

**CITY OF LANSING
JOINT EMPLOYEES' RETIREMENT SYSTEM
and POLICE AND
FIRE RETIREMENT SYSTEM
MEETING MINUTES**

Joint Meeting
Council Conference Room
10th Floor City Hall
Lansing, MI

January 14, 2020
Tuesday, 8:30 a.m.

The meeting was called to order at 8:30 a.m.

A quorum of both Retirement Boards were present.

Trustees present: (ERS), Bahr, Cahill, Dedic (8:55), Kehler, Kraus (8:40), M. Parker, Spadafore – 7.
(Police & Fire), Fabus, Kehler, Rose, C. Wilcox, R. Wilcox, Wohlfert, Wood –7.

Others present: Karen Williams, Human Resources Department; Attorney James Smiertka, (City Attorney's Office); Michael VanOverbeke, Aaron L. Castle, Francis E. Judd, VanOverbeke, Michaud & Timmony, P.C.; Cynthia J. Billings-Dunn, Matthew I. Henzi, AsherKelly, Attorney at Law; Attorney Kenneth Kane, AML Group, PLC.

Karen Williams distributed notification from City Council of the appointment of Carol Wood to the Police and Fire Retirement Board for the year 2020.

It was moved by Trustee Kehler and supported by Trustee Ryan Wilcox to confirm Carol Wood as the 2020 City Council appointment to the Police and Fire Retirement System.

Adopted by the following vote: 5 -0

Karen Williams distributed notification from City Council of the appointment of Peter Spadafore to the Employees' Retirement System Board for the year 2020.

It was moved by Trustee Bahr and supported Trustee Kehler to confirm Peter Spadafore as the 2020 City Council appointment to the Employees' Retirement System Board.

Adopted by the following vote: 7– 0.

Karen Williams provided notification to the Employees' Retirement System Board that only one nominating petition was received for the unexpired term vacated by Mark Parker.

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Ms. Irene Cahill submitted a valid nomination petition that was running unopposed. The Employees Retirement Board must approve the election results and confirm Ms. Cahill as Trustee to the Board.

It was moved by Trustee Kehler and supported by Trustee Bahr to approve the election results and confirm Ms. Cahill as a trustee to the Employees' Retirement System Board.

Adopted by the following to vote: 5 – 0.

The Retirement Boards agreed to move the items of Excusing of Board Members to the end of the meeting before adjournment.

Trustee Carol Wood inquired if all members would be allowed to vote on the interviews if they were not present at the meeting for all of the presentations.

Trustee Wohlfert indicated that members who wished to vote on the interviews should be at the meeting.

Trustee Wood also inquired if there were standard questions for all presenters for consistency.

Trustee Rose indicated that historically, there were not pre-set questions. The vendors gave presentations and the Board would be allowed to ask questions that were triggered by the presentations.

Trustee Kehler inquired if the Board could establish a few standard questions to ask.

Trustee Rose inquired to City Attorney Smiertka regarding what questions should be asked.

City Attorney Smiertka stated that it was his understanding that the Boards would provide a recommendation to the City Attorney upon selection of a firm to staff the Boards, and that the cost would be paid by the City Attorney Office. He further suggested that the Board should inquire about prior public pension experience, tax and business background, and that the selected firm will work with the City Attorney's office.

Trustee Rose also inquired to Trustee Wood how Council handles the interviews for RFPQs and applicants.

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Trustee Wood indicated that the Council generally had a list of questions, but any follow-up questions would be also asked of all applicants.

Trustee Spadafore indicated that hiring a vendor is different than hiring an employee. He felt that all presenters did not need to be asked the same questions because the RFPQ responses should have been exhaustive.

Trustee Rose wanted it clarified if the selection of a law firm would be “as needed” for services or to review qualifications. Trustee Rose inquired to City Attorney Smiertka regarding how law firms are handled “as needed.”

City Attorney Smiertka stated that there is a City Council approved list that could be used for special counsel that have an expertise or specialty.

Trustee Wood stated it was her understanding that this meeting was to make a recommendation to the City Attorney about hiring a legal counsel to represent the Boards not to add counsel to the City Council approved list.

Trustee Kraus stressed the importance of asking similar questions to all three presenters for consistency.

Attorney Michael VanOverbeke, Attorney Aaron L. Castle and Attorney Francis E. Judd provided their presentation of the legal services offered by Vanoverbeke, Michaud & Timmony, P.C. in response to the Board’s request for proposals. Attorney VanOvebeke provided an overview of the organization and experiences. Attorney Vanoverbeke, Attorney Castle and Attorney Judd discussed their client list, the types of legal services offered and fees. The attorneys discussed their approach to trustee education and how securities fraud monitoring and litigations are handled. Attorney Michael VanOverbeke stressed that the Retirement Boards would be their client. The firm’s expectation would be that their fees would be paid only by the retirement systems, not the City. The attorneys would work with the City Attorney’s Office.

Attorney Matthew I. Henzi and Attorney Cynthia J. Billings-Dunn provided their presentation of the legal services offered by AsherKelly in response to the Board’s request for proposals. Attorney Henzi first explained that the AsherKelly split from

Sullivan Ward, Asher & Patton, P.C. Attorney Henzi indicated that all the attorneys in the AsherKelley firm represents retirement systems. The proposal provided to the Boards would not be affected by the split.

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Attorney Henzi and Attorney Billing-Dunn provided an overview of their organization and experiences. Attorneys Henzi and Billings-Dunn provided an overview of their clients, the type legal services offered and fees. The attorneys discussed their approach to trustee education and how securities fraud monitoring and litigation are handled. Attorney Billings-Dunn indicated that the Retirement Boards would be their client. Fees would generally be paid by the retirement system, but under the rules of Michigan Code of Professional Conduct, there would be an agreement that makes clear that the client is not the one paying the fee.

Attorney Smiertka indicated in-between presentations that the current fees for legal counsel are approximately \$48,000.

Attorney Kenneth Lane provided their presentation of the legal services offered by AML Group, PLC in response to the Board's request for proposals. Attorney Lane provided an overview of the organization and experience. Attorney Lane discussed his client list, the types of legal services offered and fees. The attorney discussed their approach to trustee education. Although paid by the City Attorney's Office, Attorney Lane stressed that the Retirement Boards would be his client. Attorney Lane expressed that he did not have a concern with being paid directly by the Boards.

There were no public comments.

Trustee Spadafore inquired about why the retirement boards were interviewing legal counsel.

Trustee Dennis Parker responded that many trustees felt that the need for due diligence to review the legal advisor, after Attorney Lane left Clark Hill. The legal advisor provides counsel and advice to the Board that could lead to the Board or members' being sued. Members felt the need to vet the legal advisor and go through the due diligence process.

Trustee Eric Wohlfert also responded that at many of the educational conferences, it has been indicated that having the City pay for the Board's legal counsel was a conflict of interest.

Trustee Irene Cahill indicated that she would like to discuss the pros and cons of the presenters.

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Trustee Fabus indicated that Vanoverbeke had a lot of experience and staffing with public sector pension plans, but expressed concern regarding the fees the Boards' would incur.

Trustee Fabus also expressed that he felt Attorney Lane was an ethical person and that he represented the Board. He had a lot of City of Lansing Board experience. Trustee Fabus expressed concern that he was a sole practitioner. Trustee Fabus expressed concern that City of Lansing was paying for legal counsel. Trustee Fabus believed that the members have a fiduciary responsibility to the plan and the Board must decide if the City will pay for legal counsel or the Board.

Trustee Rose stated that both Asher Kelley and Attorney Lane indicated that if they were paid by the City, their obligation would be to the retirement boards.

Trustee Bahr felt that the legal counsel that represents the Board should be paid from system funds.

Trustee Kraus believed that two decisions should be discussed, funding and then selection of the firm. Trustee Kraus believed the first vote would be to determine if the City of the Board should pay for legal counsel.

Trustee Kraus called for the question supported by Trustee Spadafore.
Trustee Spadafore asked for a roll call vote.

It was moved by Trustee Bahr and supported by Trustee Dedic to pay for legal representative out of pension funds.

Trustee Dedic stated that this was not a new issue. Trustee Dedic would like that there was separation between City legal counsel and Board legal counsel. Trustee Dedic did believe that it should be funded by the Retirement Board.

Trustee Cahill inquired how the legal counsel was paid currently. Trustee Wohlfert explained that the retirement boards would include legal counsel fees in its budgets.

Trustee Kraus expressed concern about how the dollars are being spent and was this

the best use of the dollars paid out of the retirement system. Trustee Kraus stated that the pension contribution was from the City, so it would be a wash on who paid the fee. It was a matter of how it was perceived, either the legal counsel would be paid by the City or the legal counsel would be paid from contributions from the City.

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Trustee Spadafore expressed concern about the unanticipated costs from issues such as litigation against the retirement boards that would normally be absorbed by the City Attorney's Office.

Trustee Wood stated there was an agreement made between the City and the Retirement Boards to allow the trustees to have say in the decision of who staffs the Board. Trustee Wood also indicated that there is no Ordinance or rules that require the City to consult the Trustees regarding staffing the Boards.

Trustee Kraus inquired about the interaction between legal counsel and independent counsel and how it would work.

Trustee Spadafore expressed concern that if the system breaks ties with the City Attorney's office

Adopted by the following vote:

Yes: Bahr, Cahill, Dedic Kehler, Kraus, D. Parker, Spadafore. 7 – 0

No: 0.

It was moved by Trustee Ryan Wilcox and supported by Trustee Chris Wilcox to pay for legal representative out of pension funds.

Trustee Rose requested a roll call.

Trustee Fabus inquired if Attorney Smiertka could provide his thoughts regarding the OCA paying for the legal or the Board legal.

Attorney Smiertka indicated the City Attorney's Office has an ethical obligation to the Board based upon the retirement ordinances as would any attorney hired by the Board. Attorney Smiertka expressed concern about how independent counsel would interact and work with City Attorney's Office. Attorney Smiertka stated that statute did not require Boards to have their own legal counsel independent from the City. Attorney Smiertka did not feel that who pays for the attorney would eliminate the attorney's

ethical obligation to the Boards.

Trustee Ryan Wilcox expressed concern that the City could hire and fire the legal counsel and believed that it would be a conflict of interest.

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Trustee Rose stated that he believed the Boards do have the power to choose its counsel even if paid by the City. Trustee Rose expressed concern regarding using pension monies to hire counsel.

Trustee Wood indicated that when the Boards wished to hire legal counsel in the past, they were told by the City Attorney's Office that they could not. With the amendments to PA 315, the Boards were given the ability to hire its legal attorney.

Trustee Fabus stated that the reason the Boards had the joint meeting interviews to have unison and balance between the two Boards. He inquired if the Employees Retirement System could make a motion so there could be a joint discussion.

Adopted by the following vote:

Yes: Fabus, Kehler, C. Wilcox, R. Wilcox, Wohlfert, Wood -6.

No: Rose – 1

The Joint Board discussed pros and cons of the presentations. Trustee Kraus expressed Vanoverbeke has experience but would have a steep learning curve. Trustee Kraus indicated that the Retirement Ordinance has not been completed by the Board and AML has the retirement system background and knowledge.

Trustee Wood believed that when Clark Hill was hired it did not take long to get up to speed. Trustee Wood indicated the reason the Board has a trustee manual today is that

Trustee Ryan Wilcox expressed concern regarding AML lack of redundancy of information. Trustees also expressed concern that AML was a one-person firm.

Trustee Kehler stated for the record the reason I voted yes was not because I did not trust the City Attorney's office.

It was moved by Trustee Chris Wilcox and supported by Trustee Rose to hire VanOverbeke, Michaud & Timmony. P.C. as its legal representative for the Police and Fire Retirement System.

Trustee Fabus has been very pleased with Attorney Ken Lane. He is man of character and integrity and has no problem with how he represented the Board. Trustee Fabus believed that VanOverbeke ultimately has more resources and he had a fiduciary obligation to the plan.

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Trustee Wood indicated that a decision must be made, the Boards would need to work with the City Attorney's office and then a transition period would follow.

Adopted by the following vote: 7 – 0.

It was moved by Trustee Kraus and supported by Trustee Kehler to hire VanOverbeke, Michaud & Timmony, PC as its legal representative for the Employees' Retirement System Board.

Trustee Kraus requested that the two chairpersons personally contact Attorney Lane. She wanted Attorney Lane wanted to him to know that it was not the quality of his work.

Trustee Rose inquired who would review the contract.

Adopted by the following vote: 7 – 0.

Trustee Wohlfert indicated that the Board would need to discuss with the City Attorney's office, AML and Vanoverbeke.

Attorney Smiertka stated that he takes his direction from the Mayor and the president of City Council.

Trustee Fabus inquired if the Board could make a formal request to the mayor or city council to ask the City Attorney to assist the Boards.

It was moved by Trustee Fabus and supported by Trustee Ryan Wilcox to provide a formal request to City Council or the Mayor to have the Office of City Attorney as a part of the process of transitioning to VanOverbeke.

Adopted by the following vote: 7 -0.

It was moved by the Trustee Dedic and supported by Trustee Bahr to provide a formal

request to the City Council of the Mayor to have the Office of City Attorney as a part of the process of transitioning to VanOverbeke.

Adopted by the following: 7- 0.

Trustee Wood indicated that the Mayor and Human Resources Director were ex-officio members and did not need to be excused.

It was moved by Trustee Rose and supported by Trustee Fabus to adjourn the Police and Fire Retirement System Board

Adopted by the following: 7 -0.

It was moved by Trustee Bahr and supported by Trustee Dedic to adjourn the Employees' Retirement System Board.

Adopted by the following vote; 7 -0.

The Meeting adjourned at 1:03 p.m.

Minutes approved on _____

Shelbi Frayer, Secretary

Dennis R. Parker, Chairperson
Employees' Retirement System

Eric P. Wohlfert, Chairperson
Police and Fire Retirement System