

Pension update, January 2012

By Mark Diaz P&F Trustees

### **Retirees fight to claim their seat on the Detroit Police and Fire Retirement System Board of Trustees**

The retirees from the Detroit Police and Fire Departments have been fighting to claim their seat on the Detroit Police and Fire Retirement System Board of Trustees for many years and it appears the end of their fight may be in sight. As the issue came before the Board for action we properly relied on the most current laws, legislation, ordinances and collective bargaining agreements in place when the issues were presented.

**The City of Detroit Charter** adopted Aug. 6, 1996, and effective Jan. 1, 1997 calls for “A retirant, receiving benefits under the retirement system who shall be a resident of the city and elected by retired firefighters and police officers **under procedures established by ordinance.**” When this matter was presented to the Pension Board, the City Charter did not have established procedures in place.

Then there’s The Public Employment Relations Act (PERA) (City of Detroit V Michigan Council 25, AFSCME, 118 Mich App 211 (1982) Which states that PERA prevail over conflicting terms in a city charter.

This being said, the DPOA, LSA, COA and the DFFA contracts all have language describing the composition of the DPFERS Board of Trustees. None of those contracts call for a retirant to sit on the Pension Board. So basically, the retirees are a victim of PERA law that says the bargaining agreements take precedence over the charter.

The retirees contend that their legal representative Butzel Long opines that House Bill 4135 Act 25 (10) validates the provisions of the Charter of the City of Detroit, as approved by its voters, and prohibits collective bargaining over the issue of inclusion of a retirant on the Board of Trustees.” As such they believe their elected representative should be seated as a matter of law.

The retirees, including Representative Fred Durhal contend that the **intent** of House Bill 4135 Act 25 (10) was to seat a retirant on the DPFERS Board of Trustees. We spoke directly to Representative Durhal and advised him that as a fiduciary of the Board we are obligated to follow the letter of the law and not just the **intent** as it is implied. Further more if his **intent** was to see a retiree seated on the Board the language of the legislation should have stated it clearly. Unfortunately the lack of clarity on a very simple matter is costing **OUR** retirees (the same people that taught us to be police officers) unnecessary time and money.

House Bill 4135 Act 25 (10) specifically states as follows “If the charter of a city, village, or township with a population of 500,000 or more **specifies the selection** of a retirant member of the municipality's fire department, police department, or fire and police department pension retirement board, **the method of selection of that member is a prohibited subject of bargaining.**”

So all HB 4135 Act 25 (10) speaks about is the **SELECTION** process. It doesn’t say anything about the PERA laws and contract language of all four bargaining units as they pertain to the **COMPOSITION** of the board.

We have been in constant contact with Don Taylor the President of the RDPFFA regarding this matter. Currently the issue is being amended and we hope to see the elected retiree sitting at the table soon.

### **Annuity Loan Program;**

In September we spear headed a committee to get the annuity loan program that was won in the ACT 312 award for the LSA, and ratified in the DPOA contract up and running. Being as this is a benefit fought for and won by the unions, this is their benefit and is therefore the Unions' responsibility to set the rules for their benefit. We want everyone to understand, the Pension Board is a separate entity from the Unions. The responsibility of the Pension Board is to administer the pension plan as the law and the collective bargaining unit's contractual language dictates.

In December the committee met for the last time and agreed on the rules for the Detroit Police and Fire Retirement System. As you may know, the General Retirement System has an annuity loan program in place. Their plan was a foundation for the P&F plan but because of major differences in the two plans there had to be some major changes for our plan to work. We are proud to report that the rules the committee was able to set in place are in my opinion the best for all members of the Detroit Police and Fire Retirement System.

### **“When can I borrow from my annuity?”**

The system is projected to be available to begin taking loan applications by July of 2012. The process began with a request for a determination letter from the IRS. A determination letter basically gives us written approval from the IRS to carry out this benefit without our members incurring penalties for “touching” their annuity funds before they reach 59 ½ years of age. It is anticipated that the determination letter will come back to us some time around March 2012.

### **Actuarial Report**

As you may have heard our pension system is “over funded.” Per the December Actuarial report, we are 102.3% funded, that's approximately \$85 million dollars in the black. Take comfort in knowing that we consider this to be only the beginning of managing our system properly and we expect the funding percentage to only continue to climb.

### **In Closing**

Thank you for taking the time to read this update and we encourage you to share this information with every member of the department and discuss it in detail. By educating one another, and ourselves we become stronger. In an effort to bring the information to all members of our pension system we are attempting to make it to every command and give the shifts updates on current events with our pension system as well as legislation that might affect it.

Again, we are honored to represent your best interests on the Pension Board and if you have any questions, concerns or advice please give us a call and tell us what's on your mind. Please feel free to contact either one of us at the below email addresses.

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