

AGENDA

Municipal Pensions Oversight Board

Meeting of the Board Members

December 15, 2022 – 1:00 P.M.

301 Eagle Mountain Road, Second Floor, Suite 251, Charleston, WV 25311

- I. Call to Order and Roll Call
- II. Approval of Minutes of Meeting on September 22, 2022
- III. Annual Election of a Secretary/Treasurer
- IV. Old Business
 - A. Legal
 1. Beckley Fire Department Pension Board v. The Municipal Pensions Oversight Board and Chairman Civil Action No. CC-41-2022-C-185
 2. Todd Lewis Taylor v. The City of Charleston, WV Policemen's Pension and Relief Fund
 3. Paul Harrison v. the Charleston Firefighter's Pension and Relief Fund and West Virginia Municipal Pensions Oversight Board, Civil Action No. 22-C-357.
 - B. Tabled Fairmont Fire Department DROP Application Approval
 - C. Compliance Review Updates
 1. Recalculations
 - a. Charleston Fire
 - b. Dunbar Fire
 - c. Wheeling Police
 - d. Wheeling Fire
 - D. Consolidated Actuarial Report as of July 1, 2021
- V. New Business
 - A. Creation of an ad-hoc Experience Study Subcommittee
 - B. Board Clarification of 8-22-26a Supplemental Benefits – Inapplicability of 4% Limitation
 - C. P-Card Expenditures – September, October, and November 2022
 - D. Personnel
 1. Chief Financial Officer Update
 - E. Proposed Legislation
 - F. Executive Director's Report
- VI. Public Comments
- VII. Adjournment

MUNICIPAL PENSIONS OVERSIGHT BOARD

MINUTES OF MEETING DECEMBER 15, 2022

The Municipal Pensions Oversight Board (MPOB) met on December 15, 2022, at 1:00 PM. The location of the meeting was held at 301 Eagle Mountain Rd. Suite 251, Charleston WV 25311. Mr. Steve Neddo welcomes everyone and calls the meeting to order. Mrs. Janet Warren calls the roll.

ATTENDEES

Board Members:

Travis Blosser — Present

Jeffrey Fleck — Present

David Lanham — Absent

Sarah Long — Present

Jason Matthews, Vice Chairman — Present virtual

Steve Neddo — Chairman — Present

Michael Payne — Conference call

Tom Percy — Present

Craig Slaughter— Present

Staff:

Janet Warren — Administrative Assistant - Present

Les Smith, Accountant — Absent

Matthew Pauley, Chief Financial Officer - Present

Blair Taylor, Executive Director- Present

Guest:

Jim Ritchie- Senior Consulting Actuary, Bolton — Present

Jordan Mclane -Consulting Actuary, Bolton — Present virtual

General Counsel:

Anthony Eates — Deputy Attorney General — Present

Minute taker:

Janet Warren

Approval of Minutes

Minutes' for the MPOB meeting on September 15, 2022, were presented for approval. Mr. Neddo asked for a motion to approve the minutes.

Motion: Motion to approve the minutes as presented; moved by Mr. Tom Percy; Seconded by Mr. Jeffrey Fleck. Passed unanimously.

RESOLVED the minutes for the September 15, 2022, meeting, Municipal Oversight Board Meeting minutes were approved as presented.

Annual Election of a Secretary/Treasurer.

Mr. Taylor presenting

He introduces Mr. Matthew Pauley, newly hired CFO. Mr. Taylor noted that in the past, current CFO's have held the Secretary/Treasurer position.

Motion: Motion to appoint Mr. Matthew Pauley as the Secretary/Treasurer; Moved by Mr. Jeffrey Fleck; seconded by Mr. Travis Blosser. Passed unanimously.

Resolved: Appointing of Mr. Matthew Pauley as the new Secretary/Treasurer.

Old Business:

A) Legal

Mr. Anthony Eates presenting.

1. Beckley Fire Department Pension Board vs. MPOB Civil Action No. CC-41-2022- C – 185.

- **No update**

2. Todd Lewis Taylor v. The City of South Charleston, WV Policemen's Pension and Relief fund —Judge Webster.

- **No update**

- 3) Paul Harrison v. The Charleston Firefighter's Pension and Relief Fund and West Virginia Municipal Pensions Oversight Board, civil Action No. 22-C-357.

- **No update**

B) Fairmont Fire Department DROP Application

The board did not receive a response from the City of Fairmont, on the previous tabled questions, from the September 22, 2022, Quarterly Meeting, in which the board requested. Those questions included:

- a) Is Fairmont legally allowed to limit the number of members joining?
- b) How are the members being chosen?

The City of Fairmont did submit a withdraw letter, to the MPOB, and have chosen to withdraw their DROP application.

- **No action is needed.**

C) Compliance Review Updates

Mr. Blair Taylor Presenting

- **Charleston Fire-** Chief Jones gathering information, still working on recalculations. Mr. Fleck met with Mr. Jones. With the help of Mr. Fleck and staff, Mr. Jones gathered pertinent information to help with the process.
- **Dunbar Fire-** Chief Matthew's has reached out to the Dunbar Pension Secretary and Dunbar is working with the same CPA firm that Dunbar Police Pension board has used. There are other issues that Mr. Taylor is aware of and is currently working with the pension secretary, as well as their Chairman of the Board.
- **Wheeling Police-** Mr. Taylor has verbally spoken to the Wheeling Police Attorney, over the phone. The attorney for the Policemen's pension states that the city wants to make the plan whole with the city funds, however the WV Code requires that the pensioners are required to repay the overpayments. Further discussions are to occur between the parties.
- **Wheeling Fire-** Wheeling Firemen's Pension Secretary has provided a written report to the Municipal Oversight Pension Board. The report indicates the CPA firm they hired has completed the recalculations. Pension board for Wheeling Firemen's Pension has meet and agreed to adjust the Pensions to the correct amount. They voted to go ahead and pay underpaid pensioners. The Board is discussing deployment methods.

Both Boards have hired the same CPA firm to calculate pensions going forward.

D: Consolidated Actuarial Report as of July 1, 2021

Jordan McClane Presenting.

Mr. McClane is comparing the 2021 Valuation results to the previous year valuation report.

2021 Valuation results- unremarkable

- **Plan membership**- 3606 members, a decrease of only 10 members from 2020. Total membership hasn't changed much, but there is a bigger change in the active membership. A decrease of about 46 members from 2020 to 2021.
- **Accrued Liabilities** – 1.546 billion dollars in 2021. That's about 5 million dollars decrease from 2020. That decrease is due entirely to changes in discount rates. 12 out of 53 plans had a change in the discount rate, all with an increase in the discount rate (increase in discount rate reduce liabilities).
- **Normal Cost (cost assigned to active employees earning an additional year of service)** – Looked at as percentage to payroll 31% of payroll. A very small decrease from 2020, which was around 32% of payroll. As active member numbers decrease this dollar amount will decrease as well.
- **Fiscal year 2023 Contributions** – Around 71.9 million dollars in total, a slight decrease from 2020 valuation results of 72.6 million dollars. That reduction is due to the decrease in the premium tax allocation, 1.5 million from the prior year.

One remarkable result for 2021 Valuation results was the return on assets for FY21 on a MVA basis (marker value asset) return was about 23.4% on aggregate, in asset returns.

Implementation of asset smoothing is in place, gains and losses will smooth over 4 years, which will help dampen the assets of the poorer FY2022.

Actuarial Recommendations include:

1. Encourage the legislature to change the State Code to allow municipalities that use the Conservation funding policy to switch to the Optional funding policy. Currently, municipalities using the Conservation funding policy cannot change to a funding policy that is consistent with standard actuarial principles.
2. Discourage the use of the Alternative and Conservation funding policies as these funding policies result in expected future contributions which are much higher than current contributions and are expected to create a larger burden in the future for municipalities that fund under these policies.
3. Review the feasibility of pooling investments for these plans to reduce investment expenses and increase investment returns.

Mr. McClane states that results are shown by funding policy. The Standard and Optional are actuarial sound, funded better than the Alternative and Conservation Policy.

New Business:

A. Creation of an Ad-hoc Experience Study Subcommittee.

Mr. Blair Taylor Presenting:

Current Procedure timeline states that it is time for an Experience study to be completed by the Actuary. Actuary asks for a subcommittee. Mr. Taylor recommends a motion for a subcommittee and allow subcommittee to give direction to the actuary for the experience study.

Experience study is to be done and provided to municipalities. The study is completed every 3 years but not implemented for another 2 years after the study to give municipalities advanced notice of any changes in the municipal contributions required for a pension and relief fund.

Motion: Motion to create an Ad-hoc Experience Study subcommittee; Moved by Mr. Tom Percy; seconded by Mr. Travis Blosser. Passed unanimously.

Resolved: Motion for a creation of an Experience Study Subcommittee

Amended Motion: Motion to allow the Subcommittee to have the authority to act on behalf of the MPOB board. Moved by Mr. Tom Percy; Seconded by Mr. Travis Blosser. Passed unanimously.

Resolved: Motion for the creation of an Ad-Hoc Experience Study Subcommittee and gives the Subcommittee authority to act on behalf of the MPOB board.

Mr. Neddo asks for volunteers from the Board to sit on the Experience study committee.

Mr. Travis Blosser, Mr. Jeffrey Fleck, and Mr. Tom Percy agree to sit on the committee.

B. Board Clarification of 8-22-26a Supplemental Benefits – Inapplicability of 4% limitation

§8-22-26A. SUPPLEMENTAL PENSION BENEFITS ENTITLEMENT; BENEFIT PAYABLE; APPLICATION OF SECTION; CONSTRUCTION.

(a) Except as otherwise provided in this section, all retirees, surviving beneficiaries, disability pensioners or future retirees shall receive as a supplemental pension benefit an annualized monthly amount commencing on July 1, based on a percentage increase equal to any increase in the consumer price index as calculated by the United States Department of Labor, Bureau of Statistics, for the preceding year: Provided, That the supplemental pension benefit specified herein shall not exceed four percent per year: Provided, however, That no retiree shall be eligible for the supplemental pension benefit specified herein until July 1, after the expiration of two years from the date of retirement of said retiree: Provided further, That persons retiring prior to the effective date of this section shall receive the supplemental benefit provided for in this section immediately upon retirement and shall not be subject to the two year delay: And provided further, That the supplemental benefit shall only be calculated on the allowable amount, which is the first \$15,000 of the total annual benefit paid. If at any time, after the supplemental benefit becomes applicable, the total accumulated percentage increase in benefit on the allowable amount becomes less than seventy-five percent of the total accumulated percentage increase in the consumer price index over that same period of time, the four percent limitation shall be inapplicable until such time as the supplemental benefit paid equals seventy-five percent of the accumulated increase in the consumer price index. The supplemental pension benefit payable under the provisions of this section shall be paid in equal monthly installments.

Mr. Blair Taylor presenting

Language states, once supplemental benefit is given to the member, if the buying power drops below 75% of CPI (consumer price index), then the supplemental benefits (Cost Of Living Adjustment, COLA,) cap becomes inapplicable.

MPOB Staff and Actuaries need direction on how the method is to apply, to determine the 75% rule. Different methods could include:

- **Method 1-** CPI calculated based on year to year, meaning if COLA becomes 5.4% or higher than the Cap becomes inapplicable.
- **Method 2-** Taking the CPI amounts, comparing it to the COLAs given, during the life of the retirement. If the Capped amount that the retiree

receives is 75% less than the CPI amounts, the Cap would be inapplicable.

Mr. Taylor refers to the 2004 Supreme court decision *Compounding of Supplemental Benefits, (COLA) - (Fairmont Firemen's Pension Board vs. the City of Fairmont). Under that decision, COLA is calculated on the first \$15,000 plus the accumulated COLA.

❖ *Discussions about how the code should be interpreted begins.*

- Mr. Eates states that the Method is a pure percentage calculation and not a combination of dollar figures and percentages. He believes that is what the statute calls for in the code.
- Mr. Taylor asks if it is an accumulative percentage, a compound of the percentage or a sum of the percentage.
- Mr. Pearcy states that it is a statutory interpretation of the Code. Mr. Taylor agrees.
- Upon the Board asking if an opinion of the code from the Attorney General (AG) should be recommended, Mr. Eates states that in asking for an AG opinion, it could take 4 to 6 months to get an opinion from the AG. If there is a consensus, based on what the Board interprets, then there is no need to ask the AG for interpretation.
- Mr. Slaughter suggest that the Board look at the spreadsheets provided and clarify with discussion.
- Mr. Neddo's opinion is that it is based on a percentage and agrees with Method 1. While speaking with retired pensioners, currently and based on how the Municipalities are currently calculating the COLAs, they do not go back and look on how long you have the COLA, they look at current year COLA. Mr. Neddo states that he and the retired pensioners, that he has spoken with, have read the code as applying COLAs yearly. If the Capped amount is 75% less of the CPI, then the cap no longer applies. Also stating that when configuring the yearly COLAs, it is figured every year, on a yearly basis.
- Mr. McClane was asked to give an example of methodology 1. Under Methodology 1- If the CPI is 10%, then 10% would be applied. If CPI was 4.0% – 5.3% you would cap it at 4.0% because the 4% cap is applicable. Anything over 5.4% then the cap would be inapplicable. If it is at 20% then the member would get the full 20%.
- Mr. Taylor states should that occur, if the intent of the code is to make sure that the pensioner does not lose value based on rises of inflation, then wouldn't the full 20% apply? If you are looking at it from the length of time the member has been accruing, the longer the member has been under that 4.0%, the longer it will take the member to reach the 75% cap.

Mr. Taylor states from the code: The purpose is to liberally interpret the code, not to decrease benefit to the member.

- Mr. Slaughter states that Method 2 is the more actuary conservative method. in looking under two different methods. In method 1 –if the CPI is up to 4.0% then the member is keeping up with inflation. If it is above 4.0 -5.4% then they are losing. Stating the only time to make it up is when it is above 5.4.

- Mr. Slaughter asked about Method 2 stating that this method accumulates for every person, every time. An example would be if someone retired in 1996, they would fall behind, because it hasn't been above 5.4%. When calculating, you are looking at the accumulated rate of inflation from 1996 to 2022 and that may be less than 5.4% over the entire period.
- Mr. Blosser states that he has heard the same information, over the years, as Mr. Neddo has stated (see Mr. Neddo's comment above). Also, stating mistakes will be made, if calculating the COLAs on an individual employee basis, because these are configured by Pension Secretaries and not an individually paid employee. Each Municipality does not have a paid employee to calculate COLAs every year.
- Mr. Fleck questions what the methodology will do to the employers, regarding their funding of the plan and the contribution that the employer must make to adequately fund the plan.
- Mr. Ritchie responds with the experience study, stating that we aren't going to go much over 2.75.
- Mr. Taylor states that if you look from 1991 to now the average is less than 2.5. Even with a spike, it is not going to be significant enough to cause our cities to pay. But with the last experience study the CPI was reduced from 2.75 to 2.5, based on what was happening.
- Mr. McClane pulls previous experience study reports, looking at the CPIU annual average, what is used for COLA. Over 20 years the annual average was 2.17%, over 25 years it was 2.2%, over 30 years it was 2.44%.
- Mr. Eates questions Method 1- where calculations are on a year-to-year basis, that statute uses the word accumulated many times in the statute, how does that apply to method 1? Mr. Neddo responds saying that the Consumer price index is called the accumulated index in the consumer price index, which is based over several months.

Mr. Eates asks: If looking at Methodology 2- are we averaging the CPI or taking the accumulation of the CPI? Mr. McClane states they are taking the accumulation over time with Methodology 2.

- Mr. Percy ask the Actuaries based on experience, is there a preferred method. Is both methods reasonable? Mr. Ritchie states that the pension boards will have issues with calculating Method 2. Also, Mr. Ritchie has never seen a cap where it states there will be a cap at 4% but uncap it at 6%.
- Mr. Taylor interjects with the 2004 Fairmont Supreme court decision which states:

Equally ambiguous is the very next sentence in the statute which states,

This purpose would be frustrated if police and firemen's pensions were permitted to significantly diminish over time due to the effects of inflation. Further, it is obvious that the Legislature's intent in enacting W.Va. Code § 8-22-26a is to obviate to some degree the effects of inflation due to the fact that the annual percentage increase in the supplemental pension benefit is tied to the consumer price index which is the most widely used measure of inflation. (See footnote 8) Accordingly, we hold that the Legislature's intent in enacting W.Va. Code § 8-22-26a(a) (1991) is to provide protection to police and firemen's pensions against erosion due to inflation.

- Mr. Taylor states if the buying power is 4.7% over the course of years, we have reduced the buying power of the retiree.

- Mr. Slaughter states that when reading the language, he is inclined to go with Method 1 and if there are issues that arise, legislation will be needed to fix the language.

Discussion from the Board, along with clarification from the board are as follows:

The board agrees with Methodology 1, the Year-by-Year Method.

No motion is needed.

C. P-Card Expenditures – September, October, and November 2022

Motion to approve the PCard Expenditures for September, October, and November 2022; Moved by Mr. Travis Blosser; Seconded by Mr. Craig Slaughter. Passed unanimously.

RESOLVED: P-Card Expenditures for September, October, and November 2022 are approved as presented.

D. Personnel

1. Chief Financial Officer Update.

Mr. Jeff Fleck Presenting

The MPOB has made an offer to Mr. Matthew Pauley, who comes from the Higher Education Policy Commission. Mr. Pauley has accepted the offer and will begin Monday December 19, 2022.

E. Proposed Legislation

Mr. Taylor presenting

Mr. Taylor met with Senator Nelson, at his request. Mr. Nelson asked proposed legislation Mr. Taylor would bring to the Board. The four items discussed and agreed upon with Senator Nelson are as follows:

- 1) §8-33-4a and §8-33-4b- Pension Obligation Bonds (POBs). There are requirements, that the Oversight Board approve the Municipalities to sell POBs if the City's funded status is 40% or below. Mr. Taylor believes there needs to be rule making authority and emergency rule making authority on what the cities will be required to provide to the Board from an actuarial standpoint, to meet these criteria and timeframe criteria. When a municipality comes to the MPOB there is a timeframe for a response to each municipality.
- 2) A second area that the MPOB needs some Legislative changes is in the arena of "independent medical examinations" (IMEs) which are required when a police officer or firefighter files for a temporary or permanent disability. Prior to 2009 law states the local Pension boards had to send their members to WVU or Marshall to its medical school facilities. Mr. Taylor believes that members IMEs should be required to take place by WVU and Marshall School of Medicine, including Marshall Osteopathic school for exams.
- 3) Currently it appears a plan funded using the Alternative Funding Method (107% of the prior year's funding amount) can sell POBs but not close their pension fund. Mr. Taylor would like to see if there is interest in requiring any municipality which sells POBs to close the pension plan to new hires using the Optional Funding Methodology
- 4) Bolton has suggested municipalities using the Conservation Funding Methodology to fund plans be able to switch to the Optional Funding Methodology.

Motion to authorize Mr. Taylor and staff to move forward with the Proposed 2022 Legislation session; Moved by Mr. Jeffrey Fleck; Seconded by Mr. Travis Blosser

Resolved: Legislative Proposed agenda has been approved as presented

F) Executive Director's Report

Mr. Taylor Presenting

- Mr. Taylor has attended meetings and training with Municipalities. The training course Mr. Taylor was supposed to attend in December will be rescheduled in the Spring.
- The ARFP for a reviewing actuary will be completed by Mr. Taylor and Mr. Pauley.
- Remaining funds as of September 2021 – Around \$600,000 has not been drawn down, \$358,000 of that amount are for fully funded plans, leaving \$242,000 that hasn't been drawn down. Mr. Taylor will start sending the 30- and 60-days notices to the plans that haven't drawn down.
- Remaining funds as of September 2022 – Of the 18.4 million dollars that will be disbursed, over 7 million dollars have currently been disbursed, and since this report was uploaded another 2.5 million dollars have been disbursed as well.
- Quarterly fees, by the March 2023 Quarterly meeting, Mr. Taylor should have the completed fourth quarter quarterly fees.

Mr. Fleck adds that the Personnel committee will meet sometime before the March meeting for the required evaluation of the MPOB Director.

Adjournment

Mr. Neddo calls for the motion to adjourn.

Motion to adjourn; Moved by Mr. Travis Blosser; Seconded by Mr. Tom Pearcy: Passed

Resolved; meeting for December 22, 2022, of the MPOB is adjourned.

A handwritten signature in black ink, appearing to read "Steve Neddo", written over a horizontal line.

Steve Neddo (Chairman)

Minutes approved 4-3-23
(date)

Referenced documents can be found in the Board Meeting Packet.