

Legislative Analysis



DETROIT POLICE AND FIRE RETIREMENT BOARD

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4917 (Substitute H-3)

Sponsor: Rep. Fred Durhal

Committee: Labor

First Analysis (9-1-10)

BRIEF SUMMARY: Under the bill, if the local charter of a municipality having 500,000 or more people specifies the selection of a retiree for the municipality's fire and police retirement board, then the method of selection of that retiree would be a prohibited subject of collective bargaining.

FISCAL IMPACT: The bill would have no impact on the state revenues or expenditures. For further detail, please see *Fiscal Information*.

THE APPARENT PROBLEM:

In 1996, voters in the City of Detroit adopted a new City Charter under the Home Rule Cities Act that added a 12th member to the Detroit Police and Firefighters Retirement System board of trustees. The new member was to be "[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 as established by ordinance."¹

Despite the 'will of the people' expressed during the election, the retired member has not been added to the board. Instead, the active members of the Detroit Police and Firefighters Pension System have argued that the charter revision interferes with the collective bargaining process.

In response to a lawsuit brought by the Retired Detroit Police and Fire Fighters Association (RDPFFA), the Michigan Court of Appeals, in a per curiam unpublished opinion, ruled in February 2007 that "[c]harter provisions enacted pursuant to the Home Rule Cities Act cannot contravene the obligations imposed by PERA" (the Public Employment Relations Act) which in this case applies to inclusion of the composition of the retirement system boards as a mandatory subject of collective bargaining.²

¹ See, Article 11, Section 11-103 of the Detroit City Charter. The city charter currently provides that the board is to consist of three active members of the police department, three active members of the fire department and, as ex-officio members, the City Treasurer (or deputy), the Mayor (or designee), the City Council President (or another council member), the Police Chief (or designee), the Fire Commissioner (or designee), and a retired member. In May 2009, Detroit voters approved the creation of a charter commission to revise the 1997 city charter. See, [<http://www.detroitmi.gov/DepartmentsandAgencies/CityCharterCommission.aspx>].

² See, *Retired Detroit Police and Fire Fighters Association v. City of Detroit*, Michigan Court of Appeals, Docket No. 272235, February 6, 2007 (unpublished), [http://coa.courts.mi.gov/documents/opinions/final/coa/20070206_c272235_43_272235.opn.pdf].

Legislation has been introduced to specify that the method of selecting a retiree member of a city police and fire pension board is a prohibited subject of collective bargaining when the local charter in a city having 500,000 or more people requires the selection of a retirant member of the fire or police department pension or retirement board.

THE CONTENT OF THE BILL:

House Bill 4917 (H-3) would amend the Public Employment Relations Act (Public Act 336 of 1947), which concerns the collective bargaining rights of public employees. The bill deals with the board of trustees of the police or firefighters pension or retirement system in a city with a population of 500,000 or more--that is, the City of Detroit.

Under the bill, 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 or retirement board, then the method of selection of that member would be a prohibited subject of bargaining.

[Note: A prohibited subject of bargaining is one that the parties are not explicitly forbidden from discussing during the bargaining process, but any contract provision containing a prohibited subject is unenforceable. Moreover, employers are not required to bargain to the point of agreement or impasse on "prohibited subjects" before taking unilateral action.]

MCL 423.215

FISCAL INFORMATION & BACKGROUND INFORMATION:

State Revenue Impact: The bill would not have an impact on state revenue.

State Expenditures Impact: The bill would not have an impact on state expenditures.

Local Revenue Impact: The bill would not have a direct impact on the revenue systems of local units of government.

Local Expenditure Impact: The bill would have an indeterminate impact on expenditures of local units of government. By limiting the added provision to cities with a population of at least 500,000, the bill currently only applies to the City of Detroit Police and Fire Retirement System (DPFRS)³, and the collective bargaining authority of the city's police officers and fire fighters. The bill currently does not apply to the general retirement system of the City of Detroit, nor does it explicitly apply to other municipal retirement systems. By specifying that the selection (election) for a retired member of a police/fire retirement system board added through a charter provision is a prohibited subject of bargaining, the bill would, on the surface, follow the selection process

³ For further information on the two retirement systems of the City of Detroit (the General Retirement System and the Police and Fire Retirement System), including minutes of the two boards of trustees, annual reports, and independent audit reports see, [<http://www.rscd.org>].

established by city charter and any additional city ordinance. The Detroit City Charter provides that the retiree member must be elected by retired firefighters and police officers under procedures established by ordinance.⁴ As a result, then, the bill would result in some additional costs to the retirement system due to the printing and processing of ballots to elect the retirant member. Any resulting cost increases would not likely be a material amount in relation to the administrative expenses of the DPRFS.⁵

Currently the DPFERS is governed by an 11-member board of trustees, consisting of:⁶

- The Mayor of Detroit, or a designee (ex-officio).
- The President of the Detroit City Council or another member of the city council (ex-officio).
- The City Treasurer or Deputy Treasurer (ex-officio).
- The Police Chief, or another member of the Police Department (ex-officio).
- The Fire Commissioner, or another member of the Fire Department (ex-officio).
- Three firefighters who are members of the retirement system, elected by the firefighter members under rules and regulations established by the Fire Commissioner. Of the three fire fighter members, two members are to be elected from members holding the rank of Lieutenant or below and one member is to be elected from members holding the rank above Lieutenant.
- Three police officers who are members of the retirement system, elected by the police officer members under rules and regulations established by the Police Chief. Of the three police officer members, two members are to be elected from members holding the rank of Lieutenant or below, and one member is to be elected from members holding the rank above Lieutenant.

⁴ There appears to be no ordinance specifically relating to the DPFERS board, although Chapter 47 of the Detroit City Code does pertain to the city's general retirement system.

⁵ According to the FY 2009 financial report of the DPFERS, the system's general and administrative expenses totaled \$4,312,555 for the fiscal year. The financial report also notes that, as of June 30, 2009, the retirement system included 4,089 active members, 8,464 retired members, and 54 terminated members who are entitled to, but do not yet receive, benefits under the systems defined benefit plan. The DPFERS also includes another 4,948 members of the defined contribution plan. Under the current contract provisions, only *active* police officers and fire fighters are eligible to vote for elected trustees of the retirement system, which at this time does not include the retirant member. The method of selection of trustees (that is, who can sit on the board and who can vote in a trustee election) are determined under the collective bargaining process.

⁶ The current contract with the Detroit Police Officers Association provides for a 12-member board of trustees that consists of, as ex-officio members, the city's finance director, budget director, and corporation counsel, rather than the Police Chief and Fire Commissioner. The composition of the DPFERS board was altered under an August 2003 Act 312 arbitration award in MERC Case No. D01 D-0568, *In the Matter of the Arbitration Between: City of Detroit and Detroit Police Officers Association*, [<http://turf.lib.msu.edu/awards/pdfs/awards/r1983.pdf>]. Reportedly the contract with the Detroit Fire Fighters Association includes an 11-member board and, for that reason, the board continues to be an 11-member board. See, also, *Detroit Chief Financial Officer v. City of Detroit Policemen and Firemen Retirement System Board of Trustees*, Michigan Court of Appeals Docket No. 254516 (January 12, 2006), [http://coa.courts.mi.gov/documents/opinions/final/coa/20060112_c254516_48_4o.254516.opn.coa.pdf]. The decision was vacated by the Supreme Court (Docket No. 130564) on October 20, 2006, which remanded the case to Wayne County Circuit Court for entry of an order granting summary disposition to the defendants, [http://coa.courts.mi.gov/documents/sct/public/orders/20061020_s130564_64_130564_2006-10-20_or.pdf].

Member-trustees serve three-year terms, and are elected by active members within the same rank class (above Lieutenant, or Lieutenant and below).

In 1974, the Michigan Supreme Court ruled that changes in the police and fire retirement system are mandatory subjects of collective bargaining under the Public Employment Relations Act, 1947 PA 336.⁷ Subsequent to that, in 1982, the state Court of Appeals ruled that the composition of the boards of trustees of the two retirement systems of the City of Detroit are also mandatory subjects of collective bargaining under the Public Employment Relations Act, as the composition of a retirement system impacts the "wages, hours, and other terms and conditions of employment."⁸

In 1996, voters in the City of Detroit adopted a new City Charter under the Home Rule Cities Act that added a 12th member to the DPFERS Board of Trustees who was to be a reitrant member of the system, who still has not been added to the DPFERS board. In response to a lawsuit brought by the Retired Detroit Police and Fire Fighters Association (RDPFFA), the state Court of Appeals, in a per curiam unpublished opinion, ruled in February 2007 that "[c]harter provisions enacted pursuant to the Home Rule Cities Act cannot contravene the obligations imposed by PERA." In the case, the court invalidated the charter provision adding the retirant member to the DPFERS board, again finding the board's composition to be a mandatory subject of collective bargaining.⁹

Given prior court rulings, it's unclear what impact the bill would have. Generally speaking, for several decades state courts have invalidated attempts to alter the composition of the Detroit Police and Fire Retirement System board through city charter or city ordinance, outside of the collective bargaining process, by finding the board composition to be a mandatory subject of bargaining. The bill seems to presume that the Detroit City Charter provision would now supersede the collective bargaining process, without specifically saying whether board composition is now a permissive or prohibited subject of bargaining, and no longer a mandatory subject of bargaining.¹⁰ As a mandatory subject, the city has a duty to collectively bargaining over the board's composition until the point of impasse (and Act 312 arbitration). As a permissive or prohibited subject of bargaining, the composition of the DPFERS board would no longer fall under the protection of Act 312 arbitration. In this regard, then, the bill would serve to reduce the topics addressed in an Act 312 dispute and shorten the Act 312 process, resulting in some minor cost savings to the city and the state. Under Act 312, the costs of an arbitration proceeding are shared equally by the state (DELEG, Bureau of

⁷ See, *Detroit Police Officers Association v. City of Detroit*, 391 Mich 44, February 14, 1974.

⁸ See *City of Detroit v. Michigan Council 25, American Federal of State, County, and Municipal Employees*, Docket No. 58569, 118 Mich App 211, October 7, 1982. At issue was the validity of a city ordinance that altered the composition of the two boards of trustees without prior collective bargaining with the police and fire unions.

⁹ See, *Retired Detroit Police and Fire Fighters Association v. City of Detroit*, Michigan Court of Appeals, Docket No. 272235, February 6, 2007 (unpublished),

[http://coa.courts.mi.gov/documents/opinions/final/coa/20070206_c272235_43_272235.opn.pdf].

¹⁰ The bill essentially implements a provision that was previously held by the state Court of Appeals to be invalid.

In contrast, PERA includes a lengthy list of prohibited subjects of bargaining concerning public schools. A permissive subject of bargaining is one that the parties may bargain over by mutual agreement, although neither party is required to bargain to the point of impasse. Absent a collective bargaining agreement, an employer can take unilateral action regarding permissive subjects.

Employment Relations), the employer, and the union.¹¹ The state's share of Act 312 proceedings are supported by Securities Fees, the excess of which lapse to the General Fund at the close of the fiscal year.

ARGUMENTS:

For:

The spokesman for the Retired Detroit Police and Fire Fighters Association argues that "House Bill 4917 does not interfere with the collective bargaining rights of active union members," because the bill "does not address a mandatory subject of bargaining under the Public Employment Relations Act, MCL 423.201 et seq."

Indeed, proponents note that it is customary for pension system boards to include a seat for retiree members. For example, Detroit's general pension board for other city workers allows retirees to hold one of its 10 trustee seats. Nonetheless, the 11-member board of trustees for the Detroit police and fire retirement system continues to deny a voice to the city's nearly 9,500 retired police and fire workers (of whom 962 retirees are part of the defined contribution plan, while the remaining retirees are part of the defined benefit plan).

Proponents of the bill argue that retired participants of the pension system have as much interest and right to participate in the retirement board's administration of the system as do the active duty members of the police and fire departments. They say that any effort to prevent them from doing so is unconstitutional since it fails to comply with the due process clause of the U.S. Constitution.

Against:

Opponents of House Bill 4917 argue that the bill would restrict the rights of firefighters and police officers to negotiate pension issues. For example, a spokesman for the Michigan Professional Firefighters Union notes that "pension systems for municipal unions are locally based and are an important part of every labor agreement." Further, "bargaining over pension benefits and pension systems are longstanding, legal rights of public employee bargaining units." Consequently, the spokesman continues, "it is absolutely essential that the collective bargaining rights over local pension system remain with the authorized representative of the active employees and the employer."

The MPFU further argues that "House Bill 4917 is a first step in taking away the right to negotiate for pensions and the operating structure that determines the benefits that are earned and eventually paid out to current and future members of the system." They conclude, "PERA (the Public Employment Relations Act) continues to provide a clear structure for negotiating wages, hours, and other conditions of employment. The resolution to this pension system question that prompted the introduction of House Bill 4917 should be dealt with at the local level, just as the system is funded locally."

¹¹ See Section 6 of 1969 PA 312 (MCL 423.236). Senate Bill 1072 would eliminate the state's responsibility of these costs, pushing the state's share onto the employer and union. Although SB 1072 passed the House on June 24, 2010, it has not been enrolled in the Senate or presented to the Governor.

POSITIONS:

The Retired Detroit Police and Fire Fighters Association supports the bill. (8-18-10)

The Michigan Professional Firefighters Union opposes the bill. (8-18-10)

IUCE-Local 324 opposes the bill. (8-18-10)

The Michigan Association of Public Employee Retirement Systems opposes the bill. (8-18-10)

The Teamsters oppose the bill. (8-18-10)

The American Federation of Teachers-Michigan opposes the bill. (8-18-10)

The Michigan Education Association opposes the bill. (8-18-10)

The AFL-CIO opposes the bill. (8-18-10)

The City of Detroit is neutral on the bill. (8-18-10)

Legislative Analyst: J. Hunault
Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.