

CITY OF ANN ARBOR RETIREE HEALTH CARE BENEFIT PLAN & TRUST
BOARD OF TRUSTEES

Minutes for the Regular Board Meeting
March 15, 2018

B

The meeting was called to order by Jeremy Flack, Board Chairperson, at 9:08 a.m.

ROLL CALL

Members Present: DiGiovanni, Flack, Lynch, Monroe, Schreier
Members Absent: Clark, Crawford, Hastie, Nerdrum
Staff Present: Gustafson, Hollabaugh, Orcutt
Others: Michael VanOverbeke, Legal Counsel

AUDIENCE COMMENTS - None

A. APPROVAL OF AGENDA

It was **moved** by Monroe and **seconded** by Schreier to approve the agenda as submitted.
Approved

B. APPROVAL OF MINUTES

B-1 February 15, 2018 Regular Board Meeting

It was **moved** by Monroe and **seconded** by DiGiovanni to approve the February 15, 2018 Board Meeting minutes as submitted.
Approved

C. CONSENT AGENDA – None

D. ACTION ITEMS - None

E. DISCUSSION ITEMS – None

F. REPORTS

F-1 Investment Policy Committee Minutes – None.

F-2 Preliminary Investment Reports for the Month Ended February 28, 2018

Corbin Hammond, Accountant, submitted the Financial Report for the month ended February 28, 2018, to the Board of Trustees:

2/28/2018 Asset Value (Preliminary)	\$168,948,324
1/31/2018 Asset Value (Audited by Northern)	\$172,706,433
Calendar YTD Increase/Decrease in Assets (excludes non-investment receipts and disbursements)	\$739,625
Percent Gain <Loss>	-2.17%
March 14, 2018 Asset Value	\$170,061,081

F-3 Legal Report – CNH Industrial N.V v. Jack Reese, et al.

Mr. VanOverbeke discussed the following:

CNH Industrial N.V, v. Jack Reese, et al. a Supreme Court Case regarding a dispute between retirees and their former employer regarding a claim for vested rights to lifetime health care benefits.

In 1998, CNH Industrial (“CNH”) agreed to a collective bargaining agreement (“CBA”), providing

health care benefits under a group benefit plan to “[e]mployees who retire under the ... Pension Plan.” The CBA contained a general durational clause stating that it would terminate in May 2004. Accordingly, all benefit coverages, such as life insurance, ceased upon retirement. However, when the agreement expired, a class of CNH retirees sought a declaration that their health care benefits vested for life.

In 2015, while the CNH lawsuit was pending, the Supreme Court decided *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 935 (2015), requiring interpretation of CBAs according to “ordinary principles of contract law.” The Sixth Circuit, accordingly, determined that the 1998 CNH agreement was ambiguous and that evidence extrinsic to the contract (i.e., evidence that relates to but is not contained in the contract) supported the lifetime vesting claim.

The Supreme Court reversed, and stated that the Sixth Circuit erred in finding that the agreement was ambiguous based on a presumption, from pre-Tackett precedent, that lifetime vesting was inferred whenever a “contract is silent as to the duration of retiree benefits”, and in declining to apply the general duration clause. The Supreme Court further found that such inferences are inconsistent with ordinary principles of contract law, and that a contract is not ambiguous unless it is subject to more than one reasonable interpretation.

The Supreme Court specifically stated:

When a collective-bargaining agreement is merely silent on the question of vesting, other courts would conclude that it does not vest benefits for life. Similarly, when an agreement does not specify a duration for health care benefits in particular, other courts would simply apply the general durational clause. Id., at 7.

Consequently, a CBA will not be found to be ambiguous unless, after applying established rules of interpretation, it remains reasonably susceptible to at least two reasonable but conflicting meanings. Furthermore, silence as to the duration of retiree health care benefits does not, on its own, constitute ambiguity within a collective bargaining agreement. While the CNH CBA had a general durational clause that applied to some benefits and did not apply to other benefits, it was unambiguous that health care benefits were subject to the CBA’s durational clause (i.e., expiration in May 2004).

Accordingly, the overarching principle of the Tackett and Reese cases is that the determination of whether benefits contained in a collective bargaining agreement are to be provided for the lifetime of a particular agreement’s beneficiary is to be made on a case-by-case basis, upon the specific language of the CBA in question, and according to ordinary principles of contract interpretation. Therefore, reference should be made to applicable collective bargaining agreement provisions when addressing specific questions.

G. TRUSTEE COMMENTS / SUGGESTIONS - None

H. FUTURE AGENDA ITEMS - None

I. INFORMATION (Received & Filed)

