

TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director
RE: S.F. 1763 (Pogemiller); H.F. 2031 (Thissen): PERA-P&F; University of Minnesota Police Officers Exclusion
DATE: March 30, 2005

Summary of S.F. 1763 (Pogemiller); H.F. 2031 (Thissen)

S.F. 1763 (Pogemiller); H.F. 2031 (Thissen) amends Minnesota Statutes, Section 353.64, the provision governing the membership of the Public Employees Police and Fire Plan (PERA-P&F) by excluding from PERA-P&F coverage any police officers employed by the University of Minnesota who are required by the Board of Regents to contribute to the University of Minnesota Faculty Retirement Plan.

Background Information on the Public Employees Police and Fire Plan

The Public Employees Police and Fire Retirement Plan (PERA-P&F) was established in 1959 (Laws 1959, Chapter 650), to assist police officers and firefighters employed by local government. Prior to 1959, local government public safety employees were covered by the General Employee Retirement Plan of the Public Employee Retirement Association (PERA-General). Initially, PERA-P&F coverage applied to any public employee in law enforcement or fire suppression, but the membership qualifications were refined as the licensing of police officers began in the 1970's. Currently, PERA-P&F membership requires that the employee meet the following:

- a. Police Employment. Employment must be as a police officer by a municipal police department or a county sheriff's office.
- b. Primary Law Enforcement Function. Primary employment function must be to enforce the law.
- c. POST Board Licensure. Peace officer must be licensed by the Peace Officers Standards and Training Board (POST Board).
- d. Property and Safety Protection. Peace officer must be engaged in the hazards of protecting the property and safety of others.
- e. Arrest with a Warrant. Peace officer must be empowered to arrest with a warrant.

Since 1959, all newly employed county deputy sheriffs have pension coverage by PERA-P&F and, since 1980, all newly employed municipal police officers have pension coverage by PERA-P&F.

As a public safety employer pension plan, PERA-P&F pays larger retirement annuities, disability benefits, and survivor benefits than a general employee retirement plan and has an earlier normal retirement age for the retirement annuity. Because of these benefit plan differences, the plan has a greater actuarial cost and greater member and employer contributions than a general employee retirement plan. As law enforcement officers, members of the PERA-P&F are not covered by Social Security under both state and federal law for their law enforcement employment.

The policy reason for having a more lucrative benefit program for public safety employee retirement plans is that public safety employment (police officer or firefighter service) is particularly hazardous, that it requires the maintenance of a particularly vigorous and robust workforce to meet the strenuous requirements of the employment position, and that the normally expected working career of a public safety employee will be significantly curtailed as a consequence of the hazards and strenuous requirements of that type of employment when compared to a general public employee. Public employee pension plans are intended to assist the governmental personnel system by encouraging the recruitment of qualified and motivated new employers, the retention of able and valued existing employees, and the orderly and predictable out-transitioning of employees at the expected end or normal conclusion of their working career. For public safety employees, public safety employee retirement plans provide more lucrative benefits to assist in the recruitment and retention of new and existing personnel, but most clearly emphasize the out-transitioning function.

Background Information on the 1978 Consolidation of the University of Minnesota Police Retirement Plan with PERA-P&F

In 1978 (Laws 1978, Chapter 774), police officers who were employed by the University of Minnesota were transferred to retirement coverage by the Public Employees Police and Fire Plan (PERA-P&F) and the prior University of Minnesota Police Retirement Plan was dissolved upon the transfer of its liabilities, assets, and records to PERA-P&F. All newly hired University police officers after July 1, 1978, were included in PERA-P&F coverage. Seven retired police officers and 72 active police officers were transferred from the University of Minnesota Police Retirement Plan to PERA-P&F.

The University of Minnesota Police Retirement Plan was less well funded than PERA-P&F upon consolidation and the University of Minnesota was required to make an additional annual employer contribution to PERA-P&F of \$82,904 annually during the period July 1, 1978, to June 30, 1988. Upon consolidation, the University of Minnesota Police Retirement Plan was 51.49 percent funded and had a \$1.8 million unfunded actuarial accrued liability.

Although inclusion of the University of Minnesota in the police state aid was discussed by the Commission in 1978, the University of Minnesota was not made eligible to receive police state aid until 1985 (Laws 1985, Chapter 261, Section 1). The 1985 police state aid extension to University of Minnesota police officers was sponsored by Duluth legislators and resulted in a \$24 reduction in the amount of police state aid per police officer.

A separate statutory provision, Minnesota Statutes 1978, Section 353.661, provided for membership in PERA-P&F by University of Minnesota police officers. In 1989, as part of administrative provisions proposed by the Public Employees Retirement Association (PERA), the special University of Minnesota police PERA-P&F membership provision was repealed, although University of Minnesota police continued to be PERA-P&F members and the University of Minnesota continued to be treated as a participating employer under PERA law.

Background Information on the University of Minnesota Faculty Retirement Plan

The University of Minnesota has established a retirement plan for its faculty and other University employees and has operated the plan for decades.

The University of Minnesota Faculty Retirement Plan covers all regent professors, all full professors, all associate professors, all assistant professors, all full-time instructors, and designated full-time professors and administrative positions. Regent professors, full professors, associate professors, and designated professional and administrative employees with a salary greater than \$54,134 participate in the plan upon hiring. Assistant professors and designated professional and administrative employees with a salary between \$45,862 and \$54,135 participate in the plan upon the completion of two years of service at the University. Instructors and designated professional and administrative employees with a salary under \$45,863 participate in the plan upon the completion of three years of service.

The University of Minnesota Faculty Retirement Plan is a defined contribution retirement plan, with a member contribution of 2.5 percent of the person's gross annual salary and with a University contribution of 13 percent of the person's gross annual salary. The contributions continue until retirement and are invested through insured annuity contracts or through mutual funds. The plan provides immediate vesting.

At retirement, nonsystematic withdrawals of a specific dollar amount or a percentage of the account balance may be made at any time, systematic withdrawals of a flat dollar amount, a percentage of the account balance, a specific number of accumulated units/shares or interest only may be made monthly, quarterly, semi-annually or annually, annuities, either fixed or a combination of fixed and variable annuities may be purchased, and joint and survivor or certain and life options are available, and a rollover into an Individual Retirement Account is permitted. The plan will convert the cash value of plan accumulations into an annuity on a life only retirement income basis based on stipulated income conversion factors, with the factors applied on a male prime annuitant/female joint annuitant basis for balances resulting from pre-July 1, 1982, contributions and on a unisex basis for balances resulting from post-June 30, 1982, contributions.

In the event of a pre-retirement death of a covered University faculty member or designated professional or administrative University employee, the named beneficiary receives the total termination value of retirement annuities with optional forms of payment as may be elected by the beneficiary if approved by the University. In the event of a post-retirement death of a covered University faculty member or designated professional or administrative University employee, the optional annuity form election governs.

In the event of the disablement of a covered University faculty member or designated professional or administrative University employee, if the disability is total and continuous for a period of at least four months, all future member contributions are waived, but future contribution credits are accorded on the basis of a continuation of contribution levels in effect at the time of disability.

Sixteen University of Minnesota faculty members with pre-1963 service also are covered by an additional supplemental retirement benefit under a separate defined benefit plan, to account for the offset of post-1963 improvements in the University of Minnesota Faculty Retirement Plan.

Discussion and Analysis

S.F. 1763 (Pogemiller); H.F. 2031 (Thissen) excludes from Public Employees Police and Fire Plan (PERA-P&F) coverage University of Minnesota police officers who are required by the University Board of Regents to contribute to the University of Minnesota Faculty Retirement Plan.

The proposed legislation raises several pension and related public police issues that may merit Commission consideration and discussion, as follows:

1. Partial or Complete Reversal of 1978 Inclusion of University of Minnesota Police Officers into PERA-P&F. The policy issue is the function of the proposed legislation as a partial or a complete reversal of the 1978 legislation including police officers at the University of Minnesota in the Public Employees Police and Fire Plan (PERA-P&F). From 1978 until now, all police officers at the various University of Minnesota campuses have been members of PERA-P&F, based on an arrangement reached between the Commission and the University and implemented by 1978 legislation. Some testimony should be taken by the Commission about what circumstances have changed since 1878 to make PERA-P&F defined benefit retirement plan coverage inappropriate retirement coverage for some or all University police officers and to make defined contribution retirement plan coverage from the University of Minnesota Faculty Retirement Plan more appropriate. Public safety pension plan coverage is premised on the special circumstances of that employment, involving particular job hazards and the need for the maintenance of a particularly vigorous workforce. If coverage by the University of Minnesota Faculty Retirement Plan, a plan designed to cover general employees without special hazards and without early retirement eligibility, is more appropriate for some University of Minnesota police officers as reflected in the proposed legislation, questions arise about the nature of the University of Minnesota police employment that may mean that PERA-P&F coverage is no longer appropriate for any University of Minnesota police officer.
2. Potential Subversion of PERA-P&F Reemployed Annuitant Earnings Limits. The policy issue is the potential for the proposed legislation to subvert the reemployed annuitant earnings limitations in Public Employees Police and Fire Plan (PERA-P&F) law. PERA-P&F law, Minnesota Statutes, Section 353.37, sets a maximum on the earnings of an annuitant who is reemployed by a PERA-P&F participating employer, with the limit set at the applicable Social Security earnings test limits, and with the annuitant amount reflecting the overage in earnings beyond the maximum deposited in an interest-bearing special account for payment to the annuitant at age 65 or one year after the termination of the reemployment. The reemployed annuity limits emphasize the requirement that a public employee actually retire before receiving an annuity while remaining fully employed in the same line of employment. The Commission staff is aware that the Public Employees Retirement Association (PERA) has had reemployed annuitant earnings limitation or plan membership controversies in the past with police chiefs at the Minneapolis and Duluth campuses of the University of Minnesota and this proposed legislation may represent an attempt to avoid the reemployed annuitant earnings limits by PERA-P&F early annuitants who seek a second career employed by the University of Minnesota. The University of Minnesota may be able to attract a number of attractive candidates for police chief and other upper echelon police positions at the University at relatively modest salaries if PERA-P&F early annuitants were not affected by the reemployed annuitant limits, as appears to be the result of this proposed legislation. The conflict, if accurately portrayed, is a collision between public employer recruiting opportunities with a primary function of a public pension plan as a mechanism for producing a predictable and systematic out-transition of public employees at the conclusion of their normal working careers. The Commission should consider requesting testimony from PERA and from the University of Minnesota on University police hiring practices and expectations and on experiences with PERA-P&F retirees in the employ of the University.
3. Police State Aid Impact of Retirement Coverage Change. The policy issue is the impact of the exclusion of some or all University of Minnesota police from Public Employees Police and Fire Plan (PERA-P&F) retirement coverage on police state aid receivable by the University of Minnesota.

Under Minnesota Statutes, Section 69.011, Subdivision 1, Paragraph (g), Clause (5), a police officer qualifies for being certified for inclusion in the police state aid program if the police officer is a member of a local police relief association (i.e. the Fairmont Police Relief Association or the Minneapolis Police Relief Association), the State Patrol Retirement Plan, PERA-P&F, or the Minneapolis Employees Retirement Fund (MERF) with respect to Metropolitan Airports Commission police covered by that plan. If some or all University of Minnesota police officers are covered by the University of Minnesota Faculty Retirement Plan and are excluded from PERA-P&F, the University should receive less police state aid. Police state aid in 2004 was potentially \$7,498 per police officer, if the employer had that average employer pension cost for its police. Because the police state aid administration is a Department of Revenue function and is not fully integrated administratively with other agencies (i.e., there is no statutory requirement that the Department of Revenue verify either Police Officer Standards and Training Board (POST) licensure or police retirement plan coverage), the University of Minnesota may erroneously or consciously over-certify its number of police officers after the enactment of the special legislation and the Department of Revenue may not catch that over-certification. Amendment LCPR05-190 clearly specifies the ineligibility of any University of Minnesota police officers covered by the University of Minnesota Faculty Retirement Plan for inclusion in police state aid and should alert the Department of Revenue to the police state aid impact of the proposed legislation.

4. Intended Applicability. The policy issue is the intended applicability of the proposed legislation. The current effective date on the provision is the day following final enactment, but the effective date does not clarify whether the provision would apply only to police officers who are newly employed by the University of Minnesota or would apply to existing University of Minnesota police personnel. If the provision is intended to apply to current University of Minnesota police personnel, the proposed legislation will have a much greater potential reemployed annuitant earnings limitation impact and problem. If the intent is to limit the application to newly hired University of Minnesota police officers, Amendment LCPR05-191 would clarify that intent.
5. Extent of University of Minnesota Support for the Proposed Legislation. The policy issue is whether or not the proposed legislation is supported by the University of Minnesota or not and whether the proposed legislation is an initiative of the University or is an initiative of one or more University of Minnesota police officers. If the University of Minnesota supports the proposed legislation and is its source, the proposed legislation is more likely to have a clear public policy purpose and the University should be able to present that purpose convincingly. If the proposed legislation has a University of Minnesota police officer as its source or if the proposed legislation does not have strong University of Minnesota support, the proposed legislation may reflect an attempt to enhance a person's personal retirement situation without reference to larger public policy goals. The Commission should consider taking testimony from the University of Minnesota about the origins of the proposed legislation and about its support for the proposed legislation.

Technical Amendment LCPR05-189

Amendment LCPR05-189 makes two changes in the proposed legislation that better reflect current practices with respect to Public Employees Police and Fire Plan (PERA-P&F) coverage for University of Minnesota police officers. The changes correct an omission in PERA and PERA-P&F statutes created in 1989 when Minnesota Statutes 1988, Section 353.661, was repealed without making the necessary accommodations to Minnesota Statutes, Section 353.01, Subdivision 6, the definition of "governmental subdivision," and Minnesota Statutes, Section 353.64, the specification of PERA-P&F membership. The amendment adds the University of Minnesota to the definition of "governmental subdivision," the specification of PERA/PERA-P&F covered employing units, to the extent that the University of Minnesota has police officers covered by PERA-P&F. The amendment also clarifies that University of Minnesota police officers who are not covered by the University of Minnesota Faculty Retirement Plan are covered by the PERA-P&F. The two additions should be pursued even if the underlying proposed legislation is not recommended in order to have current law reflect current practice.