Municipal Police Employees' Retirement System
Minutes of the Legislative Committee Meeting
January 18, 2023

The Legislative Committee of the Municipal Police Employees' Retirement System held a Meeting on Wednesday, January 18, 2023 at 9:45 am.

A. Call to Order

The meeting was called to order by Major Burkart at 9:45 a.m.

B. Roll Call

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

Members Absent
None

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, Benefits Administrator
Ms. Ashlee McNeely, MPERS, Executive Management Officer (virtual)
Mr. Greg Curran, Curran Actuarial Consulting, Actuary
Mr. David Barnes, NEPC, Investment Consultant
Mr. Kurt Livermore, Acadian, Sr. VP Portfolio Manager
Mr. James Klapman, Acadian, Sr. VP Relationship Manager
Chief Christopher Wilrye, MPERS Trustee
Mayor Gerard Landry, MPERS Trustee
Rep. Tony Bacala, MPERS Trustee
Lt. Tyrone Warren, MPERS Trustee
Mr. Kenny Herbold, Louisiana Legislative Auditor (virtual)

C. Public Comment

Major Burkart called for public comments. There were no public comments.

D. Regular Business

1. Approval of the May 18, 2022, Committee Meeting Minutes

Major Burkart called for the approval of the May 18, 2022, committee meeting minutes.

Motion by Major (Retired) Gibson, seconded by Lt. (Retired) King, to approve the minutes of the meeting held May 18, 2022. Without objection, the motion carried.

E. New Business

1. Discussion and Action Regarding Legislation to Be Proposed for Consideration for the 2023 or 2024 Regular Sessions

Mr. Huxen stated that he planned to schedule legislative committee meetings every month from March through May as there were likely to be bills that affect all the retirement systems. He added that if the meetings were not needed then they would be canceled.

The committee discussed Mr. Huxen's recommendation that the board authorize the executive director and general counsel to pursue the following legislation on behalf of the board of trustees:

- "Do-over" of HB 21/Act 360 from last year, which is necessary since the enrolled version that was presented to and signed by the governor was not the same as that passed by the legislature; and
- To authorize and direct the executive director to advertise for a bill pertaining to the definition of earnable compensation, subject to him contacting the New Orleans City Council president and chief administrative officer to determine whether employer contributions for retention pay are included in the City's 2023 budget and to determine specifics regarding the possible timing of the retention payments.

The proposal of the "do-over" of HB 21/Act 360, which was the funding deposit account/COLA bill, was made because a portion of the legislation was omitted from the enrolled bill that was sent to the governor and signed. That omitted section was subsection J, paragraph 3, which provided that approval of additional benefits for retirees, survivors, and beneficiaries. As provided by this subsection, the approval of a COLA shall be made by formal action of the Board of Trustees and considered an amendment to the provisions of the retirement system. Mr. Huxen stated that because this was omitted and could be used to challenge the bill as unconstitutional, the House of Representatives wanted to run it again this year just to be safe. He added that it would be the same bill in the exact same form all over again. He mentioned that Representative Bacala has agreed to sponsor it yet again. Rep. Bacala went on to say that it took two years to pass the bill previously and that they should clean it up and pass it just like before.

The committee discussed whether the Board could set the employer rate effective July 1, 2023 higher by up to 0.85% under the law. Mr. Huxen stated that they wouldn't be paying any COLAs from the new account in that year and that he didn't think there would be a legal impediment to collecting the money. Mr. Huxen stated that the Board would discuss the possibility of asking employers to pay up to an extra 0.85% at its March Board meeting. He added that the committee would just need to recommend that the Board proceed with the same legislation that was passed the prior year.

Mr. Huxen then discussed the next issue - the New Orleans retention pay - and suggested the system do something about it during the upcoming legislative session. The New Orleans retention pay/bonus is structured as a $5,000 payment for every 5 years of service up to 20 years of service. Once someone has over 20 years of service, they would get a one-time payment of $20,000. Representative Bacala discussed the receipt of contributions for new hires and the payments at 5 years, 10 years, 15 years. He stated that the system essentially got a bonus if they received contributions on those payments and the payments did not affect average final compensation. Major Burkart raised some concerns that it could affect average final compensation.

Mr. Huxen stated that he believed that New Orleans was going say that this retention pay would be included in earnable compensation. He stated that MPERS had an anti-spiking provision which would offset the negative impact of including this pay to some degree but would not fully offset it. Initially, New Orleans believed they were going to be making these payments in March which would mean that it was too late to seek legislation to exclude it. He added that including it could incentive people to retire after receiving it and that he expected it to have an impact on the employer contribution rate.

The committee discussed the details of the New Orleans payments and whether it would have a cost to the system. New Orleans has asked an AG's opinion as to whether they can pay it in March or July. Mr. Huxen stated that he expected the AG to say that the payments can be made in July because it says one year from the day it was approved.

Mr. Huxen added that, theoretically, if they were able to find a sponsor, they could get this excluded. After further discussion, Mr. Curran stated that Representative Bacala was right that in some cases contributions on the retention pay would be good for the system as they would collect contributions and never pay a benefit on that salary, but others will be tremendously bad for them. Mr. Curran stated that the anti-spiking rules were important in keeping this from being a much bigger issue for retirees. He added that those who retire within the first 3 to 5 years after the payment would see an increase in average final compensation and bigger benefits. He added that collecting contributions on a $5,000 bonus at first entry into the system would almost certainly be good for the system.

He explained the actuary's process of taking annual salaries reported from the system's data to project future pay for that individual. He gave the example of Chairman Burkart as someone who if they get a pay increase of $20,000 in one year and that increases the compensation reported to the actuary, the valuation process will assume that it's a part of the annual rate of pay and project salary increases into the future on that. So, initially, it's going to have a negative impact to the employer contribution rate without a doubt, because everybody's pay will look like it is expected to be higher in the future. The following year, however, when Major Burkart's salary is reported to the actuary from the system's database, the projected salary won't include the $20,000 and the system would experience a gain. The one time pay would cause a disruption to the valuation process. He said that the real impact would come in the long-term and would depend on how many people retire for whom the payment would become a part of the average final compensation. He stated that if it increased benefits for a small number, it could turn out to be a net positive. But, that kind of money in an average final compensation affects a lifetime of benefits. He said that his office could do a study if the board wanted to have a better understanding of the possible impact of including these payments. There was continued discussion about the topic. It was discussed that it would not be fair to make small municipalities that can't afford to pay these retention bonuses to pay added contributions.

The committee agreed that the average member would want it to be pensionable. The committee also discussed whether the New Orleans City Council had budgeted to pay both the bonuses and the contributions on those bonuses.

In summary, Mr. Curran stated that he worried that receiving contributions on the one-time pay would immediately lead to an increase in employer contributions. He added that the question would be whether costs would come back down. He added that he worried that at a time where the employer contribution rate is at the highest level, it would be challenging to employers to see cost increases because it was included in earnable compensation. Then there would be worries that other employers would follow New Orleans and also pass retention bonuses.

Mr. Curran expressed his opinion that trying to exclude these bonuses from earnable compensation would likely be preferable to trying to include it. Mr. Curran also stated that in a multiple employer plan, it doesn't make sense to allow these types of issues for one employer to affect all of the others. Mayor Cromer stated that he felt that in fairness to smaller municipalities that were not going to be able to afford these bonuses, it would be better to exclude them from earnable compensation.

Mr. Curran then discussed a possible interpretation that would spread the impact of the salary retroactively by policy if the system could not change the statutes. The Board also discussed the possibility of seeking legislation in the 2023 session. Mr. Huxen stated that it might be difficult to find an author since the 2023 session limited each legislator to 5 non-fiscal bills. The committee also discussed the possibility of whether a definition of earnable compensation would be found to be germane to the "do over" of House Bill 21 if an author could not be found. Mr. Huxen added that the earnable compensation language in MPERS statutes states that it shall mean the full amount of compensation earned by an employee for a given month. Would a payment made based on many years of service be considered pay for a given month? Mr. Huxen stated that he might suggest a policy excluding it, but that it could be overturned. He added that the Board might have to seek an Attorney General's opinion as well.

The committee discussed running a placeholder advertisement in case they needed a bill on the definition of earnable compensation. The committee discussed concerns about allowing this precedent to be set by allowing New Orleans to treat the one-time bonus as earnable compensation. Mr. Huxen stated that he would speak with the President of the New Orleans City Council and J.P. Morrell, the Chief Administrative Officer, about what the City has budgeted.

A motion was made by Lt. (Retired) King, seconded by Mayor Cromer, to pursue 2023 legislation for the "Do-over" of HB 21/Act 360, and to advertise for a bill pertaining to the definition of earnable compensation. Without objection and after a roll-call vote, the motion carried.

F. Other Business

There was no other business brought before the committee.

G. Adjourn

A motion was made by Mayor Cromer, seconded by Lt. (Retired) King, to adjourn the meeting at 10:50 a.m. Without objection, the motion carried.

The next meeting date is March 15, 2023.

To the best of my knowledge, the foregoing minutes accurately represent the actions taken at the meeting held January 18, 2023.

Major Raymond Burkart, Jr.
Legislative Committee Chairman

Ben Huxen,
Executive Director and General Counsel