

**EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE**  
**MINUTES OF A SPECIAL FEBRUARY 9, 2011 PENSION BOARD MEETING**

1. Call to Order

Chairman Mickey Maier called the meeting to order at 11:55 a.m. in the Board Members room of the Italian Community Center, 631 East Chicago Street, Milwaukee, Wisconsin, 53202.

2. Roll Call

Members Present

Linda Bedford (Vice Chair)  
Donald Cohen  
Keith Garland  
Mickey Maier (Chairman)  
Jeffrey Mawicke  
Dr. Sarah Peck  
Donald Weber

Members Excused

David Sikorski  
Guy Stuller

Others Present

Mark Grady, Principal Assistant Corporation Counsel  
Gerald J. Schroeder, ERS Manager  
Roger Kerkenbush, Assistant Fiscal Officer  
Steven Huff, Reinhart Boerner Van Deuren s.c.  
Joseph Voiland, Reinhart Boerner Van Deuren s.c.  
Jeremy Levinson, Attorney for Mark Ryan

3. Mark Ryan, et al. v. Pension Board—Remand from Circuit Court

The Chairman provided background on the Mark Ryan appeal. Mr. Ryan filed a sworn, notarized waiver of his retention incentive bonus on June 13, 2002. In the waiver, Mr. Ryan acknowledged that he fully understood the impact of his execution of the bonus waiver and acknowledged that he understood the benefit that he waived by signing it. Several years after filing the bonus waiver, Mr. Ryan retired effective July 1, 2008. Based on his waiver, ERS refused to include the bonus in the calculation of Mr. Ryan's pension benefit. Mr. Ryan filed a notice of appeal to the Pension Board in March 2009. Mr. Ryan submitted an affidavit indicating that he believed that the Back DROP waiver could be accepted only if he also filed a bonus waiver along with it. Mr. Ryan attributed his misunderstanding to the statement of an unidentified person who he says was an employee of ERS.

At its March 18, 2009 meeting, the Pension Board considered Mr. Ryan's arguments and the materials he submitted, and denied his appeal. Mr. Ryan then sought review in the Milwaukee County Circuit Court. In a written order dated January 27, 2011, Judge Kahn remanded the matter to the Pension Board. The court orally ruled that the Pension Board is required to issue a written decision explaining its decision. Judge Kahn also indicated that Mr. Ryan should have an opportunity to address the Board and to raise any issues that he believes are appropriate.

The Chairman then asked Jeremy Levinson, Attorney for Mark Ryan, to address the Board. Mr. Levinson indicated that Mr. Ryan would not be attending and that he did not want to repeat his argument of two years ago because it is the same. He then stated that the difficulty in this appeal is establishing the standard of proof and the burden of proof for this kind of proceeding, but that there should also be a shared interest in resolving this matter quickly. Mr. Levinson acknowledged that the Board takes its responsibilities very seriously and that those responsibilities include making sure funds are available for retirees, but Mr. Levinson also feels the matter is simple: he says Mr. Ryan was given inaccurate advice and he relied on it. Mr. Levinson acknowledged that the advice may have applied to a larger subset of ERS employees, but it did not apply to the smaller subset to which Mr. Ryan belonged.

Mr. Levinson then stated that he believes the opportunity to put evidence into the record has come and gone. The Board needs to find historical facts, and as a matter of historical fact, the record permits only one factual finding, in Mr. Levinson's opinion. Mr. Levinson further stated that no entity can make perfect decisions known to be true with metaphysical

certainty. Decisions must be based on fact, and the facts are as stated in Mr. Ryan's March 2009 affidavit, in his spouse's affidavit, and in other supporting documentation.

In response to a question from Mr. Levinson, Mr. Huff stated that the same six Board members who voted to deny Mr. Ryan's appeal in March 2009 are also present at this meeting. Mr. Weber indicated that he is an acquaintance of Mr. Ryan and will abstain from any vote.

Ms. Bedford moved that the Pension Board adjourn into closed session under Section 19.85(1)(g) with regard to Item 3 for the purpose of the Board receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation. At the conclusion of the closed session, the Board may reconvene in open session to take whatever actions it may deem necessary concerning these matters.

**The Pension Board voted by roll call vote 6-1, with Mr. Weber dissenting, to enter into closed session to discuss agenda item 3. Motion by Ms. Bedford, seconded by Dr. Peck.**

The Board entered into closed session and later returned to open session with a roll call vote in order to readdress the Mark Ryan matter.

**In open session, the Pension Board voted 6-0-1, with Mr. Weber abstaining, to deny Mr. Ryan's appeal, consistent with the discretion assigned to the Pension Board by Ordinance section 8.17 to interpret the Ordinances and Rules of ERS based on the findings and rationale and in accordance with ERS 1016(b) set forth below:**

1. In 2002, Mr. Ryan was the elected Clerk of Milwaukee County (the "County") and had worked in County government for over 20 years. Mr. Ryan became a member of ERS upon commencing employment with the County.
2. During calendar year 2002, public awareness and media attention regarding County pensions and pension waivers was high. That year, a number of elected County officials faced recall petitions and a number lost re-election bids. A number of officials agreed to waive certain enhanced pension benefits, whether in hopes of maintaining goodwill or public trust or possibly retaining their positions. The local news media repeatedly published information regarding these waivers, and identifying those officials who waived, or did not waive, the enhanced benefits.

3. Mr. Ryan swore to, signed and filed two separate waivers of enhanced pension benefits in June of 2002: (i) a Back DROP pension benefit waiver and (ii) a Retention Incentive Bonus ("Bonus") waiver.
4. Mr. Ryan executed the Back DROP waiver on June 11, 2002. The Back DROP waiver did not require spousal consent. Mr. Ryan makes no challenge to the effectiveness of his knowing and voluntary waiver of the Back DROP benefit. The Back DROP waiver is filed-stamped June 11, 2002 by ERS.
5. Mr. Ryan executed the Bonus waiver, which required spousal consent, on June 12, 2002. Mr. Ryan swore and acknowledged that he fully understood the particular benefit he waived by signing the Bonus waiver.
6. Mr. Ryan brought the Bonus waiver to his wife, Colleen Ryan, to execute and provide spousal consent. Mrs. Ryan swore to and signed a statement acknowledging that she understood the benefit given up in the Bonus waiver.
7. On June 13, 2002, Mr. Ryan filed the Bonus waiver. In the sworn waiver that he filed, Mr. Ryan made no written indication that he was filing the Bonus waiver under protest, or in any manner inconsistent with its contents. His filing of the Bonus waiver was not a mistake.
8. Subsequently, Mr. Ryan was re-elected and remained in office for approximately six more years.
9. Several years after signing the waivers, Mr. Ryan decided to retire and obtained an Estimated Retirement Allowance letter prior to his retirement. Shortly thereafter, on June 24, 2008, Mr. Ryan requested inclusion of the Bonus in the calculation of his pension benefit.
10. ERS refused to include the Bonus, and Mr. Ryan filed a notice of appeal to the Pension Board, along with affidavits and other papers in March of 2009. The Pension Board considered the arguments of counsel for Mr. Ryan, and all materials submitted by Mr. Ryan, including his affidavit and the affidavit of his wife, Colleen Ryan. Neither Mr. Ryan nor Mrs. Ryan have appeared before the Board, but in their affidavits, Mr. and Mrs. Ryan state that they believed that the Back DROP waiver would be accepted only if they filed a Bonus waiver along with it.
11. The Pension Board considered and rejected Mr. Ryan's appeal at its March 18, 2009 meeting. The minutes of that meeting reflect the

Pension Board's belief that the information submitted by Mr. Ryan was less than certain.

12. The Pension Board is not now and never has been persuaded by Mr. Ryan's claim that he did not understand that he actually waived the Bonus by signing the Bonus waiver. Even Mr. Ryan's own statements are inconsistent: the affidavit submitted by Mr. Ryan incident to his appeal to the Pension Board is contradicted by the sworn, notarized waiver that Mr. Ryan filed with the County on June 13, 2002.
13. Mr. Ryan previously acknowledged that he fully understood the impact of his execution of the Bonus waiver and acknowledged that he understood the benefit that he waived by signing it. He acknowledged that he understood that filing the Bonus waiver would cause him to receive a smaller benefit than he otherwise would have been entitled to receive. He acknowledged that he had the opportunity to consult with legal counsel prior to signing the Bonus waiver as to its content and legal significance.
14. Mr. Ryan also acknowledged that he understood that he could not revoke the Bonus waiver at any time in the future.
15. The Pension Board is not persuaded by Mr. Ryan's claim that he filed the Bonus waiver only because he believed that he was required to file both the Bonus waiver and the Back DROP waiver together.
16. As the county clerk, Mr. Ryan was familiar with the Ordinances and Rules. There is no Ordinance and no Rule that required Mr. Ryan to execute either waiver, and Mr. Ryan knew or should have known as much, based, in part, on his position. Further, he knew or should have known that documents sworn to and filed with ERS would take precedence over contradictory oral statements.
17. Mr. Ryan attributes his alleged misunderstanding to the statement of an unidentified person that he alleges was an employee of the retirement system, but Mr. Ryan does not claim that he questioned this person or otherwise attempted to investigate the accuracy of the unidentified person's statement. Rather than relying on the statement of this unidentified person, which was contrary to publicly available information, Mr. Ryan could have taken time to investigate the accuracy of the statement by contacting other officials, but he did not. Mr. Ryan would not have been justified in relying upon statements that conflicted with the sworn, notarized Bonus waiver that he chose to file.

18. Mr. Ryan's allegation regarding the statement of this unidentified person is contrary to the past practice of the retirement system and the Pension Board. Waivers of specified pension benefits have been accepted by the retirement staff and the Pension Board from other elected officials without any requirement that such officials file more than one waiver. The Pension Board does not find Mr. Ryan's allegation in this regard credible because it is contrary to the Pension Board's and retirement system's past practice and the training of the employees of the retirement system. Moreover, it is an allegation made so many years after the fact as to make it less credible.

19. The Pension Board further finds that by not objecting at the time that he filed his waiver and by waiting many years later to raise this issue, Mr. Ryan has diminished the chances that his claim could be verified. Mr. Ryan is unable to offer any direct information from the alleged retirement system employee. The Pension Board finds that Mr. Ryan's failure to raise this issue in a more timely manner is a basis upon which to deny his appeal.

20. The Pension Board therefore has found that Mr. Ryan knowingly, voluntarily and irrevocably waived the Retention Incentive Bonus, and has denied the request to reinstate it.

**Motion by Dr. Peck, seconded by Ms. Bedford.**

In response to a question from Mr. Levinson, the Chairman stated that the Board will provide Mr. Levinson with a letter containing the findings and rationale.

4. Survivor Benefits for Posthumously Conceived Children Under Section 201.24(6.4)

Ms. Bedford moved that the Pension Board adjourn into closed session under Section 19.85(1)(g) with regard to Item 4 for the purpose of the Board receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation. At the conclusion of the closed session, the Board may reconvene in open session to take whatever actions it may deem necessary concerning these matters.

**The Pension Board voted by roll call vote 6-1, with Mr. Weber dissenting, to enter into closed session to discuss agenda item 4. Motion by Ms. Bedford, seconded by Dr. Peck.**

5. Adjournment

The meeting adjourned from closed session at 12:50 p.m.

Submitted by Steven D. Huff,  
Secretary of the Pension Board