plan Corrections, and Fiduciary Duties: How All of These Intersect With Current Employer Challenges and Proposed Legislation (Qualifies As Education Regarding the Laws, Rules, and Regulations Applicable to MPERS and Instruction on Fiduciary Duty)

The committee and board members present received education on plan qualification issues and fiduciary duties specifically aimed at how these issues intersect with current employer challenges and proposed legislation. Mr. Robert Gauss, partner at Ice Miller provided the education. Mr. Gauss discussed the rules for plan qualification under Internal Revenue Code section 401(a) and specifically governmental qualified plans under IRC 414(d). He reviewed the code and other guidance from IRS. Tax qualification is important because qualified plans have employer contributions that are not taxable to members. Earnings and income are not taxed to the trust or members. Members may receive favorable tax treatment for plan distributions. Employers and members do not pay employment taxes when contributions are made, or benefits are paid.

Governmental plans are not subject to ERISA (they are exempt from many Code requirements) or PBGC premium payments. Tax attorneys still look to ERISA when giving guidance.

To be qualified a plan must follow the exclusive benefit rule. Trust assets must only be used for the benefit of employees or their beneficiaries. No trust assets may be diverted for any purpose other than the exclusive benefit of employees or their beneficiaries.

Mr. Gauss discussed the definition of “pension plan” for qualified plans. Plans must be established and maintained by an employer or employers for employees. Assets must be held in trust. Trustees must exercise fiduciary duties. The plan must be established to provide systematically for the payment of definitely determinable benefits. Payments from the plan must be made to employees over a period of years, usually for life, after retirement.

Mr. Gauss discussed the rules under 414(h)(2) for picked up contributions. This section allows employees to contribute to the plan on a pre-tax basis. Those contributions get recharacterized as employer contributions. To allow this, the employee cannot have an option of receiving picked-up amounts. MPERS says in state law that employee contributions will be made on a picked up basis. MPERS’ favorable determination letter specifically says that it is not a ruling on the pickup status.

Mr. Gauss discussed issues within governmental plans related to optional participation. He stated that a governmental plan employee may not have a choice from one month to the next whether to participate. Optional participation must be a one-time irrevocable election. If an employee gets a choice, they must make it at the time when first eligible for any plan with that employer. A key to the pickup arrangement is that the employee choice can only happen at first eligibility (not necessarily the date of first employment). Mr. Gauss stated that they had not seen IRS allow more than 60 days for employees to make the irrevocable election.

He then discussed “normal retirement age” and retiree reemployment issues. He stated that governmental retirement plans deal with retiree reemployment across the country. In 2007, the IRS issued regulations defining normal retirement age requirements. They stated that the age had to be a number, with a safe harbor at age 62, but ages from 55 through 62 were allowed if the age represented a typical retirement age, and age 50 or above was a safe harbor for public safety employees. There was then a notice of proposed regulations issued in January 2012 that provided safe harbors for qualified public safety employees: age 50 or later, combined age and service of 70 or more, and any age with at least 20 years of service.

If the MPERS normal retirement age is any of these three safe harbors or requires a higher age or more service, then the system complies with the guidance. As a part of considering normal retirement age, the IRS also looks to the issue of retiree reemployment and whether the reemployment is part of what the IRS calls a sham transaction. The IRS issued a private letter ruling where the IRS said you must have a bona fide separation from

employment. They even mentioned the webster definition of retirement that says you stopped working.

IRS did not give a bright line rule for bona fide separation from service. They said that likely a one year separation is sufficient, but otherwise it would be a facts and circumstances test. This is also a taxation issue because if a benefit is paid before age 59½ without a separation from service, the employee could be subject to a 10% penalty. IRS is really focused on whether a payment should be considered an “in-service” distribution. Under 401(a)(36), a qualified plan can pay a benefit while in-service if the plan provides for it and the employee is at least age 59 ½.

It is a qualification issue for the plan. The first question is does the plan provide for “in-service” distributions. If not, then the plan must be vigilant to make sure that we don’t have retirees collecting benefits that also continue to work for the same employer. There’s also a tax issue for the individual. Under code section 72, if you start to receive retirement money before 59½ you will owe a 10% penalty. There are several exceptions – if a member dies or becomes disabled, they are not subject to the penalty. Public safety employees who separate from service after age 50 qualify for an exception to the penalty if there is a bona fide separation from service. Without the bona fide separation from service there will be a penalty each year until age 59½.

In response to a question from Major (Retired) Ray Burkart, Jr., Mr. Gauss stated that you need two things – a bona fide separation from service and no prearranged return to employment with the employer. Major Burkart questioned the practice of leaving with an understanding that they can return to employment. Mr. Gauss brought up a penalty issued by IRS against Fort Lauderdale for not properly reporting the early distribution in such cases. Mr. Huxen clarified that it would be on the system staff to decide the appropriate code to put on the annual tax form. Mr. Huxen stated his concern with the system trying to determine if there was a prearranged agreement with the employee to return. Mr. Gauss stated that around the country, plans will adopt a period of time that they think represents a good faith bona fide separation. In some places they use the 1 year period mentioned by IRS. The most common period is 6 months, but some as low as 3 months.

Mr. Gauss stated that if the plan does not report properly on the 1099-R, there’s a double penalty from IRS. He then reviewed the key questions the plan must ask when dealing with reemployed retiree issues. He stated that the length of separation was a key question. It requires a facts and circumstances test because there is no IRS safe harbor. There must be a real separation from service with no pre-arranged agreement to return. These tax issues exist if they return to the same employer.

The committee discussed the legislation regarding reemployment of retirees and what possible period of separation would be reasonable. Mr. Gauss stated that from a tax perspective no separation is necessary for those at least age 59½. Chief Bergeron stated that what he was hearing was that the Board could change the rule to allow a 60 day separation if returning to a different employer but not if returning to the same employer. Mr. Gauss stated that many systems get around having to worry about this by allowing a return with no break and service but only at age 59½ or later. Mr. Huxen stated that MPERS could leave in the 12 month separation for the same employer but less than age 59½.

The next topic was plan corrections. Mr. Gauss discussed voluntary corrections under the Employee Plans Compliance Resolution System (EPCRS). He stated that the correction rules are based on the principle that plans are to encourage practices and procedures to ensure that the plan is operated in accordance with the Code and all plan terms. Any time a plan makes an error, the IRS calls that a failure. Want to restore the plan and member(s) to where each would have been had the failure not occurred and must fully correct all members and for all plan years. The correction must be applied consistently.

There are 3 ways to correct an error – self-correction program (plan does it on its own), voluntary correction program (plan goes to IRS and gets approval for the correction), or audit closing agreement program where IRS comes to the plan with an error. The final one is what the plan wants to avoid. By correcting errors consistent with these procedures, the plan preserves the tax deferred benefits for participants and preserves its qualified plan status.

Common issues for correction include erroneously excluded employees, overpayment of benefits or contributions, underpayment of member contributions, and failure to operate the Plan in accordance with Plan terms.

The committee discussed situations where MPERS had erroneously excluded employees including positions where employees were enrolled in MERS. Mr. Gauss stated that Plans must have a practice and procedure to deal with these situations. Mr. Gauss stated that the IRS did not require recovery of small overpayments of \$250 or less.

Mr. Gauss then reviewed fiduciary duties. He stated that board members were fiduciaries under state law. He stated that although not subject to ERISA it represents a place to look for good guidance. Mr. Gauss discussed the three general types of fiduciary duties, the highest level of obligation under the law. They are the Duty of Loyalty, Duty of Prudence, Duty to Follow Plan Documents. Mr. Gauss pointed out that the duty to follow the plan documents was not only a qualification issue but also a fiduciary requirement.

Under the Duty of Loyalty, the board has a duty to balance issues among retirees and active members or among members of different tiers. Under the Duty of Prudence, the board must act with care, skill, prudence, and diligence. State statute requires board members to follow the prudent man rule. Mayor Cromer asked about how board members could meet the standard regarding investments. Mr. Gauss stated that their duty was to hire proper expertise and monitor those professionals.

Chief Bergeron asked what happens if a person is not enrolled in the wrong plan but is supposed to be enrolled in MPERS and is not. Mr. Gauss stated that the Board needed to use the correction procedures to attain compliance based upon the way the plan is written.

Major Burkart commented on the current legal costs between MPERS and the cities. He also expressed concern about the possibility that the system would have to take up legal cases in every venue with conflicting opinions by judges and courts of appeal. He was concerned that it could take 10 to 15 years to get to the supreme court to get some jurisprudence on the subject. Ms. Morris stated that the Board did have a fiduciary duty to seek the funds and that is why the Board initiated litigation.

Chief Bergeron asked Ms. Morris if the Board was obligated to file the suits. She stated that she believed they were required in order to exercise their fiduciary duty and protect their tax status. Mr. Gauss gave the board two examples to consider. One in Kentucky and CALPERS. Mr. Gauss stated that the worst case scenario for the system is a spouse calling when her husband is killed in the line of duty. If that officer was not enrolled and the spouse sues the system for benefits, it will take a lot of time and money in the courts.

Mr. Huxen asked if retirees stopped getting benefits in the CALPERS case. Mr. Gauss stated that after years of trying to get compliance they stopped paying benefits. Mr. Huxen stated that MPERS has cases of retirees currently being paid from cities that are not enrolling officers.

Major Burkart asked Mr. Gauss about the Board's settlements with employers. He answered that he couldn't say that the settlements were reasonable without more information but stated that as fiduciaries the Board has the right to settle suits. Ms. Morris stated that it was easier to correct for municipalities with no eligible employees at the time. She stated that they sought full correction for those employed and negotiated regarding former employees.

Major Burkart asked Mr. Huxen how employer contributions have been impacted by the cities, forcing the system to litigate because they are not enrolling employees. Mr. Huxen stated that obviously the litigation costs cause the employer contribution rate to go up, and the fact that they are not enrolling employees has and will continue to increase employer costs. He

added that much of the employer contribution goes to pay off UAL so bringing a new person into MPERS saves money for those already in MPERS. Part of the reason that MPERS is not affordable is that these employees are not enrolled.

2. Presentation by Global Governance Advisors on Pension Best Practices and Potential Impacts of HB 42 (Qualifies as Fiduciary Duty Instruction Training)

Peter Landers and Brad Kelly provided board education on best practices. Mr. Landers started with a review of basic fiduciary duties. He stated that he and Mr. Kelly would focus on the duty of Prudence as it pertains to the proposed legislation. He stated that they looked at how House Bill 42 aligns with governance best practices. The bill would add 4 mayoral positions resulting in 6 total mayoral positions. This would dilute employee representation. Mr. Landers suggested that the Board ask two questions – Is this aligned with current pension governance best practices? and Is this aligned with current governance trends?

Mr. Landers looked at a study done by Keith Ambachtsheer and a couple of other academics. Mr. Ambachtsheer is a recognized global expert in pension fund governance. He found that poor governance can cost a fund from 1% to 2% annually. The study identified 5 areas where poor governance tends to occur.

1. Not having enough financial oversight or expertise
2. Not having the right board composition and skills
3. Not doing board evaluations and looking at board performance
4. A lack of clarity in board and management roles
5. Not having a high-performance culture with competitive compensation

Another study that looked at good governance which can gain 24 basis points in a plan's 10-year returns.

One area of study was structure – having one fiduciary board for both investment and administrative oversight. The second was board size. The study found that 6 – 10 member boards were optimal. MPERS is already above that level. Next was stakeholder representation on boards. The study found that you needed to have a meaningful portion of the Board coming from active and retired participants, suggesting between 20% to 70%. Boards also need financial expertise with at least two members with financial or actuarial experience. Finally, the study found that 8 – 10 years of average tenure was best practice.

To maintain sustainability, the system needs to make good governance a priority. Other studies found a strong correlation between governance quality and fund performance. Boston College looked at board structure and size and found ideal size of 6 to 10 members (small enough to act efficiently)

with stakeholder representation. They found that on average 50% of board members were plan members, 15% were ex-officio, and 31% were general public. Mr. Landers suggested the board consider whether the proposed legislation was in line with these guidelines. House Bill 42 would increase the board size from 15 to 19 without increasing required knowledge or skill. This could increase the competing financial interests on the board.

Mr. Kelly reviewed trends in governance. Leading transformed funds focus on removing politics (or political representatives) from their boards. He reviewed a few examples of funds that separated themselves from other funds.

He found in a Willis Towers Watson survey that talent acquisition costs much more than employee retention. They also found an increased willingness of employees to leave for benefits and growth opportunities. There has been an increase in lifetime income benefits being added to DC plans. These are like defined benefit plans.

Mr. Kelly discussed a sustainability crisis at Dallas Police & Fire Retirement System. In response to moving to a DC plan model for new members, they could not attract or retain public safety personnel. They were forced to increase base pay for public safety employees to attract talent. The State of Alaska also found that a move to DC plans made it hard to attract and retain personnel.

The conclusion related to governance trends and proposals in House Bill 42 is that it will misalign MPERS with best practices on board size and importance of member representation on the board. It will materially impact the overall performance of the fund. It will misalign MPERS with public pension trends and could potentially impact the employers' ability to attract and retain public policing personnel moving forward.

There were no questions for Mr. Kelly and Mr. Landers. Major Burkart thanked them for their presentation.

3. Presentation by the Louisiana Municipal Association/Louisiana Municipal Risk Management Agency/Risk Management, Inc. Regarding Its Proposal for Resolution of Claims by MPERS Against Municipalities and Pending Legislation

The committee heard from Joe Stamey and Randall Keiser, representing the interest of LMA and RMI, regarding possible resolution of claims by MPERS against municipalities. Mr. Stamey stated that originally at 10:30am they had with them Derrick Johnson, LMA president and Mayor of Cheneyville, Patrick Cronan, General Manager of RMI, and Richard Williams, Deputy Director of LMA, as well as Mayor Ray Bourque from Broussard. Unfortunately, there was a meeting that LMA had to turn its attention to, and as a consequence of the time, they had to unfortunately

leave for that. We've asked for the opportunity to come back and make our presentation at the April Board Meeting.

Mr. Stamey stated their desire to be here as a symbol of good faith and their intent to work with MPERS, to try to find common ground, and to resolve the differences. He stated they did not want to be in litigation and had asked for the opportunity to consider mediation to move toward a solution. He stated they have made that offer on multiple occasions and it was also contained in the proposal that was provided. He assured everyone that the LMA and its member municipalities want to work to get all applicable police officers enrolled in MPERS, to be in compliance with enrollment, and to provide payroll records in a timely way moving forward. He added that they only ask that MPERS work with their member municipalities who have arrearages by resolving those claims in a manner that is consistent with some of the other resolution settlements. The concern is that some municipalities are having financial challenges, and this is going to add to that. He stated that they would be forced to lay off essential employees, including police officers. They would not be able to make their mandated budget obligations. Some of these municipalities are even talking about having to consider bankruptcy in order to try to seek a solution. Mr. Stamey assured everyone again that no one wants this to occur. He stated that they are working to find solutions. Mr. Stamey stated that he and Mr. Keiser have been attorneys for over 30 years, and their primary work over those 30 years has been representing police officers in civil litigation.

Mr. Stamey stated that it has been claimed that the LMA and RMI have been trying to take away the municipal police officer's retirement benefits. He assured everyone that not only is this allegation untrue, but that it's an unfair characterization of their actions and intent. He emphasized that they did not file litigation against MPERS. MPERS has filed litigation against members municipalities. He stated that they are only asking that these municipalities are given the same consideration as in the municipalities that MPERS is already in litigation with or in active claims with, to help seek special resolution of the arrearage amounts consistent with what they have done with some of the other municipalities with which they have reached a resolution.

Mr. Keiser stated that he was there to explain the proposal made by the LMA. Mr. Keiser stated that there were 15-16 resolutions that MPERS reached with other municipalities. He added that it is very difficult to have a conversation with someone who is in arrearages in the tens, twenties, and even hundreds of thousands of dollars, knowing that large actuarial backpay has been waived in other cases.

Mr. Keiser stated that one of the things they are being approached with is why are some people being treated differently than other folks. Mr. Keiser encouraged the committee to look at their proposal and give consideration to treating the other municipalities in a similar way to how the former

municipalities have been treated. He suggested that this should be a symbiotic relationship where MPERS and LMA work hand and glove, and he stated that they shouldn't be in court rooms across the table from each other.

Major Raymond Burkart, Jr asked if there were any questions. Chief Bergeron asked if the LMA was willing to enroll all of its police officers if we do a settlement, or are they saying they want the settlement and still have options where they can enroll or not enroll?

Attorneys thanked Chief Bergeron. They stated that the opt out municipalities have options where their officers can be in or be out based on a voluntary waiver. There are certain municipalities that have no choice. They are required to be members of MPERS. One of the biggest issues they have run into in municipalities, especially small municipalities, was a lack of good continuity, or transfer of information between administrations. Some of the municipalities they are dealing with literally did not understand that they did not have the ability to not opt out.

Chief Bergeron asked if the LMA would support a no opt out clause for all agencies. The RMI attorneys stated that they did not think that they had the ability to do that based on the section 218 agreements that were executed back in the seventies. Mr. Keiser stated that he believed what the LMA would be willing to do is to work hand in glove to get those people that are supposed to be in MPERS enrolled. He suggested that included educating the mayors and the chiefs. He indicated some mayors in large municipalities with an elected chief of police have no authority to force the chief to enroll officers. He added that they had run into to that situation with Ms. Morris in some of the cases. They have had one or two cases where they have an elected chief of police, and the municipality was willing to resolve the situation, but the chief would not sign that paper.

Chief Bergeron that he knew of situations where chiefs are telling employees that if they don't opt out, they would not be hired. He stated that this was a problem. He stated that he believed the retirement system was created by some of the smaller departments because they needed a retirement system. He expressed concern when people claim they didn't know the rules and asked what happens next time there's a turnover and they say they didn't know. He asked if they would have to come back again and ask the Board to make an exception? Chief Bergeron said that he personally believes that cities and jurisdictions have gotten away with not paying their police officers for the same reason they get away with not paying teachers and fireman, and that's because people do this job because they love it. He added what he doesn't love is having to sit there and explain to a person who has a family member who gets killed in the line of duty that they won't get benefits because the mayor said he couldn't afford it. Chief Bergeron stated that he thinks police departments, including his own police department, must budget and pay the retirement benefits. He stated that it's

time that someone stood up for the employees to make sure that they are getting some benefit. He added that it's their fiduciary responsibility to worry about the system, and he apologized to the mayors, but it's not their responsibility to worry about their budget. Chief Bergeron stated that he thinks it's the mayor's responsibility to worry about the money side when they are back in their agencies, towns, or cities. He reiterated that on this Board they must worry about the stability of the system.

Mr. Ramey assured Chief Bergeron that it is not only about the circumstance of their future retirement benefits, that mayors are struggling to find every dollar they can to enhance police salaries and payments because some of them are not even getting a living wage. He assured Chief Bergeron that there are a lot of moving parts and stated that what they have from them is a commitment. He stated that if someone is supposed to be enrolled, they won't have to worry about filing an action in the future if things go the way they believe it will. He assured Chief Bergeron that the people they are working with, both at the LMA and RMI, don't want to be in the litigation business. He suggested that it required cooperation and a working relationship to get a yes-yes result. He also stated that they were prepared to explore whatever form they needed including mediation, if necessary, to bring in someone that can help guide everyone together to find a solution that is workable for MPERS and the member municipalities. He added that they want all the litigation and all claims resolved.

Chief Bergerson stated that he personally spoke with a mayor of a large municipality, and it seems that they are being left out because they have the revenue and can pay it. He added that they are going to be the ones left holding the bag when contributions are increased because of the little departments that are now backing out of a system that they once agreed to be involved in.

Mr. Ramey stated that he believed it was a small number compared to the whole. Mayor Cromer stated that there were about 270 communities with 10,000 or less. Mr. Stamey stated that there were about 15 active in litigation and another 10 or so active in claims. The committee discussed the number of municipalities in MPERS and the number that were not enrolling officers. Mr. Huxen estimated that there were about 100 that were not doing what they need to do. He stated that the litigation could double easily. Ms. Taylor Camp stated that the system had 183 participating employers. Chief Westlake asked if that is all together, including the large employers. Ms. Camp stated that it was. Chief Westlake commented that half of the small towns are not contributing.

Chief Bergeron stated that if everybody contributed what they were supposed to then maybe the percentages wouldn't be as high as they are. He asked the attorneys if they were willing to work to remove all of the legislation that they have introduced. Mr. Stamey assured Chief Bergeron that everything is on the table as far as they are concerned. Chief Bergeron

stated that he was asking a yes or no question. Mr. Stamey stated that it was a very complicated question and it's a give and take relationship. He assured Chief Bergeron again that everything is on the table with some serious negotiations.

Mr. Huxen asked if they could tell the committee which specific provisions in their bills were detrimental to LMA because just about everything in the bills except rehired retirees was to lower the contribution rate. Mr. Ramey stated they would be happy to address that in a negotiation or mediation, but that they were not prepared to micromanage individual questions. Asst. Chief DiMarco stated that he could appreciate that but reiterated that the committee was interested in knowing which provision in the system's bills would be negative to LMA.

Major Burkart Jr. asked why LMA didn't come up with a bill that has a revenue source. He gave an example of a surcharge on tickets for the Superbowl in New Orleans. He stated that if you have one million people and charge them one dollar, it's a million dollars. Major Burkart Jr. stated that he didn't like the comment that "Everything is on the Table". He asked what happens in ten years when they are all gone. He stated that he has been through this situation with the same answer a few times. Mr. Ramey stated that they were there to try to move the conversation forward and find a solution. He stated that they have been retained to defend these municipalities and that they were not lobbyists, not legislation specialist, and they are not tax attorneys. Major Burkart suggested that they bring the idea to their clients. Mr. Keiser stated that there was a constitutional amendment on the ballot to move money into the state retirement systems. Major Burkart stated that was for the state systems, not them. Mr. Keiser stated that he was correct and agreed that that is a problem that can be solved legislatively. He stated that if they can do it for the state, they can do it for MPERS.

Major Burkart asked Mr. Ramey and Mr. Keiser to get three dates and times from their clients so that they could put that meeting in place.

Next. Major Burkart stated that Mark Kraus wanted to comment.

Mr. Mark Kraus introduced himself as a retired deputy police Chief out of Lake Charles, Louisiana. He stated that he served over thirty-two years. He stated that he and his city had paid MPERS their required portion of his pay over his career. He stated that he retired in 2019 and didn't know what MPERS was or knew anyone involved until this legislation came up. He stated he spoke with Ms. Melissa Frazier, who took great care of him with his retirement. He stated he got involved now because it concerns every weapons-carrying officer, every secretary, or anyone else in the MPERS system. He stated he wasn't necessarily speaking to the Board members, but to anyone else about how the legislation and related topics has affected the police officer on the road. He stated that he recognized all the time it

has taken to put everything together for these conversations. He stated that there is a time to fight and there is a time to settle. He stated that his message today is that when we fight, everyone gets bruised even if you win the fight. Mr. Kraus stated that he was going to start a fight today. He stated he didn't want anyone to get bruised, so he was going to try his best to come up with a solution. Mr. Kraus stated that current legislation is horribly wrong. He expressed concern that police chiefs and mayors were being sued for millions of dollars yet there was another meeting that was more important for Mr. Richard Williams to attend than to be available to answer related questions. He stated that he "would call Richard Williams ineffective," and that his absence is "fundamentally wrong."

Mr. Kraus stated that the concern of affordability (even as a legitimate concern) is not the responsibility of a police officer. He stated that a police officer is more afraid of the politicians than they are of the criminals as officers want to "catch the bad guys." Mr. Kraus stated that he does not know the resolution but asked that it be expedited.

Mr. Kraus stated that personal financial decisions are being made by police officers every day, including by those already retired. He expressed concern about the possibility of MPERS being defunded. He asked that a solution be found and noted the willingness of the board to negotiate as opposed to the lack of a representative to negotiate from the LMA. Furthermore, he requested the board be open-minded. In closing he told a personal story to express the point that police officers deserve a "good pension" which he said meant a "safe pension." Finally, he requested that the board make sure it would defeat the concerning legislation if it was not withdrawn.

Major Burkart Jr returned to his discussion about getting possible meeting dates and stated that they should talk about revenue raising, not cutting back. Mr. Ramey stated that they look forward to further meetings and further discussions. He stated that he would reiterate what he has already said at the very first meeting. He stated that they requested resolution options, including mediation in early summer and that it has been in litigation since. He added that they did not want further litigation and were looking for resolutions.

Major Burkart Jr stated that the solution is money, not cutbacks. He mentioned that in New Jersey a portion of the lottery goes to pension systems, stating that \$2.1 million is sent to it. He questioned why "we" aren't doing that instead of "cutting each other up".

Mr. Huxen stated that he had provided a proposed solution to LMA and had not heard back. Mr. Ramey stated that they had done similarly with a similar response.

Lt. (Retired) Chad King discussed the helpful input of the mayors and stated that he believes the board has always acted in good faith. He said that he

didn't believe the board had turned down any settlement offer provided by legal counsel that would get municipalities compliant. He stated that he wanted LMA to act in the same manner. Mr. Ramey assured him that compliance in regard to enrollment and submission of timely payroll records is a shared goal and a foundation hopefully for getting an agreement. He stated that they needed help with settlements with regards to the arrearages. He suggested that they wanted similar "deals" for the outstanding municipalities.

Chief Bergeron stated his concern about their current bills and the time table for negotiations. Sheri Morris stated that one of the bills that the board is concerned about was deferred for one week. There was back and forth between several members and the attorneys discussing when everyone could agree on dates for further discussion.

Mayor Landry asked for clarification about the number of municipalities in MPERS. Sheri Morris answered that 183 out of the 303 municipalities participate in MPERS. Mayor Landry asked additionally how that compares to MERS and FRS. Ms. Camp stated that MERS has around 140 and FRS around 140-150.

Mayor Landry discussed how he had good relationships "on both sides" (LMA and MPERS). He said that both sides were complaining to him about a lack of cooperation from the other side. He also mentioned that cooperation is difficult when you have strong personalities and large numbers of people. Additionally, he stated that he believed these issues do not have to "be a big deal". He referenced the presentation from Ice Miller and said that since it is federal law that the municipalities must produce the requested information, "make them do it." He wanted there to be "sit downs" with the powers that be in order to make decisions and get the relevant information where it needs to go. He mentioned the rates that his city pays for employer rates for MPERS and FRS and Social Security. He said he wants rates to go down because more people are participating, not higher rates because less people are participating. He hoped that a smaller group would get together to make recommendations to the board.

Chief Wilrye asked if RMI had records of police officers. RMI said that LMA might. Ms. Morris mentioned that not everyone uses RMI. However, she did say that RMI would require such information on those covered. When asked if RMI could provide that information, the attorney stated they would be able to if released by the officer; however, they stressed that it is first and foremost the responsibility of the municipality. Additionally, the attorney mentioned the turnover at small municipalities as part of the issue.

Mayor Cromer mentioned that many of LMA's members are small municipalities and that many don't have the records that are being requested. He also mentioned that LMA's offer of education for these members should be looked into closely as potentially valuable.

Mr. Huxen added that Richard Williams and John Gallagher had previously requested that he provide education at LMA but no one attended his presentation. Mayor Cromer pointed out that many do not send representatives to these conferences and that either LMA or MPERS would have to instead reach out to them.

Chief Bergeron stated that new chiefs were required to go through a class and suggested that mayors might need that too. Chief Bergeron wanted clarification on whether LMA as a body had voted for “these bills” or whether they were being sponsored by a small group. Additionally, he asked the attorneys specifically who they were representing. The attorneys clarified that they were representing the municipalities with whom MPERS was in litigation. There was back and forth between members of the Board as to who had written the bills and who directed that person. It was suggested that the bills came from Karen White.

Major (Retired) Kelly Gibson made a motion for the chairman and vice-chairman of the board to appoint a four person committee to oversee negotiations with the LMA regarding existing litigation that could then be brought back to board. Mayor Cromer seconded the motion. The committee discussed the number of ongoing suits. Ms. Morris mentioned that of the 22 suits filed originally, many have been resolved, including some of the clients of RMI. Major (Retired) Kelly Gibson reminded the board that a motion with a second was before the committee. **After some minor additional discussion, the motion was passed.**

The committee then recessed for lunch.

4. Discussion and Action Regarding Legislation for the 2024 Regular Session (Qualifies as Actuarial Science Education)

- a. House Bill No. 14 by Rep. Dewitt
- b. House Bill No. 15 by Rep. Fontenot
- c. House Bill No. 36 by Rep. Bacala
- d. House Bill No. 38 by Rep. Freeman
- e. House Bill No. 42 by Reps. Firment and Butler
- f. House Bill No. 43 by Rep. Bacala
- g. House Bill No. 52 by Rep. Firment
- h. Senate Bill No. 1 by Sen. Price
- i. Senate Bill No. 5 by Sen. Miguez
- j. Senate Bill No. 329 by Sen. Seabaugh
- k. Other legislation

The Board resumed the meeting following lunch and began a discussion of legislation affecting MPERS within the 2024 Regular Session. Mr. Huxen stated that of the bills not proposed by the Board he recommended that the Board oppose House Bill 38 by Representative Freeman which changes

the law so that New Orleans will likely never pay partial dissolution costs again. He also stated that he recommended opposing House Bill 42 by Representatives Firment and Butler that could effectively destroy MPERS and House Bill 52 by Representative Firment which would change the venue for MPERS to sue employers outside of East Baton Rouge. Mayor Cromer brought up other things that the bill covers.

The committee elected to go back and fully discuss House Bill 42. Mayor Cromer stated that the bill did several things. He stated that it added board members and changed the prescriptive period. Asst. Chief DiMarco stated that he was against adding board members. He stated that the board had too many members now.

Mr. Huxen stated that they should go back over each bill. He began by discussing House Bill 14 by Rep. Dewitt which is not an MPERS sponsored bill but was trying to do something similar to an MPERS bill. He stated that the bill was trying to repeal R.S. 11:2220(J) which gets rid of all rehired retiree restrictions. He asked Mr. Gauss what he recommended if the Board was going to drop the rehired retiree restrictions. Mr. Gauss suggested that it only be for people 59 ½ and above and otherwise require a 90 day or 60 day separation period. Mayor Cromer asked if 90 days would meet federal guidelines. Mr. Gauss stated that from the plan perspective he believed that 90 days was long enough that the Board could state that it was presumptive of a bona fide separation subject to facts and circumstances being brought to the board to the contrary.

Mr. Huxen asked Mr. Gauss if it required both age 59 ½ and 90 days. Mr. Gauss stated that they could take one of two different approaches – could say that anyone 59 ½ or above could separate from service without being required to separate for 90 days, or that everyone needs to separate from service for at least 90 days. Chief Bergeron suggested it would be easier to require a 90 day separation for everybody returning after retirement. Mr. Huxen stated that the Board needs to oppose the bill in its original form and to state what amendment would allow him to state that MPERS supports the bill.

Mr. Curran asked to make a comment about the bill. He stated that although the change in reemployed retiree provisions was a policy decision, he wanted to state for the record that a bill with a short period of separation could be a driver of higher costs. He stated that a 90 day separation would have the potential to cause a number of high service members to leave and return to employment. He stated that if this occurred, it had the potential to increase the retirement rates experienced by the plan and therefore to increase costs. He stated that although he did not have experience from MPERS for a change like this, he expected it to increase costs. He added that if board members had concerns with current costs, this would increase costs, and the current expectations related to

past investment experience would be a further increase in costs without the change.

Major (Retired) Gibson asked where exactly the cost would come from. Mr. Curran stated that these laws tend to create an incentive to retire earlier than they otherwise would. Major (Retired) Gibson stated that he felt current law was penalizing employees for doing what the plan allowed. Mr. Curran stated that his point was not that members were doing anything wrong to exercise their option to retire. He simply wanted the Board to understand that under actuarial funding, if the plan observed higher rates of retirement in the future, assumptions would have to change and would increase costs.

The committee and board members present discussed how the bill would increase the costs of the plan. Mr. Huxen stated that this only affected municipal jobs that are not police jobs. Mr. Curran stated that in the last experience study the system did see a large increase in retirement rates which led to an increase in employer costs. To think of how it would cost more, Mr. Curran stated that costs would be much higher if he ran the actuarial valuation based on the presumption that all members retire when they first reach eligibility. The actuarial assumptions look at the actual retirement patterns of members which show that not all members retire when they become first eligible. Since reemployed retiree bills incentive people to retire at an earlier point in time, they move costs closer to that assumption of retirement at first eligibility. Mr. Curran stated that Major Gibson was correct that the plan must legally pay benefits to any member who meets the plan's retirement rules and elects to retire. The current legislation that restricts reemployed retirees was put in place to try to limit the possibility of cost increases. Mr. Curran stated that there were things the Board could do to limit the possibility of higher cost like putting a sunset date on the change or limiting it to people retired before 2024 to avoid incentivizing retirements from the current group of active members. Mr. Curran stated that if the bill will only affect those who return to work in non-police positions it would likely have limited impact but warned if a bill allowed members to retire and return to work in the police department, cost impacts could be much greater.

Major Burkart, Jr. asked Mr. Huxen for his recommendation. He stated that he recommended opposing the bill in its original form and ask for an amendment to include the 90 day separation from service discussed.

Motion by Lt. (Retired) Chad King, seconded by Mayor Cromer, to recommend opposing House Bill 14 in its original form and to ask the author to amend the bill to include a 90 day separation from service as discussed in the legislative committee meeting. Without objection, the motion carried.

Mr. Huxen stated that House Bill 15 by Representative Fontenot, would affect retirees of the system that return to employment in a position covered by MPERS, if they attain age 55 and retired with 20 or more years of service credit. These individuals would have their benefits suspended during the first 60 days after retirement. MPERS would receive employee and employer contributions during reemployment but the retiree would not earn additional service or receive additional benefits other than a refund of the additional employee contributions.

Mr. Huxen recommended that the committee oppose the bill unless they were comfortable with an increase in employer contributions based on the incentive for active members to retire in order to receive two checks. He added that the bill could also be bad for retirees who return to work making more money than before retiring and want to accumulate a new benefit. Mr. Huxen also recommended that they reach out to Representative Fontenot to see if he would be willing to amend the bill to apply only to police officers who were already retired by March 10, 2024 so you're not incentivizing anyone to retire, change the 60 days to 90 days due to tax concerns, and make it to where the rehired retiree has to irrevocably elect to not be reenrolled in MPERS.

Mr. Curran stated that this is a much broader bill. He added that his office did some sensitivity testing, which was not meant to represent the maximum cost but showed that with an increase in retirement rates under test 1 (where rates for those with between 20 and 25 years of service increase 25%, between 25 and 30 years of service increase 50%, and those with over 30 years of service increase 75%) saw a contribution increase of 0.75%. He added that a second test with larger impacts to retirement rates found that cost increases would be 2.5% of payroll. The point of these figures is to show how increased retirement rates can affect employer costs. With this broader bill, the concerns over cost would be much greater. Restricting the bill to people already retired will have a mitigating impact but will not mean that the bill will have no cost. Requiring employee and employer contributions will certainly lower the cost impact. More importantly requiring employer contributions will avoid building an incentive for mayors and chiefs of police to seek out retirees instead of younger new members with low accrued liability because they aren't required to pay contributions to the plan. Mr. Curran discussed the cost implications caused by shrinking plan payrolls. He stated that adding a sunset provision would also protect the plan from runaway costs.

After discussion from Asst. Chief DiMarco and Lt. (Retired) Chad King, Mr. Curran stated that he felt that keeping employer contributions and interest earned on all contributions would only partially offset the cost impact of the change. He added that if employers are trying to attract police officers from the pool of experienced retirees, having a rule making the bill only applicable to those retired before 2024 would represent an increase to the pool of possible applicants. He also stated that opening it up to current and

future active members to retire for at least 90 and return to employment would not actually create a new pool of applicants. The only caveat is that it is possible that in a few cases an active who is unwilling to continue working might be retained if allowed to double dip.

Asst. Chief DiMarco suggested including a sunset provision. Mr. Curran stated that the Sheriffs bill included a 2028 sunset date.

Motion by Lt. (Retired) Chad King, seconded by Mayor Cromer, to recommend opposing House Bill 15 in its original form but to reach out to Representative Fontenot and ask if he would be willing to amend the bill to apply only to police officer already retired as of March 10, 2024, change 60 day provision to a 90 day provision, make reemployed retirees irrevocably elect by filing a statement with MPERS that they accept not receiving additional service credit or an additional retirement benefit within 30 days after reemployment, and make the provisions sunset in 2028. Without objection, the motion carried.

Mr. Huxen provided his recommendations regarding House Bill 36. First, on page 2, line 20, after "police" insert "does not meet any other definition of employee". On page 3, line 7, change "sixty" to "ninety". To deal with an issue brought to the Governor by the City of New Orleans related to retired officers hired in a civilian position, the proposal would be to add a paragraph on page 3 after line 17. The paragraph to read, "(iii) The benefits of a retiree of this system who retires as a police officer during the period beginning July 1, 2024 and ending June 30, 2026 and who, no sooner than ninety days following the date of his retirement, is first employed as an employee under R.S. 11:2213(11)(a)(iii) only shall not be suspended if the retiree irrevocably elects not to receive additional service credit or accrue any additional retirement benefit in the retirement system. Such election shall be in writing and filed with the board of trustees within thirty days after the effective date of the retiree's employment. During such employment, the retiree and his employer shall make contributions to the retirement system as provided by this Chapter. Upon termination of employment as an employee under R.S. 11:2213(11)(a)(iii), employee contributions paid since reemployment shall, upon application, be refunded, without interest, to the retiree. The retirement system shall retain the employer contributions and interest on the contributions."

Mr. Huxen discussed the issues that New Orleans has had with retirees returning in civilian positions. Major Burkart, Jr. added his knowledge of some of the issues that the city was experiencing. He added that the change could even help smaller police departments.

Mr. Huxen stated that the next suggestion was to change "March 5, 2023" to "July 1, 2024" on page 3, lines 23 and 24. On page 4, lines 12 and 14, he suggested changing "sixty" to "ninety". He also recommended

specifically stating that the Back-DROP applies to subplan members if they aren't eligible for DROP and that it doesn't apply to the retired subplan members and to clarify that full-time employees of the newly proposed Houma-Terrebonne airport police department shall be enrolled in MPERS. The bill could also be amended to provide that an elected chief of police who is prohibited from continuing employment as a chief with the same employer due to term limits can retire with seven years or more of service, at age sixty-seven or thereafter. Provide that any chief retiring under this provision will have to make a special election prohibiting him from receiving an additional benefit if he subsequently returns to work on a full-time basis, although he and his employer will have to contribute.

Mr. Curran stated that the 7 years of service at age 67 provision was taken from MERS and the use of age 67 was meant to limit the cost of adding the additional rule. Chief Bergeron stated that age 67 is too high. He stated that he liked at 59½ better. Mr. Curran stated that the age affects the cost impact. The committee discussed their preferences for the age requirement and the impact on cost. Mr. Huxen stated that his proposal was to limit the new rule to those subject to term limits. Mr. Curran stated that they did not have sufficient information in the valuation data to be able to run the valuation with such a granular change.

Motion by Major (Retired) Kelly Gibson, seconded by Lt. (Retired) Chad King, to recommend that the Board adopt the staff recommendations related to House Bill 36 with a change to the retirement of term limited chiefs of police with 7 years of service at age 62. Without objection, the motion carried.

Mr. Huxen reviewed House Bill 38 by Representative Freeman. The bill would change the 50 rule for partial dissolution to instead require a decrease in participating employees of 100 to cause a partial dissolution. Mr. Huxen recommended opposing the bill.

Motion by Mayor Cromer, seconded by Major (Retired) Kelly Gibson, to oppose House Bill 38. Without objection, the motion carried.

Mr. Huxen reviewed House Bill 42 by Representatives Firment and Butler. Employees hired January 1, 2025 and later would only be members of MPERS if their employer entered into an agreement for coverage. New Orleans has stated to state officials that they could enroll their people in NOMERS. Also, some employees would become eligible for MERS or only social security. The bill also adds 4 additional mayors appointed by the LMA and affects the method that MPERS can use to collect delinquent payments from the Treasurer. The bill also adds a prescriptive period of three years for going back and collecting delinquent contributions. Mr. Huxen stated that if anything is done with the prescriptive period, it needs to start running when reports are filed. Ms. Morris stated that this

represents changing the law to get what they have not been able to get from the courts.

Motion by Major (Retired) Kelly Gibson, seconded by Lt. (Retired) Chad King, to oppose House Bill 42. Without objection, the motion carried.

Mr. Huxen recommended one change to the board sponsored House Bill 43 by Representative Bacala to insert the following paragraph on page 10, after line 4 which would add a penalty if an employee is not properly enrolled so employers will not wait to fix the issue.

“(K) Any employer who fails to properly enroll in the system, a person meeting the definition of employee under R.S. 11:2213(11)(a)(iii) only is also subject to a penalty of fifty dollars for each day that the employee is not enrolled. Such penalty shall be paid by the employer no later than the fifteenth day of the month following the month in which the employee is enrolled in the system.”

Motion by Lt. (Retired) Chad King, seconded by Major (Retired) Kelly Gibson, to support House Bill 43 with the recommended change. Without objection, the motion carried.

Mr. Huxen reviewed House Bill 52 by Representative Firment to change the venue in cases between MPERS and employers to the district court of the judicial district in which the employer is located. He stated that this bill was retaliation against MPERS for suing employers for not enrolling officers. He recommended the committee oppose the bill and request that the author withdraw it.

Motion by Major (Retired) Kelly Gibson, seconded by Lt. (Retired) Chad King, to oppose House Bill 52 and to request that the author withdraw it. Without objection, the motion carried.

Mr. Huxen discussed Senate Bill 1 by Senator Price. The bill relates to transfers of service credit. If someone transfers out of MPERS, the system will keep the additional contributions collected to prefund COLAs. The bill was heard and was reported favorable.

Motion by Lt. (Retired) Chad King, seconded by Major (Retired) Kelly Gibson, to support Senate Bill 1. Without objection, the motion carried.

Mr. Huxen discussed Senate Bill 5 by Senator Miguez. He stated that the in its original form it would cost MPERS \$4.5 million by making the system divest of certain investments. He added that system directors had been working with the Senator to make changes. He added that all of the

systems were against the bill. Mr. Huxen stated that the bill would give the Attorney General the right to go after investment firms for violations.

Motion by Lt. (Retired) Chad King, seconded by Major (Retired) Kelly Gibson, to oppose Senate Bill 5 in its original form. Without objection, the motion carried.

Mr. Huxen stated that Senate Bill 329 by Senator Seabaugh basically does the same thing that House Bill 52 does regarding venue. He recommended the committee oppose the bill.

Motion by Major (Retired) Kelly Gibson, seconded by Mayor Cromer, to oppose Senate Bill 329. Without objection, the motion carried.

F. Other Business

There was no other business brought before the committee.

G. Adjourn

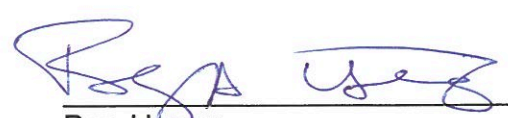
Motion by Lt. (Retired) Chad King, seconded by Major (Retired) Kelly Gibson, to adjourn the meeting at 2:50 p.m. Without objection, the motion carried.

The next meeting date is April 17, 2024.

To the best of my knowledge, the foregoing minutes accurately represent the actions taken at the meeting held March 20, 2024.



Major Raymond Burkart, Jr.
Legislative Committee Chairman



Ben Huxen,
Executive Director and General Counsel