

NORTHAMPTON COUNTY OTHER POST EMPLOYMENT BENEFITS FUND (OPEB)
BOARD MINUTES

October 27, 2022

4:00 p.m.

1. **Call to Order:** Mr. Lamont McClure called the meeting to order at 4:27 p.m.
2. **Call of the Roll:** The following appointees to the Retirement Board were present: Mr. Lamont McClure, County Executive; Ms. Lori Vargo Heffner, Council President; Mr. Ronald Heckman, Council Member; Mr. Gerald Seyfried, Retiree Member; Mr. Stephen Barron, Director of Fiscal Affairs

The following appointees to the Retirement Board were absent: Mr. Kerry Myers, Council Vice President; Mr. Thomas Guth, active employee Member of Northampton County Retirement system

Others Present – Mr. John Spagnola, PFM; Mr. Bryce Meyers, Fiscal Affairs; Ms. Mary Lou Kaboly, Board Secretary; Ms. Danielle Mutarelli, Human Resources; Ms. Stephanie Hann, Human Resources

3. **Courtesy of the Floor** – Mr. Seyfried.

Mr. Seyfried stated that while he appreciates and supports the recent improvements to retiree medical benefits, he is concerned there may be additional costs to retirees in the future due to those changes. He believes the Retirement Board is responsible for and has a right to negotiate and approve contract changes to medical benefits for retirees, and that Capital Blue Cross should have presented the Medicare Advantage PPO product to the board. He would like Capital Blue Cross to come before the board and guarantee that there will be no cost increase in the future due to the introduction of the Medicare Advantage PPO product. He asserted that past attorneys' opinions support his view that retiree medical benefit contract negotiations are within the board's purview.

Mr. McClure replied that Human Resources staff has historically led retiree medical benefit contract negotiations, and the Medicare Advantage PPO product was presented to the board prior to the County moving forward with it. Mr. McClure indicated that he believes there is no authority in the charter for the board to be directly involved in retiree medical benefit contract negotiations, and he does not feel it is appropriate.

Mr. Seyfried responded that he believes Supreme Court rulings, the Pennsylvania Constitution, Pennsylvania state law, Act 53, Act 2962, and the Administrative Code support his opinion that the board is responsible for retiree medical benefits.

Mr. McClure asked Mr. Seyfried whether he wants to delay the implementation of the positive changes to the retiree medical benefits. Mr. Seyfried stated that he wants Capital Blue Cross to come before the board prior to the changes being implemented, to fulfill the board's legislative responsibility and protect retirees from future cost increases.

Mr. McClure produced a summation from Solicitor Spadoni, which Solicitor Spadoni prepared on Mr. Seyfried's behalf and Mr. McClure received regarding the board's role in voting for OPEB changes. Mr. McClure stated that the Solicitor's Office reviewed Solicitor Spadoni's summation, and Solicitor Taylor provided the attached conclusion, which Mr. McClure provided to Mr. Seyfried and read aloud for the board. The memo indicated that there is no legal provision supporting Mr. Seyfried's assertion that the board must vote on OPEB increases.

Mr. McClure asked Mr. Seyfried what changes he wants to the Medicare Advantage PPO product negotiated with Capital Blue Cross. Mr. Seyfried stated that he wants to safeguard the board's responsibility for retiree medical benefit changes, and referenced legal opinions from multiple attorneys supporting this assertion. Mr. Seyfried quoted the summation from Solicitor Spadoni that "changes in post-employment healthcare benefits are within the authority of the Retirement Board, independent of any action taken by the County Executive or County Council. See the memorandum of December 18, 2009 Backenstoe report, and opinion June 2, 2006, and memorandum of April 30, 2008 to Northampton County Council." Mr. McClure asserted that these legal opinions refer to the elimination of retiree medical benefits, and the addition of the Medicare Advantage PPO product has significantly improved the retiree medical benefit options.

Ms. Vargo Heffner asked whether it would be reasonable for the board to review and accept the Medicare Advantage PPO product since it was within the board's purview to ask for the plan changes.

Mr. McClure opened the floor for Ms. Mutarelli to discuss the implementation of the new product. Ms. Mutarelli indicated that open enrollment for the retirees is currently running and will continue through November 18, 2022 for a January 1, 2023 effective date. The coverage for individuals currently enrolled on the BlueJourney HMO product ends December 31, 2022, and if the enrollment process is delayed, there could be loss of coverage or lapse of coverage for those individuals.

Mr. Heckman asked for clarification regarding whether retiree coverage would default to their current plan if the County delays the Medicare Advantage PPO product. Ms. Mutarelli stated that the individuals currently enrolled in the Retiree PPO with lifetime maximum benefit plan would be able to continue on that plan but would be required to continue to pay a separate premium cost for their Medicare part D plan. Ms. Mutarelli indicated that the County signed the agreement with Capital Blue Cross for the new product. The BlueJourney HMO product is going away December 31, 2022. The deadline for retiree enrollment changes is November 18, 2022.

Mr. Seyfried referred to Solicitor Spadoni's summation that medical benefits are a retirement issue and the Executive is without individual authority to administer them. Mr. McClure reiterated that the board does not have authority to direct the County administratively, and Mr. Barron supported Mr. McClure in stating that the board's focus is limited to its funds. Mr. Barron stated that no County Executive or Fiscal administrator has control over a health insurance company's offer in the negotiation of medical benefits. If the benefit becomes more expensive and a County Executive decides not to cover the additional premium at cost to the County, and enough retirees approached the board regarding premium increases at their expense, the Retirement Board has the authority to decide whether to cover the premium increase with OPEB funds. The board cannot direct the County to put money in the Pension fund without involving the Courts, and the board's powers lie within the money granted by the County.

Mr. Seyfried responded that GASB requires the County to fund OPEB. Mr. Barron clarified that GASB requires the County to book the OPEB liability on our net position statement, but does not require the County to have a fund for that liability. Other Pennsylvania counties do not have a dedicated OPEB fund, and they pay their OPEB fees from tax dollars each year. Northampton County Council has an ordinance that states we will fully fund OPEB.

Mr. McClure asked Ms. Mutarelli to confirm that retirees will not have health insurance January 1, 2023 if retiree open enrollment is delayed. Ms. Mutarelli indicated that those individuals currently enrolled in the BlueJourney HMO product are scheduled to automatically be moved over to the Medicare Advantage PPO product. As the BlueJourney HMO product is going away December 31, 2022, these individuals will not have a Medicare Advantage product in place.

Ms. Vargo Heffner asked whether Capital Blue Cross stopped offering the BlueJourney HMO product or if that was the County's decision. Ms. Mutarelli replied that the County chose to replace the BlueJourney HMO product to improve coverage for retirees that live outside of the 21 covered counties in Pennsylvania.

Ms. Vargo Heffner asked whether there is a significant cost difference with the change. Mr. Barron replied that the change is de minimus, and increased from \$300 per member to \$325 per member. The additional cost includes the fitness benefit Silver Sneakers, dental benefits, and vision benefits. The additional premium costs for retirees, their spouses, and dependents are not being passed to them and are being covered by the OPEB fund.

Ms. Vargo Heffner proposed that changes to retiree medical benefits be presented to the board prior to retiree open enrollment to address Mr. Seyfried's concerns moving forward. Mr. Barron reiterated that the board's decisions are limited to the fund. Mr. Seyfried argued that he recalled the board negotiating benefits during the Stoffa administration.

Mr. Heckman stated that he supports the improvements to the retiree plan and suggested seeking a declaratory judgment regarding the board's authority to resolve the matter long-term, but he is concerned that doing so for the pending changes would leave retirees without health insurance coverage in January. Mr. McClure indicated that he feels this would be appropriate if in the future a board would seek to reduce or eliminate retiree benefits, but he has improved them and seeking a declaratory judgment at this time is unnecessary because the changes were within the law. Mr. Seyfried reiterated his stance that all medical benefit changes must be presented to the board for approval, regardless of whether they are improved.

Ms. Vargo Heffner asked for confirmation that the introduction of the new Medicare Advantage PPO product will neither adversely affect our retirees in cost nor benefit coverage. Mr. McClure and Ms. Mutarelli confirmed that the County upgraded retiree benefits will be at no additional cost to them and no benefit coverage is being eliminated. The new product contains all previously covered benefits included in the BlueJourney HMO product as well as the addition of an expanded national network of providers and national coverage.

Ms. Vargo Heffner asked Mr. Seyfried what he believes is an equitable resolution. Mr. Seyfried asked for a declaratory judgment on whether the Retirement Board has the authority to administrate retiree benefits, and indicated he understood the County is moving forward with the Medicare Advantage PPO product because the County signed the contract.

Mr. Seyfried asked whether the County received an actuarial cost of the changes to the plan. Mr. Barron replied that they have a draft plan with the OPEB actuarial costs for this year's request to Council to fund OPEB. Mr. Meyers stated that the request for 2023 is approximately 1.2 million dollars, and the actuarially-determined contribution by the County has been significantly reduced over the last few years as the number of people eligible for OPEB declines. Mr. Barron further indicated that the retiree medical insurance is a fully-insured, premium-based product, and therefore its cost is determined by the number of members.

4. **Approval of the July 28, 2022 OPEB Fund minutes.** Mr. Barron made a Motion to approve the minutes of the July 28, 2022 board meeting. Mr. Heckman seconded the Motion. The vote to approve was unanimous.

5. **Performance Updates – PFM, John Spagnola.** Mr. Spagnola gave the presentation of the fund’s performance in the 3rd quarter of 2022.

OPEB Fund market value as of September 30, 2022 = \$44,586,677

As of September 30, 2022:

Q3 gain:	-5.30 percent
Gain since inception:	4.52 percent (inception date is 9/1/2017)
YTD gain:	-20.77 percent
1-year gain:	-16.83 percent
3-year gain:	2.90 percent
5-year gain:	4.21 percent

Mr. Spagnola stated that the OPEB fund performed the same as the Pension fund due to similar investment strategy. Ms. Vargo Heffner asked whether PFM is considering shifting the managers at this time due to market volatility. Mr. Spagnola replied that PFM has concern with WCM Focused Growth International, Acadian Non-U.S. Equity, and Aristotle International Equity and reduced their portfolio assets due to short-term underperformance, but PFM is giving these managers time to demonstrate their investment strategy.

6. **Adjournment** – Ms. Vargo Heffner made a Motion to adjourn the meeting. The OPEB Fund meeting adjourned at 5:14 p.m.



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INTEROFFICE MEMO

TO: Lamont McClure and Melissa Rudas

FROM: Brian Taylor

RE: Retirement Board Voting Procedure

DATE: October 26, 2022

Issue: Whether the NORTHAMPTON COUNTY RETIREMENT BOARD must vote on increases of the County's Other Post- Employment Benefits (OPEB)

Answer: A review of the Pennsylvania County Pension Law (Act 96) 16 P.S. § 11651 et. seq. indicates that there is no provision that requires a county retirement board to vote on OPEB increases. Likewise, I could not find any case law requiring submission to a County Retirement Board. Conversely, there was no case law that precluded such a vote or that spoke to any specific procedure to implement changes to OPEB. The only limitation is found in 53 Pa.C.S. §2962 which limits the ability of Home Rule Charter of Municipalities to diminish rights or privileges of former employees to benefits or present employees to their pension or retirement system. Here we are dealing with a proposed increase. At most, Section 19 of Pension Law merely states that "in addition to the retirement allowance the Board may grant retired employee insurance or other similar benefits that the county has granted other employees". I did not find the issue addressed in either the Northampton County Home Rule Charter or the County Administrative Code. I did speak briefly with Elizabeth Kelly, the former Director of Human Resources and she stated that she could not recall any such requirement.