

19th JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

NO.: _____ **DIVISION:** _____ **SECTION** _____

THE CITY OF NEW ORLEANS

VERSUS

MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM

FILED: _____
_____ **DEPUTY CLERK**

PETITION FOR DECLARATORY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes the City of New Orleans (“City” or “CNO”), who respectfully submits this Petition for Declaratory Judgment to resolve a disputed question of law as to whether certain one-time recruitment and retention incentives being paid to CNO police officers are “earnable compensation,” for which Defendant, Municipal Employees’ Retirement System (“MPERS”), is entitled to receive contributions pursuant to La. R.S. § 11:2227. Specifically, the City seeks a judgment declaring that (1) payments made to MPERS members pursuant to Police Recruitment and Retention provisions of the CNO’s classified pay plan are not earnable compensation as defined in La. R.S. § 11:2213(10); (2) such payments are not subject to the requirements in La. R.S. § 11:2227 regarding member contributions and employer contributions; and (3) MPERS may not lawfully retain the contributions for recruitment and retention payments that it has received from the CNO. In support of this Petition, the City alleges the following, to wit:

PARTIES AND VENUE

- 1.** The City of New Orleans is a municipality in the state of Louisiana and an employer of police officers who are members of the Municipal Police Employees’ Retirement System pursuant to La. Rev. Stat. § 11:2211, et seq.
- 2.** Made Defendant herein is the Municipal Police Employees’ Retirement System, which is a Louisiana statewide retirement system domiciled in East Baton Rouge Parish, Louisiana.

3. Venue is proper in this Court pursuant to article 84 of the Louisiana Code of Civil Procedure.

FACTUAL ALLEGATIONS

CNO Police Recruitment and Retention Incentives

4. In 2022, the City of New Orleans faced an unprecedented staffing crisis relative to its police force and other public safety personnel, such as emergency medical technicians (“EMTs”).

5. Since the COVID-19 pandemic began, the total number of commissioned officers in the New Orleans Police Department (“NOPD”) decreased by approximately 20%, from 1,218 in 2019 to 965 in 2022. At the height of the crisis, attrition rates had doubled; veteran officers were leaving at a much greater rate, while fewer new officers were joining NOPD to replace them.

6. Similar problems were affecting other CNO public safety departments; for example, staffing shortfalls in New Orleans Emergency Medical Services (“EMS”) were affecting response times to emergencies.

7. As part of a larger effort to address this public safety staffing crisis, in March of 2022 the City’s administration proposed financial incentives to retain its commissioned police officers, EMTs, and other short-staffed public safety positions.

8. In November of 2022, the City proposed additional financial incentives to increase recruitment of new police officers and further encourage police officers to remain with NOPD in the coming years.

9. Pursuant to Article X, section 10 of the Louisiana Constitution of 1974, any increase in pay to classified positions in City government must be adopted by the New Orleans Civil Service Commission (“Commission”) and approved by the New Orleans City Council (“City Council”).

10. The City’s proposals were ultimately adopted by the Commission as an amendment to the *City of New Orleans Revised Pay Plan for the Classified Service* (“Classified Pay Plan”).¹ The original proposal was adopted by the Commission on March 11, 2022 and approved by the City Council on July 21, 2022; the second proposal was adopted by the Commission on November 3,

¹ A complete copy of the current Classified Pay Plan is available online at <https://nola.gov/civil-service/classification-and-compensation/pay-plan/>.

2022 and approved by the City Council on January 19, 2023. Following amendments adopted by the Commission on March 3, 2023 and approved by the City Council on March 9, 2023, the Classified Pay Plan amendment for police recruitment and retention incentives provides as follows:

Special Rate of Pay: Police Retention and Recruitment

Employees in the classification of Police Officer, Senior Police Officer, Police Corporal, Police Sergeant, Police Lieutenant, Police Captain, and Police Major are eligible for a special rate of compensation upon completion of a specific number of years of service with the New Orleans Police Department.

Years of Service Retention Pay

- Five Years \$5,000
- Ten Years \$5,000
- Fifteen Years \$5,000
- Twenty Years \$5,000

1. Employees are eligible to receive each level of retention pay.
2. Retention pay is paid in a lump sum to be paid out at the end of the first complete pay period after the employee reaches the specified number of years of service, provided that no payment is made until one calendar year from March 11, 2022, the date the Civil Service Commission originally adopted the amendment.
3. The years of service do not need to be contiguous, but all credited time must be in an eligible classification employed by the New Orleans Police Department.
4. One year after March 11, 2022, the date of the amendment to the Pay Plan by the Civil Service Commission, or March 11, 2023, all eligible officers shall receive retention pay equivalent to the cumulative amount due from their years of service. For example:
 - a. A Police Officer has six years of service with NOPD on March 11, 2022. Twelve months after March 11, 2022, that officer will receive \$5,000. That officer will be eligible for another \$5,000 payment as soon as they reach 10 years on the force.
 - b. A Senior Police Officer has nine and a half years of service with NOPD on March 11, 2022. Twelve months after March 11, 2022, that officer will have ten and a half years of service and will receive \$10,000. That officer will be eligible for another \$5,000 payment as soon as they reach 15 years on the force.
5. Additionally, one year after March 11, 2022, all officers who have at least one year of service and fewer than five years of service, will receive a \$5,000 payment which will serve as their retention payment for five years of service. Any officer who receives this initial payment will be ineligible to receive an additional payment upon reaching five years of service but will be eligible for payments upon reaching ten years of service.

6. The officer must be currently employed by the New Orleans Police Department at the time of payment in order to receive the special rate of compensation.

Additional Retention and Recruitment Incentives to Combat Severe Staffing Shortage.

To address a severe staffing shortage by retaining current officers and attracting new recruits, employees in the classification of Police Recruit, Police Officer, Senior Police Officer, Police Corporal, Police Sergeant, Police Lieutenant, Police Captain, and Police Major are eligible for the special rates of compensation defined herein. These provisions are limited to a distinct time period in order to address acute staffing needs.

1. Employees in the specified classifications who are employed with NOPD as of October 21, 2022, shall receive an additional \$10,000 retention payment if they remain employed with NOPD through October 21, 2025. The \$10,000 retention payment will be paid in a lump sum at the end of the first complete pay period after October 21, 2025.
2. Employees in the specified classifications hired between October 21, 2022, and October 21, 2024, shall receive an additional \$10,000 retention payment if they remain employed with NOPD for three years after completion of the formalized training program conducted by NOPD. The \$10,000 retention payment will be paid in a lump sum at the end of the first complete pay period occurring three years after the employee has completed the formalized training program.
3. Individuals hired as Police Recruits between July 24, 2022 and October 21, 2024, shall receive retention payments at the completion of nine months, two years, and three years of service. The first retention payment of \$4,000 will be provided at the completion of nine months of service. The remaining two retention payments of \$5,000 each will be provided at the completion of two and three years of service, respectively. Each retention payment will be paid out as a lump sum at the end of the first complete pay period following the corresponding term of service.
4. Individuals in the classification of Police Officer who are employed on or before October 21, 2024, and who are not eligible for payments under subparagraph three or five of this section shall receive a retention payment of \$5,000 at the last pay period of each fiscal year in which payments under subparagraph three or five of this section are made provided that they are in the classification of Police Officer when the payment is issued. The total amount of payments made to a Police Officer pursuant to this subparagraph shall not exceed \$20,000.
5. Lateral transfers and reinstated officers hired between July 24, 2022, and October 21, 2024, will receive four retention payments of \$5,000 each at the completion of nine months, two years, three years, and four years of service. Each retention payment will be paid out as a lump sum at the end of the first complete pay period following the corresponding term of service. Payments must be issued while the individual is in the classification of Police Officer.

MPERS Contribution Requirements

- 11.** Pursuant to La. Rev. Stat. § 11:2211, et seq, MPERS provides retirement benefits to full-time municipal police officers and other eligible employees throughout Louisiana.
- 12.** All full-time police officers employed by the City of New Orleans are members of MPERS.
- 13.** State law provides that MPERS members and their employers must make financial contributions to MPERS.
- 14.** The member's contribution, also called the employee contribution, is governed by La. R.S. § 11:2227(B)(1): "[e]ach municipality shall make deductions from . . . the earnable compensation paid [to the member] in each and every payroll." In other words, for all "earnable compensation" paid to an MPERS member, the City must withhold an amount equal to the employee contribution rate and transfer it to MPERS instead.
- 15.** Regarding the employer's contribution, La. R.S. § 11:2227(D)(1)(a) provides that "[i]n addition to the assessment collected above, each municipality which has employees on its police force who become members in this retirement system shall contribute the employer contribution rate as determined in R.S. 11:103, and shall remit this amount monthly to the system."
- 16.** La. R.S. § 11:2213(10) defines "earnable compensation" as "the full amount of compensation earned by an employee for a given month, including supplemental pay paid by the state of Louisiana, but shall not include overtime."
- 17.** Because La. R.S. § 11:2213(10) is a pension statute, it "must be liberally construed in favor of the intended beneficiaries," and "[a]ny ambiguity in such statutes must be resolved in favor of the persons intended to be benefited by those statutes." *Dunn v. City of Kenner*, 2015-1175, p. 7 (La. 1/27/16), 187 So. 3d 404, 410 (citing *Swift v. State*, 342 So. 2d 191, 196 (La. 1977)).
- 18.** The employee contribution rate for 2023 is 10%.
- 19.** The employer contribution rate for 2023 is 31.25%.
- 20.** Payment of employee and employer contributions are due to MPERS on "the close of the tenth day after the end of the month for which payment of employer's and member's contributions is applicable or deducted." La. R.S. § 11:2227(J)(1). Payment of contributions are "delinquent"

if the employer “fails to transmit” the contributions to MPERS “within five days after their due date.” *Id.*

21. If contributions are delinquent, the employer must also pay MPERS “[i]nterest charged at the legal rate . . . from the date the payment became delinquent.” La. R.S. § 11:2227(J)(2)(a). If contributions are delinquent for more than ninety days, the employer “is also subject to a penalty of twenty-five percent of the aggregate monthly contributions due.” La. R.S. § 11:2227(J)(2)(b).

22. La. R.S. § 11:2227(D)(2)(a) authorizes MPERS to recover delinquent monthly contributions by having the state treasurer “deduct the amount of the delinquent contributions from any monies then available for distribution to or for the benefit of that municipality and shall transmit said amount directly to the board of trustees of the retirement system.”

Attorney General Opinion and CNO Response

23. Following the City Council’s approval of the original retention pay proposal in July of 2022, MPERS formally requested an opinion from the Louisiana Attorney General on the question of whether recruitment and retention pay incentives for municipal police officers, including the CNO’s original retention incentives and certain one-time payments implemented by the City of Baton Rouge, are earnable compensation for which contributions to MPERS must be made.

24. On March 8, 2023, the Attorney General issued Opinion 22-0055, which states “it is the opinion of this office that certain payments, such as retention pay or incentive pay to members of MPERS, are considered earned compensation for the purposes of computing retirement benefits.” La. Atty. Gen. Op. No. 22-0055, p. 4.

25. MPERS has relied on Attorney General Opinion 22-0055 to assert that the CNO must make employee and employer contributions for all payments made to members under the Classified Pay Plan provisions for police recruitment and retention incentives.

26. On March 26, 2023, the CNO made the first payments to NOPD officers under the new pay plan provisions for recruitment and retention incentives.

27. 899 MPERS members employed by the CNO have received retention payments to date.

28. As of the filing of this Petition, the CNO has paid its member employees \$11,390,000.00 in police recruitment and retention incentives.

29. A total of \$1,139,000.00 in employee contributions has been withheld from recruitment and retention payments made to MPERS members and tendered to MPERS instead.

30. The CNO has tendered to MPERS an additional \$3,559,375.00 in employer contributions for the recruitment and retention payments made to MPERS members.

31. The CNO disputes that MPERS is entitled to receive employee contributions or employer contributions for payments made under the recruitment and retention incentive plan.

32. The recruitment and retention payments made to MPERS members are not compensation for work performed during a particular time period. Rather, it is earned simply by remaining employed with NOPD during the relevant time period, regardless of the amount of time worked.

33. Importantly, treating retention and recruitment payments as earnable compensation is worse for MPERS members. Doing so deprives members of between eight and ten percent of every recruitment and retention payment, while only a very few of those members, if any, will see an increase in their retirement benefit.

CLAIM FOR RELIEF

34. The City hereby adopts and re-avers the allegations contained in the foregoing paragraphs.

35. The City respectfully requests that this Court issue a judgment declaring whether MPERS is entitled to receive employee contributions and employer contributions for retention and recruitment payments that the CNO makes to MPERS members under the Classified Pay Plan provisions set forth in Paragraph 9.

36. Specifically, the City seeks declaratory judgment holding that retention and recruitment payments are not earnable compensation as defined in La. R.S. §11:2213 and that, consequently, MPERS is not entitled to receive employee contributions or employer contributions for them.

37. Furthermore, the City seeks declaratory judgment holding that contributions for recruitment and retention payments which the CNO has already transferred to MPERS, as described in Paragraphs 26 and 27, were not owed and may not be lawfully retained by MPERS.

38. Declaratory judgment is appropriate and available in this case, as provided in Louisiana Code of Civil Procedure article 1871.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, the City of New Orleans, respectfully pray that its Petition for Declaratory Judgment, Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction be deemed good and sufficient, and, after due proceedings are had, that judgment be rendered in favor of the City of New Orleans and against Municipal Employees' Retirement System, and that the City of New Orleans be awarded costs and such other legal and equitable relief to which it is entitled.

Respectfully submitted,



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