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March 10, 2010

Via Hand Delivery
Honorable Steven Lindberg
State Representative
P.O. Box 30014
Lansing, Michigan 489099

Re: HB 4917

Dear Chairman Lindberg and Committee Members:

Please allow me to introduce myself. My name is Michael L. Stefani and my law firm represents the Retired Detroit Police and Fire Fighters Association. This letter is submitted in support of HB 4917, which would allow retired participants in the Detroit Police and Fire Retirement System to vote in the election of trustees.

HB 4917 does not interfere with the collective bargaining rights of active union members. This is the case because it does not address a mandatory subject of bargaining under the Public Employment Relations Act, MCL 423.201 *et seq.* ("PERA"). Our Court of Appeals has held that the **composition** of the board of trustees of a police and fire retirement system (i.e., the number of active and/or retired police and fire personnel sitting on the board versus the number of city appointees) is a mandatory subject of collective bargaining. The Court held the composition of the board to be a mandatory subject of bargaining because the board votes on issues which significantly impact the rights of participants. And since the ratio of police and fire personnel to city appointees on the board can determine whether it votes in a manner which is fair to participants, the composition of the board is significant enough to require that it be decided by collective bargaining.

HB 4917 does not affect the ratio of police and firefighters on the board, nor does it restrict the right of active union members to collectively bargain over that issue. HB 4917 amends PERA by adding a provision that active and retired participants shall vote in the election of retirement system trustees. PERA does not currently provide that the right to vote in trustee elections is a mandatory subject of bargaining and no Michigan court has held that it is a mandatory subject of bargaining. Simply allowing retired participants to vote for Trustees to the Board does not conflict with or erode PERA. Also, contrary to what some opponents of the bill have suggested to this Committee, HB 4917 has nothing to do with Public Act 312, which

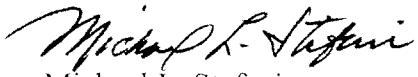
provides for compulsory arbitration of mandatory subjects of bargaining in police, fire and emergency contract disputes. Since the issue of who may vote in an election of trustees is not a mandatory subject of bargaining to begin with, Act 312 would not be affected by HB 4917.

Passage of HB 4917 is even more appropriate based on the fact that the current policy of denying retired participants the right to vote in the election of trustees to the Detroit Police and Fire Retirement System is unconstitutional. In order to comply with the Due Process Clause of the United States Constitution, any law, rule or regulation which prohibits retired participants from voting for Trustees, while allowing active members to vote, must be based on a rational relationship to some legitimate governmental purpose of the Retirement System. The reasons suggested to this Committee by opponents to HB 4917 for preventing retirees from voting have included: 1) allowing retirees to vote would interfere with the collective bargaining rights of active union members; 2) the retirees continue to receive their monthly benefit checks, so why change the system if it isn't broken, and 3) if retirees are allowed to vote for Trustees, the voices of active members would be drowned out. None of these reasons rises to the level of a legitimate governmental purpose.

As discussed above, allowing retired participants to vote for Trustees does not interfere with active participants' collective bargaining rights. The retired participants have as much interest and right to participate in the Board's administration of the Retirement System as active duty members. Also, HB 4917 will not allow retirees to "drown out" the voices of active duty members. Although retirees will be allowed to vote for Trustees, only the active members will determine who the candidates are for Trustee. A rule which prevents retired participants from voting for Trustees while allowing active duty members the right to vote is simply unconstitutional.

In conclusion, it is our opinion that HB 4917 does not interfere with the collective bargaining rights of active union members. It does not conflict with or erode PERA and it does not have an impact on Act 312. Moreover, it is our opinion that retired participants in the Retirement System have a constitutional right to vote in the election of members of the Retirement System Board of Trustees. From both a legal standpoint and a policy perspective, the passage of HB 4917 is not only appropriate, it or something similar is required by the Due Process Clause of the United States Constitution.

Very truly yours,



Michael L. Stefani