**S.F. 2104**

(Foley)

H.F. 2311

(Hortman)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-P&F
Relevant Provisions of Law: Uncoded
General Nature of Proposal: Providing a PERA-P&F annuity based on St. Paul firefighting service
Date of Summary: January 23, 2006

Specific Proposed Changes

- Authorizes the receipt of a PERA-P&F annuity based on the eligible individual's St. Paul firefighting service, with the cost to be paid by the City of St. Paul.
- Based on the amount of member contributions the individual paid to the local plan versus those that would have been paid to PERA-P&F, he will either pay the difference, plus interest, or receive a refund of the difference, plus interest.

Policy Issues Raised by the Proposed Legislation

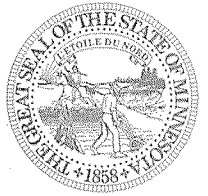
1. Existence of other available remedies.
2. Personal responsibility.
3. Cost of the annuity to be provided.
4. Question of city responsibility.
5. Precedent concerns.
6. Appropriate scope of the legislation.
7. Lack of PERA support.

Potential Amendments

Amendment LCPR05-242 is a technical amendment.

Amendment LCPR05-243 would have the city would pay for an annuity provided under the benefit provisions of the St. Paul Fire Relief Association, waiving the vesting requirement. Local approval is required. (substantive)

Amendment LCPR05-244 is identical to LCPR05-243, except that the city is mandated to pay the necessary amount for the annuity to be provided. (substantive)



TO: Members of the Legislative Commission on Pensions and Retirement

FROM: Ed Burek, Deputy Director **EB**

RE: S.F. 2104 (Foley); H.F. 2311 (Hortman): PERA-P&F; Former St. Paul Firefighter Request for PERA-P&F Pension

DATE: April 8, 2005

Summary of S.F. 2104 (Foley); H.F. 2311 (Hortman)

S.F. 2104 (Foley); H.F. 2311 (Hortman) would authorize Mr. Clyde Thomas (identified in the draft by date of birth and employment dates), who had been a member of the local St. Paul Fire Relief Association for service as a firefighter but who did not qualify for a benefit from that plan, to receive a PERA-P&F annuity based on his St. Paul firefighting service, with the cost to be paid by St. Paul. In addition to the annuity, if the eligible individual paid contributions to the local plan that were less than those that would have been paid to PERA-P&F if that plan had provided the coverage, the individual will pay the difference, plus interest, to PERA-P&F. If the individual paid more than would have been paid to PERA-P&F, the individual will receive a refund of the difference plus interest payable by St. Paul.

Mr. Thomas's Contention

For many decades, the St. Paul Fire Relief Association provided service pensions for retired St. Paul firefighters, survivor benefits for their spouses, and disability benefits for injured firefighters. Under law (Minnesota Statutes, Section 423A.01, Subdivision 1), the St. Paul Fire Relief Association was closed to new members on June 15, 1980, and all firefighters and police officers "first employed" after that date became members of a statewide police and fire pension plan, PERA-P&F, rather than members of any local relief association.

Mr. Clyde Thomas states in his December 21, 2004, letter that he was a St. Paul firefighter who started working for the St. Paul Fire Department in 1980. He contends that his first employment date is June 30, 1980. During the first week of employment, Mr. Thomas and 14 other trainees hired on the same date met with Jim Conway, a St. Paul Fire Relief Association official. Mr. Thomas claims that he and all the other new hires were instructed by Mr. Conway "to backdate the (retirement plan) application's date to June 14, 1980." Given the use of the June 14, 1980, date, each of the new hires became a member of the local relief association rather than PERA-P&F. Mr. Thomas continues, "we were given no choice in the matter, nor were we told what effect this would have on any pension benefits we would eventually earn in the future." He further adds, "I should not be penalized for doing what I was instructed to do."

Mr. Thomas contends that he never should have been a St. Paul Fire Relief Association member, that his membership in that pension fund was unfair and harmful, and the city and/or relief association official caused the harm. He contends that his correct employment date is June 30, 1980, not June 14, and that under law he should have been placed in PERA-P&F, because all firefighters "first employed" after June 15, 1980, should have PERA-P&F coverage. Mr. Thomas terminated as a St. Paul firefighter on January 3, 1990, after ten years of service. The St. Paul Fire Relief Association pension plan in effect on the date of his termination required 20 years to vest (be eligible) for any pension benefit, and the plan had no refund provision. Thus, given his service, Mr. Thomas is not eligible for any form of benefit from the St. Paul Fire Relief Association plan. In contrast, if he had been placed in PERA-P&F he would have vested for a benefit. The Legislature revised the PERA-P&F plan in 1989 to have three-year vesting. If he had been covered by PERA-P&F, he would have been eligible for a PERA-P&F deferred annuity when he terminated St. Paul employment after ten years of service.

In reviewing this situation and deciding whether Mr. Thomas deserves a remedy, the Commission and Legislature may wish to address the issue of whether St. Paul and the St. Paul Fire Relief Association clearly acted improperly in placing Mr. Thomas in the local relief association. The issue hinges on how one defines "first employed," as used in Minnesota Statutes, Section 423A.01, Subdivision 1, the provision of law that states that all police and paid firefighters "first employed" after June 15, 1980, are members of PERA-P&F rather than a local relief association. This is discussed below in the section entitled "Issue: Meaning of Hire Date or First Employment Date."

Material Provided by the Upper Midwest Pension Rights Project

Other materials on Mr. Thomas's situation were provided by the Upper Midwest Pension Rights Project, which is part of the Minnesota Senior Federation. The information, which is attached, includes employment records, St. Paul Fire Relief Association bylaws, and information on City of St. Paul employment practices. In part, the materials indicate Mr. Thomas has tried previously to obtain some value for the ten years of employee contributions that he made to the St. Paul Fire Relief Association. In 1991, Mr. Thomas and two other former St. Paul firefighters brought suit to have their employee contributions returned by the local relief association. This was a request for a refund. The court granted summary judgment to the St. Paul Fire Relief Association. Because the plan does not have a refund provision, the court concluded that it would be improper to require the relief association to pay a refund to these three individuals.

PERA's Position

The Public Employees Retirement Association (PERA) does not support payment of any PERA-P&F benefit to Mr. Thomas. In response to a letter from the Upper Midwest Pension Rights Project, PERA's Executive Director, Mary Vanek, stated (in a July 9, 2004, letter) that PERA would oppose any proposed legislation on this matter. Ms. Vanek's letter indicates that PERA reviewed Mr. Thomas's service history record and further verified with the city of St. Paul that Mr. Thomas's "hire date was June 13, 1980." Ms. Vanek concludes that Mr. Thomas was appropriately placed in the local relief association and was not eligible for PERA-P&F given that hire date. If the individual was not eligible to be in PERA-P&F, there is no basis other than compassion for paying a PERA-P&F benefit.

The local relief association did consolidate with PERA-P&F in 1993. Under terms of these local police or paid fire relief association consolidations, individuals who terminated from the relief association prior to the consolidation were limited to the benefits provided by the local plan. They had no rights to any PERA-P&F benefits, other than a choice between post-retirement benefits computed under provisions of the local plan or PERA-P&F's post-retirement adjustment provision on any annuity provided by the local plan. The St. Paul plan did not have a refund provision, so Mr. Thomas is not entitled to a refund, and he was not vested for a local plan retirement annuity. Therefore, there is no basis in existing law to provide any form of PERA-P&F or local plan benefit to Mr. Thomas.

Issue: Meaning of Hire Date or First Employment Date

Mr. Thomas's contention that he should have been in the PERA-P&F plan, and thus should be given the benefit he would have been entitled to under that plan, hinges on the meaning of "first employed" as it appears in statute. Minnesota Statutes, Section 423A.01, Subdivision 1, states in relevant part that "Notwithstanding any law to the contrary, all persons *first employed* by any municipality as police officers or police officer trainees, salaried firefighters or firefighter trainees or public safety officers or public safety officer trainees after June 15, 1980 shall be members of the public employees police and fire fund....and shall not be members of any local police or paid fire relief association..." [Emphasis added.] "First employed" is not defined in this section or chapter, and it is not defined in PERA law. The Commission may wish to focus on whether the city interpreted "first employed" in a reasonable and consistent manner. Mr. Thomas contends that he was first employed as a firefighter on June 30, 1980, and thus should have been in PERA-P&F. The city and PERA contend that Mr. Thomas was first employed earlier, on June 13, 1980, and therefore was appropriately placed in the local relief association.

The divergent positions stem from different interpretations of "first employed." The city interpreted "first employed" to mean the hire date. Mr. Thomas was hired on June 13, 1980. Under this interpretation, he was correctly placed in the local relief association. The instruction from Mr. Conway to backdate the St. Paul Fire Relief Association membership forms to June 14, 1980, was a direction to date the forms for the day after being hired. Again, under this interpretation of "first employed," that backdating does not appear to be an effort to alter Mr. Thomas's pension coverage by violating Section 423A.01, Subdivision 1. In contrast, Mr. Thomas contends that he was "first employed" on the date that he first began earning salary as a St. Paul firefighter. This was June 30, 1980. Under this alternative definition, he should have been placed in PERA-P&F. Under this view, the backdating could be viewed as an effort to deceive and violate statute by altering pension coverage.

The Commission may wish to focus on whether the city and St. Paul Fire Relief Association caused harm by considering whether the city and St. Paul Fire Relief Association actions were clearly unreasonable, unjust, and/or contrary to law. If the city or relief association caused harm, there is an argument that a remedy should be found and that the city shall bear the cost of the remedy. There seems little basis for

contending that PERA should bear part of the cost. The individual was never reported to PERA for PERA-P&F membership, and PERA plan administrators seem to have had no contact with the individual during his St. Paul employment. Thus, it seems reasonable to conclude that PERA did not cause harm.

Policy Issues

S.F. 2104 (Foley); H.F. 2311 (Hortman) would authorize Mr. Clyde Thomas (identified in the draft by date of birth and employment dates), who had been a member of the local St. Paul Fire Relief Association for service as a firefighter but did not qualify for a benefit from that plan, to receive a PERA-P&F annuity based on his St. Paul firefighting service, with the cost to be paid by St. Paul. In addition to the annuity, if the eligible individual paid contributions to the local plan that were less than those that would have been paid to PERA-P&F if that plan had provided the coverage, the individual will pay the difference plus interest to PERA-P&F. If the individual paid more than would have been paid to PERA-P&F, the individual will receive a refund of the difference plus interest payable by St. Paul.

This is a difficult issue for the Commission. Almost all special law requests brought before the Commission involve currently active plan members seeking to address a given pension problem. The individual covered by the bill is not an active plan member. He terminated from a public plan in 1990 and the information provided to date does not indicate any other public pension plan coverage. Terminating before addressing any perceived public pension plan coverage problem undercuts the claim of harm, and the long delay in seeking a legislative remedy makes it harder to obtain a complete factual record. Also, the individual is requesting a pension from a pension plan, PERA-P&F, in which the individual was never a member. Commission staff is not aware of any past bills requesting such treatment which were favorably acted upon.

Policy issues concerning the bill are:

1. Other Available Remedies. The Commission may wish to consider whether this problem is more amenable to non-legislative remedies. The situation could be addressed through the courts, or through city of St. Paul action which does not involve the courts. The Upper Midwest Pension Rights Project noted that the 1991 court case addressed the limited question of whether Mr. Thomas and two other ex-St. Paul firefighters should receive a refund. Given the lack of any refund provision in the plan, the action was dismissed. A new lawsuit could address the issue of whether the city placed Mr. Thomas in the wrong pension plan, whether that caused harm, and whether the city should compensate Mr. Thomas for that harm. Another possibility is a negotiated settlement between the city and the individual, bypassing the courts and without need for any special law.
2. Personal Responsibility. The Commission may wish to consider that Mr. Thomas bears some responsibility for the current situation. The actions he took, presumably freely, caused his current lack of any pension benefit for his ten years of St. Paul service. Mr. Thomas now values pension coverage, but it appears that at the time of his St. Paul employment, the decade of the 1980s, he did not.

Mr. Thomas indicates that he followed Mr. Conway's instructions to backdate the pension plan enrollment form to June 14, 1980, an action which he now claims was part of a city/St. Paul Fire Relief Association effort to violate statute and alter his proper pension coverage. Mr. Thomas was a party to that action. If he understood the implications at that time, he should have refused to participate. If he did not understand the implications at that time, but began to have reservation at any time during his ten years of St. Paul employment, he should have requested a review of his pension coverage. If the coverage is incorrect, as Mr. Thomas now contends, then action to place him in the correct pension plan could have occurred during the 1980s while he was still employed by St. Paul. The Commission may wish to determine whether Mr. Thomas questioned his pension coverage at any time during his St. Paul active career and sought a coverage change. If he did not, then that suggests Mr. Thomas was satisfied with the pension plan and its coverage while he was employed by the city.

If Mr. Thomas had received a benefit from the local plan, it is highly unlikely that Mr. Thomas would now be contending that he never should have been a member of the St. Paul Fire Relief Association. Mr. Thomas terminated shortly before vesting for a benefit. He had a responsibility to understand his pension plan and the implications of leaving. The implications of terminating would be apparent from a review of plan benefits, or by contacting his relief association. The St. Paul Fire Relief Association plan was designed to strongly discourage termination of service. Members needed 20 years to vest and the plan had no refund provision. Those who left before vesting received nothing. While these terms seem harsh by present standards, they were not uncommon in local relief association plans of that time. If Mr. Thomas had consulted the officers of the St. Paul Fire Relief Association, they would

have warned him that he was not vested, but it is likely that he would vest if he briefly delayed his termination. Mr. Thomas left St. Paul employment on January 3, 1990, presumably of his own free will, suggesting that at the time he did not value a pension. A few months earlier, his relief association board had passed a resolution in an open board meeting lowering the vesting requirement to five years. The change was not effective until the city council gave approval, which occurred in late January 1990, a few weeks after Mr. Thomas terminated. If Mr. Thomas had delayed his termination a few weeks, he would have received a deferred pension based on his ten years of service.

3. Cost. The issue is cost. PERA would need to provide an estimate of the cost of the annuity to be provided to Mr. Thomas under this legislation, a cost to be borne by the City of St. Paul.
4. City Responsibility Issue. The issue is whether the city caused harm and should be held responsible for covering the cost of the annuity. The bill is drafted in a manner that assumes that the city created harm and should be forced to provide a sufficient remedy for that harm. The question of harm hinges on whether the city acted reasonably in using the date of hire as the date on which an individual is “first employed” for purposes of Section 423A.01, Subdivision 1. The Commission may wish to have testimony on this matter from city of St. Paul officials and PERA. In letters, the city contends that it acted appropriately and should not be required to pay for this benefit. If the Commission concludes the city acted reasonably, then there is no basis for contending that the city caused harm worthy of being compensated.
5. Precedent Concerns. As a remedy for the lack of a pension benefit, the bill requests an annuity from a pension plan in which the individual was never a member. Commission staff is not aware of any case in which a request of this type was granted. The Commission may be concerned that recommending the bill to pass may lead to additional requests for benefits from a plan in which the individual was never a member, or from individuals who terminated from a plan without vesting and who request through a special law that the vesting requirement be waived.
6. Scope. The issue is whether there are other individuals employed as St. Paul police officers or firefighters in June 1980 who may be in an identical circumstance and which should be included in the legislation. The city has indicated that Mr. Thomas is the only individual in his cohort of new St. Paul firefighter recruits in this situation. The other 14 in his group either left before three years of service (and thus would not have vested under the PERA-P&F plan) or continued as active employees until after 1993, when the St. Paul Fire Relief Association consolidated into PERA-P&F, which would have given these individuals access to the PERA-P&F benefit plan. It is possible, though, that the city used identical procedures to decide whether new St. Paul police officers hired in June 1980 should be in the local police pension plan (the St. Paul Police Relief Association) or PERA-P&F. Therefore, there might be a few ex-police officers in a situation similar to that of Mr. Thomas.
7. Lack of PERA Support. PERA has indicated in its July 9, 2004, letter that it opposes any benefit for Mr. Thomas and it supports the St. Paul use of the hire date for determine which individuals are to be placed in the local plan rather than PERA-P&F.

Amendments

LCPR05-242 is a technical amendment. If the Commission wishes to deal with this bill in its current form, the Commission may wish to consider amendment LCPR05-242, which clarifies that the individual would receive service credit, rather than “service” in PERA-P&F.

The following two amendments are substantive.

LCPR05-243 would have the city pay for an annuity provided under the benefit provisions of the St. Paul Fire Relief Association plan, given the individual’s service credit in that plan, waiving the vesting requirement. Local approval is required. This amendment at least has the advantage of not paying a benefit from a plan in which the individual was never a member. However, given the city’s position on this matter, it is unlikely that the city would approve the legislation.

LCPR05-244, an alternative to LCPR05-243, is identical to that amendment except that the city is mandated to pay and, if payment does not occur, the necessary amount would be deducted by the Department of Finance from aids to the city. This mandated approach should not be used unless the Commission is convinced that the city caused harm.

OFFICE OF HUMAN RESOURCES

Angela S. Nalezny, Director



CITY OF SAINT PAUL

Randy C. Kelly, Mayor

400 City Hall Annex
25 West Fourth Street
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4th Floor: 651-292-7656
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Edward Burek
Deputy Executive Director
Legislative Commission on Pensions and Retirement
55 State Office Building
St Paul, MN 55155-1201

February 18, 2005

Re: Legislative Draft: Request by former St Paul Firefighter for Public
Employees Police and Fire Plan (PERA-P&F) Benefit

Dear Mr. Burek,

I am familiar with the situation of former St Paul firefighter Clyde Thomas and his request for PERA benefits. I have had discussions on this issue with Mary Vanek of PERA and with Tara Makinen of the Upper Midwest Pension Rights Project (UMPRP). Attached is a memo that I sent to Ms Vanek last summer.

I agree with UMPRP that there are no other former City of St Paul employees in Mr Thomas' situation.

I also agree with your assessment that the key issue is the definition of 'first employed' and that the law does not define the term.

The City hired Mr. Thomas on June 13, 1980, his appointment date. This is the date that was used in all cases to determine seniority (for layoffs, for bidding on assignments, etc.). The City feels it acted appropriately by using this date as the undefined date 'first employed'.

Please contact me at (651) 266-8897 if I can be of further assistance.

Sincerely,

Terry Haltiner
Risk Analyst

LCP & R FEB 25 2005

OFFICE OF HUMAN RESOURCES
Angela S. Nalezny, Director



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TO: Mary Most Vanek
PERA

FROM: Terry Haltiner *TH*
Risk Analyst

DATE: July 7, 2004

RE: Clyde Thomas

I have reviewed the attached information from Tara Makinen of the Upper Midwest Pension Rights Project regarding former St Paul firefighter Clyde Thomas. The following are my comments:

The Employment Service History document clearly shows that Mr Thomas was hired by the City of Saint Paul on June 13, 1980. This is consistent with all documentation that I have found. The date of hire is determined by the City. The Relief Association would have had no input. The June 13, 1980, date would have been used in all cases to determine seniority (for layoffs, assignments, etc.).

I do not know why Mr Thomas stated that he was hired on June 14, 1980, when he filled out his application for membership in the relief association (it should have stated June 13).

I do not know why Mr Thomas states that he was given no choice about being hired on June 13, 1980. He must have accepted the job.

Ms Makinen seems to use the terms 'Fire Department' and 'Relief Association' interchangeably. They are clearly separate entities with neither having any control over the other. The Fire Department makes staffing decisions. The Relief Association managed the pension plan.

Please feel free to call me at (651) 266-8897 if I can be of any further assistance.

MN. STAT. 1982

423A.01 POLICE AND SALARIED FIREFIGHTERS RELIEF ASSOCIATION

7506

CHAPTER 423A

POLICE AND SALARIED FIREFIGHTERS
RELIEF ASSOCIATION

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|---------|---|---------|---|
| 423A.01 | Police and salaried firefighter's relief associations. | 423A.10 | Powers of city officials limited. |
| 423A.02 | Local police and firefighters' relief association amortization state aid. | 423A.11 | Recomputation of a disability benefit as a service pension. |
| 423A.03 | Temporary provision; application to certain municipalities. | 423A.12 | Service credit for periods of disability. |
| 423A.04 | Alternative benefit increase. | 423A.13 | Less hazardous duty employment for marginally disabled police officers or firefighters. |
| 423A.05 | Clarification of interpretation on authority to approve alternative benefit increase. | 423A.14 | Offsets from disability benefits. |
| 423A.06 | Minimum disability benefit coverage for certain police officers and firefighters. | 423A.15 | Effect of provisions for existing disability benefit recipients. |

423A.01 POLICE AND SALARIED FIREFIGHTER'S RELIEF ASSOCIATIONS.

Subdivision 1. Membership of new police and salaried firefighters in the public employees police and fire fund. Notwithstanding any law to the contrary, all persons first employed by any municipality as police officers or police officer trainees, salaried firefighters or firefighter trainees or public safety officers or public safety officer trainees after June 15, 1980 shall be members of the public employees police and fire fund established by sections 353.63 to 353.68, and shall not be members of any local police or paid firefighter's relief association established or maintained by the municipality, unless the municipality elects to retain the local relief association by the adoption of a municipal resolution approved by a majority of the governing body of the municipality following the holding of a public meeting at which the views of the public are considered and a copy of the municipal resolution is filed with the secretary of state, the commissioner of finance, the commissioner of insurance and the executive secretary of the legislative commission on pensions and retirement on or before August 15, 1980.

Subd. 2. Operation of local relief association upon modification of retirement coverage for newly hired police officers and firefighters. The following provisions shall govern the operation of a local relief association upon the modification of retirement coverage for newly hired police officers or firefighters:

(1) The minimum obligation of a municipality in which the retirement coverage for newly hired police officers or salaried firefighters has been modified pursuant to subdivision 1 with respect to the local relief association shall be determined and governed in accordance with the provisions of sections 69.77, 356.215 and 356.216, except that the normal cost calculation for the relief association shall be computed as a percentage of the compensation paid to the active members of the relief association. The compensation paid to persons with retirement coverage modified pursuant to subdivision 1 shall not be included in any of the computations made in determining the obligation of the municipality with respect to the local relief association.

(2) The contribution rate of members of the local relief association shall be governed by section 69.77, unless a special law establishing a greater member contribution rate is applicable whereupon it shall continue to govern. The member contribution rate of persons with retirement coverage modified pursuant to subdivision 1 shall be governed by section 353.65.

(3) When every active member of the local relief association retires or terminates from active duty, the local relief association shall cease to exist as a legal entity and the assets of the special fund of the relief association shall be transferred to a trust fund to be established by the appropriate municipality for the

9119 Yates Bay
Brooklyn Park, MN 55443

December 21, 2004

Melissa Hortman 47B
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155

Dear Representative Hortman,

My name is Clyde Marcellus Thomas and this letter is in regards to my experience with the St. Paul Fire Department's Relief Association and PERA. I am contacting you because I do not know who can help me and I am hoping that you can.

I started working for the St. Paul Fire Department on June 30, 1980 along with 14 other trainees. During our first week we were required to meet with Jim Conway, who at that time was also the Fire Department's Relief Association's secretary. During that first week of employment, we were asked to fill out several different forms. One of the forms was an application to join the St. Paul Fire Department's Relief Association (their pension plan), which was given to us by Jim Conway.

At that time Jim Conway instructed each of us to backdate the application's date to June 14, 1980. This was done so that we would all fall under the St. Paul Relief Association's Pension Plan, because on June 15, 1980 all new firefighters would automatically be placed in the PERA pension plan. We were given no choice in this matter, nor were we told what effect this would have on any pension benefits we would eventually earn in the future. I believe with all new firefighters going into PERA, the St. Paul Relief Association's pension plan eventually would not be able to sustain itself with firefighters retiring, resulting in less contributions coming in; that's why they wanted to get this last group into this pension plan. If the Relief association had not backdated my admission date, I would have automatically been enrolled in PERA's Pension Plan.

I worked for the St. Paul Fire Department from 1980 until my termination on January 3, 1990. It is my understanding that in November of 1989, the Relief Association adopted an amendment reducing the years required to vest from twenty to five. I had ten years of service at that time but could not qualify for the reduced vesting because the City did not act to adopt the amendment until January 30, 1989.

I believe that I am entitled to pension compensation under the PERA Pension Plan, because I made contributions into the Relief Association's Pension Plan for 10 years. For the years I contributed into the Relief Association Fund, social security earnings were not taken from my paychecks. My Social Security Earnings Statement list "zeros" for ten years. I was a new employee following the instructions of the Relief Association's representative sent to assist myself and the other trainees that day in filling out the needed

paperwork for the Fire Department's pension plan. Jim Conway instructed us to backdate the form, so that's what we did. I should not be penalized for doing what I was instructed to do. Regardless of why my class was instructed to backdate our applications, placing us into the Relief Association instead of PERA was not in our best interest.

Last year I asked the Upper Midwest Pension Rights Project of the Minnesota Senior Federation to assist me with this problem. I have enclosed a summary of their findings regarding this situation.

I would sincerely appreciate your help in correcting this matter.

Sincerely,

Clyde M. Thomas

Clyde Marcellus Thomas
Former St. Paul Firefighter



UPPER MIDWEST PENSION RIGHTS PROJECT

IRIS PARK PLACE • 1885 UNIVERSITY AVE. W. • SUITE 190 • ST. PAUL, MINNESOTA 55104
(651) 645-0261, EXT. 110 • TOLL FREE: (877) 645-0261, EXT. 110

January 5, 2005

Representative Melissa Hortman
377 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155

Regarding: Former St. Paul Firefighter Clyde Thomas

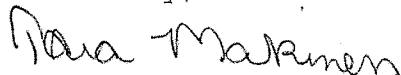
Dear Representative Hortman,

It has come to the attention of the Upper Midwest Pension Rights Project (UMPRP) that a report written by our organization sent to you by Mr. Clyde Thomas contained two typographical errors.

- Page 1 of the Issue and Relief Sought, paragraph 4 should read, "On January 3, **1990**, Mr. Thomas left the Fire Department at least 30 days after the Relief Association adopted an amendment reducing the required years of vesting from 20 to five."
- Page 5 of the Facts, the first complete bullet on the page should read, "On January 3, **1990**, the St. Paul City Council approved the St. Paul Fire Department Relief Association's November 1989 change in the by-laws."

Enclosed please find the corrected versions of page one and page five of the UMPRP's report. We apologize for any inconvenience this may cause.

Sincerely,



Tara Makinen
Law Clerk

Encl.

A Joint Project
of the Minnesota Senior Federation and the Coalition of Wisconsin Aging Groups

*Providing Pension Education, Counseling and Claims Assistance
to Wisconsin, Iowa, Minnesota and the Dakotas.*



Coalition of
Wisconsin
Aging Groups
www.cwag.org

Issue and Relief Sought

Clyde Thomas served the St. Paul Fire Department as a firefighter for ten years and today would like to receive a pension benefit for his service. Shortly after being hired by the St. Paul Fire Department, Mr. Thomas was enrolled in the St. Paul Fire Department Relief Association, a non-profit entity, which was the pension program available for firefighters employed before June 15, 1980. This is regardless of the fact that Mr. Thomas began working for the Fire Department after June 15, 1980.

Minnesota law closed the St. Paul Fire Department Relief Association, in which Mr. Thomas had been enrolled, to new members, and required firefighters first employed after June 15, 1980 to join The Public Employees Retirement Association (PERA). PERA is the retirement program created by the Minnesota Legislature for the employees of county and local governments. On March 31, 1993, PERA assumed the administrative responsibilities for the Relief Association pension fund. Eventually the Relief Association and the PERA Police and Fire funds merged in 1999.

The St. Paul Fire Department Relief Association by-laws state a new member's first date of membership is the "date of entry upon the payroll." The human resource department entered Mr. Thomas into the payroll on June 30, 1980, fifteen days after June 15, the date required for all firefighters to join PERA. The Relief Association admitted Mr. Thomas for membership in contravention of the new law.

On January 3, 1990, Mr. Thomas left the Fire Department at least 30 days after the Relief Association adopted an amendment reducing the required years of vesting from 20 to five. If this new rule had been applied to Mr. Thomas, he would have been eligible to collect a pension when he reached retirement age, since he worked for the Fire Department for ten years. However, the City did not adopt the amendment until January 30, 1990 and that was 27 days after Mr. Thomas left the department.

During his ten years of service, Mr. Thomas paid bi-weekly contributions to the St. Paul Fire Department Relief Association Pension Fund, from which he received no benefit. Although Mr. Thomas worked for ten years, he will not receive a pension or a refund of his contributions from

Fire Department Relief Association changed its by-laws pursuant to Minnesota Statute 423A.19. The change in the by-laws reduced the years of service required to vest in the plan from twenty to five.

- City of St. Paul approval of reduced vesting: On January 30, 1990 the St. Paul City Council approved the St. Paul Fire Department Relief Association's November 1989 change in the by-laws. The change in the by-laws reduced the years of service required to vest in the plan from twenty to five. (See CF 90-147)
- Relief Association Retirement Contributions: Mr. Thomas joined the St. Paul Fire Department Relief Association's pension plan, which closed itself to new entrants as of June 15, 1980. According to Mr. Thomas, he was given no choice in this action, nor was he told of the possible affect this would have on any pension benefit he might eventually earn. During the time he served as a fire department employee, Mr. Thomas contributed to the St. Paul Fire Department Relief Association retirement fund on a bi-weekly basis. To date Mr. Thomas has received nothing from the St. Paul Relief Association's pension fund.
- 1991 Lawsuit to recover contributions: In 1991, Mr. Thomas, along with two other former City of St. Paul firefighters, sought to recover their plan contributions through a declaratory judgment.
 - o Holding: The Court granted summary judgment to the St. Paul Fire Department Relief Association.
 - o Reasoning: The Court noted that both the now-repealed Minn. Statute Section 69.45 and the St. Paul Fire Department Relief Association's constitution required twenty years of service to vest; furthermore the applicable statutes and the Association's constitution lacked provisions allowing the firefighters to recover their pension contributions. See *Thomas v. St. Paul Fire Dept. Relief Ass'n*, 1992 WL 77534, 1992 WL 77534 (Minn.App.) (unpublished opinion)
 - o UMPRP analysis: Notably, the Court based its judgment partly on the premise that Mr. Thomas began working on June 14, 1980. However, unlike the other two firefighters involved in the suit, Mr. Thomas began working after June 15, 1980 and rightfully should have been covered under PERA. This issue was not addressed in the lawsuit, and is a separate issue from the claims brought by the lawsuit seeking a contribution refund.



UPPER MIDWEST PENSION RIGHTS PROJECT

IRIS PARK PLACE • 1885 UNIVERSITY AVE. W. • SUITE 190 • ST. PAUL, MINNESOTA 55104
(651) 645-0261, EXT. 110 • TOLL FREE: (877) 645-0261, EXT. 110

December 15, 2004

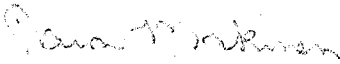
Clyde M. Thomas
9219 Yates Bay
Brooklyn Park, MN 55443

Dear Mr. Thomas,

As you know, you contacted the Upper Midwest Pension Rights project (UMPRP) regarding your ten years worth service and contributions to the St. Paul Fire Department Relief Association Pension Fund. Enclosed please find a summary of our research and conclusions. The UMPRP encourages you to contact your legislators to seek their assistance concerning your retirement security. Changes in the law made shortly before you entered and left the Relief Association indicate the intent to prevent situations, such as the one in which you find yourself, from occurring.

Please do not hesitate to contact the UMPRP with further questions.

Sincerely,



Tara Makinen
Law Clerk

Issue and Relief Sought

Clyde Thomas served the St. Paul Fire Department as a firefighter for ten years and today would like to receive a pension benefit for his service. Shortly after being hired by the St. Paul Fire Department, Mr. Thomas was enrolled in the St. Paul Fire Department Relief Association, a non-profit entity, which was the pension program available for firefighters employed before June 15, 1980. This is regardless of the fact that Mr. Thomas began working for the Fire Department after June 15, 1980.

Minnesota law closed the St. Paul Fire Department Relief Association, in which Mr. Thomas had been enrolled, to new members, and required firefighters first employed after June 15, 1980 to join The Public Employees Retirement Association (PERA). PERA is the retirement program created by the Minnesota Legislature for the employees of county and local governments. On March 31, 1993, PERA assumed the administrative responsibilities for the Relief Association pension fund. Eventually the Relief Association and the PERA Police and Fire funds merged in 1999.

The St. Paul Fire Department Relief Association by-laws state a new member's first date of membership is the "date of entry upon the payroll." The human resource department entered Mr. Thomas into the payroll on June 30, 1980, fifteen days after June 15, the date required for all firefighters to join PERA. The Relief Association admitted Mr. Thomas for membership in contravention of the new law.

On January 3, 1980, Mr. Thomas left the Fire Department at least 30 days after the Relief Association adopted an amendment reducing the required years of vesting from 20 to five. If this new rule had been applied to Mr. Thomas, he would have been eligible to collect a pension when he reached retirement age, since he worked for the Fire Department for ten years. However, the City did not adopt the amendment until January 30, 1980 and that was 27 days after Mr. Thomas left the department.

During his ten years of service, Mr. Thomas paid bi-weekly contributions to the St. Paul Fire Department Relief Association Pension Fund, from which he received no benefit. Although Mr. Thomas worked for ten years, he will not receive a pension or a refund of his contributions from

the Relief Association or PERA. Today Mr. Thomas should receive a pension through PERA.

Relevant Statutes and City Resolutions

Minnesota Statute 423A.01(1) Police and Salaried Firefighters' relief associations:

All persons first employed by any municipality as salaried firefighters or firefighter trainees after June 15, 1980 shall be members of the public employees police and fire fund established by sections 353.63 to 353.68 and shall not be members of any local . . . firefighters' relief association . . . (effective on June 15, 1980, language current as of 2004)

Minnesota Statute 423A.19(1) Reduced Vesting Requirement:

Notwithstanding any law to the contrary, for a police or salaried firefighters relief association that implements the provision with municipal approval as provided in subdivision 4, a person with at least five years of service credited by the relief association is entitled, upon termination of active service and reaching at least the required normal retirement age, to receive a pro rata monthly service pension. The pro rata monthly service pension must be calculated in the amount and manner specified by the board of trustees, but not to exceed that portion of the service pension payable upon meeting the minimum age and years of service requirements that bears the same relationship that the person's actual years and portions of years of service bear to the minimum service requirement. (effective August 1, 1987, language current as of 2004)

Resolution City of St. Paul CF-90-147: In November of 1989 the Relief Association amended its by-laws to adopt the reduced vesting requirement of MN statute 423A.19(1). On January 30, 1990, the City Council adopted the Relief Association by-law amendment. The amendment reduced the years required to vest in the pension fund from twenty to five.

By-laws of the St. Paul Fire Department Relief Association January 1, 1993

Article I, section 2:

Upon the date that a person is sworn as a fire fighting Member of the Fire Department of the City of St. Paul and regularly entered on the

payroll thereof, or within Ten days of such date such persons shall make and file with the Secretary of the Association a written application for Admission to Membership . . . (January 1, 1993)

Article 1, section 3:

Upon acceptance of an Application for Membership . . . such Membership of the accepted applicant shall commence as at the date of entry upon the payroll of the Fire Department of the City of St. Paul and taking of the oath, and the President and Secretary shall issue a Certificate of Membership so dated in the name of the accepted applicant. (January 1, 1993)

Article IX, section 3:

Notwithstanding previous provisions, and in accordance with enabling statutes (Minnesota Statutes 423A.19); Each member having not less than Five (5) years service, and having no more than 20 years service will be entitled to 1 unit for each year of service within the St. Paul Fire Department Relief Association through such members nineteenth (19) year. . . (Adopted by the Relief Association in November of 1989).

Definitions

Certified appointment date: According to Shirley Eisfelder, from the St. Paul Human Resource Department, the "certified appointment date" was the date the newly hired employee was finished taking required tests, interviewed, hired, and appointed to the job. The City has always used the "certified appointment date" for determining employee seniority; this practice was to facilitate the process of uniformly assigning the same appointment date to each member of a training class. (Shirley Eisfelder, City of St. Paul Human Resource Department)

Employment date: The employment date is the date the individual actually starts working. The "employment date" is the date the human resource department enters the new employee onto the payroll. Unlike the "certified appointment date", the definition of "employment date" has not changed over the years. (Shirley Eisfelder)

Since July 1, 1995 the "certified appointment date" is the date the new employee actually begins work. The UMPRP attempted to learn why the City no longer use s two different dates, the "certified appointment date" and the "employment date." We have not received a definitive answer, although Shirley Eisfelder acknowledges the two dates were simply confusing.

Facts

- Certified Appointment Date: June 13, 1980 (See enclosed Employee Service History) or June 14, 1980 (See St. Paul Fire Department Relief Association Application)
- Date of Admission into the Relief Association: June 14, 1980. Although the St. Paul Fire Department Relief Association by-laws Article 1, section 3 states the Relief Association membership begins "the date of entry upon the payroll," the Association backdated Mr. Thomas's application and admitted Mr. Thomas two weeks before his date of entry upon the payroll. (See enclosed Employee Service History, employment date and certified appointment date; See also St. Paul Fire Department Relief Association, application for membership; See also St. Paul Fire Department Relief Association by-laws Article 1, section 3)
- On June 15, 1980 the St. Paul Fire Department Relief Association closed itself to new members.
- Employment Date: Clyde Thomas began working with the St. Paul Fire Department on June 30, 1980. (See enclosed Employee Service History)
 - Date of entry upon the payroll: June 30, 1980. (See employee service history) Mr. Thomas received no paycheck from the Department between June 13, 1980 and June 30, 1980 because he had not yet begun to work. He did receive payment for his work after June 30, 1980.
- Mr. Thomas filed his application for the St. Paul Fire Department Relief Association application on July 18, 1980.
- Years of Employment: Mr. Thomas worked for the St. Paul fire department from 1980 until his termination on January 3, 1990. Mr. Thomas left the fire department with ten years of service.
- St. Paul Fire Department Relief Association approval of reduced vesting: In November 1989, the St. Paul

Fire Department Relief Association changed its by-laws pursuant to Minnesota Statute 423A.19. The change in the by-laws reduced the years of service required to vest in the plan from twenty to five.

- City of St. Paul approval of reduced vesting: On January 30, 1980 the St. Paul City Council approved the St. Paul Fire Department Relief Association's November 1989 change in the by-laws. The change in the by-laws reduced the years of service required to vest in the plan from twenty to five. (See CF 90-147)
- Relief Association Retirement Contributions: Mr. Thomas joined the St. Paul Fire Department Relief Association's pension plan, which closed itself to new entrants as of June 15, 1980. According to Mr. Thomas, he was given no choice in this action, nor was he told of the possible affect this would have on any pension benefit he might eventually earn. During the time he served as a fire department employee, Mr. Thomas contributed to the St. Paul Fire Department Relief Association retirement fund on a bi-weekly basis. To date Mr. Thomas has received nothing from the St. Paul Relief Association's pension fund.
- 1991 Lawsuit to recover contributions: In 1991, Mr. Thomas, along with two other former City of St. Paul firefighters, sought to recover their plan contributions through a declaratory judgment.
 - o Holding: The Court granted summary judgment to the St. Paul Fire Department Relief Association.
 - o Reasoning: The Court noted that both the now-repealed Minn. Statute Section 69.45 and the St. Paul Fire Department Relief Association's constitution required twenty years of service to vest; furthermore the applicable statutes and the Association's constitution lacked provisions allowing the firefighters to recover their pension contributions. See *Thomas v. St. Paul Fire Dept. Relief Ass'n*, 1992 WL 77534, 1992 WL 77534 (Minn.App.) (unpublished opinion)
 - o UMPRP analysis: Notably, the Court based its judgment partly on the premise that Mr. Thomas began working on June 14, 1980. However, unlike the other two firefighters involved in the suit, Mr. Thomas began working after June 15, 1980 and rightfully should have been covered under PERA. This issue was not addressed in the lawsuit, and is a separate issue from the claims brought by the lawsuit seeking a contribution refund.

Furthermore, today Mr. Thomas no longer seeks to recover his contributions, but would like to receive a pension through PERA.

Was Mr. Thomas appropriately enrolled in the St. Paul Fire Department Relief Association?

- PERA's position: PERA executive director, Mary Most Vanek looked to the certified appointment date on Mr. Thomas's employee service history. She concluded that Mr. Thomas was correctly enrolled in the Relief Association. Ms. Vanek reasoned, "according to Minnesota Statutes, Section 423A.01 persons first employed after June 15, 1980 must be enrolled in PERA Police and Fire." (See July 9, 2004 letter from Mary Most Vanek)
- UMPRP's position: Mr. Thomas's employment date was June 30, 1980; therefore his date of entry upon the payroll was June 30, 1980. If the St. Paul Fire Department had followed its own governing by-laws, the date of Mr. Thomas's admission into the Relief Association should have been June 30, 1980, not June 14, 1980.
 - Minnesota Statute 423A.01 closed the Relief Association to new members as of June 15, 1980.
 - Mr. Thomas should have been a member of PERA.
- Impact of Relief Association Enrollment versus PERA enrollment
 - According to Mary Most Vanek, the executive director of PERA, if Mr. Thomas had been enrolled in PERA when he left the department, he would have qualified for PERA benefits. (See July 9, 2004 letter from Mary Most Vanek)

Exhaustion of Potential Remedies

Mr. Thomas worked for the St. Paul Fire Department for ten years. He contributed to the Relief Association pension fund on a bi-weekly basis. Mr. Thomas earned a right to his pension. The Relief Association approved the reduced vesting amendment in November of 1989. If the St. Paul City council had adopted the provision 27 days earlier, or in November or December, Mr. Thomas would be eligible to receive a pension through the Relief Association fund administered by PERA. The UMPRP encourages Mr. Thomas to seek the help of one of his legislators because no other remedies are available.

The UMPRP has contacted PERA to learn if PERA is willing to help Mr. Thomas in any way . Mary Most Vanek, PERA's executive director, acknowledges that if Mr. Thomas had been enrolled in PERA, he would be entitled to receive PERA benefits. However, Ms. Most Vanek asserts that Mr. Thomas was correctly enrolled in the St. Paul Fire Department Relief Association and therefore is ineligible to receive benefits from PERA. Ms. Most Vanek has said she will recommend to the Board of Trustees to oppose any legislation granting Mr. Thomas any right to receive a PERA benefit.

However, Ms. Most Vanek ignores an important consideration. She bases her conclusion on the assumption that the association correctly admitted Mr. Thomas. The UMPRP asserts, the association did not follow its own by-laws in admitting Mr. Thomas; therefore the association did not properly admit Mr. Thomas.

Conclusion

The UMPRP feels the issue today differs from the issues brought forward in the 1991 suit because Mr. Thomas's start date was backdated and because he is not seeking to recover his plan contributions. It is difficult to understand the rationale for backdating the applications because Mr. Thomas's class did not actually begin working until late June and the legislature clearly wanted new firefighters to join PERA not the Relief Association. Furthermore, placing the newly hired employees in the Relief Association was not in their best interest. Therefore the UMPRP believes Mr. Thomas is entitled to PERA benefits, not through the St. Paul Firefighters' Relief Association by-laws and the applicable Minnesota Statutory Provisions of Minn. Stats. 69.25, 69.26 and 69.45, but instead as an individual who rightfully should have been a member of PERA upon joining the fire department in late June of 1980.

Mr. Thomas served the City of St. Paul for ten years. To the UMPRP's knowledge, Mr. Thomas is the only individual in this situation, other individuals from his class either quit working for the fire department before completing

three years of service or continued until the Relief Association and PERA merged in 1993.

However, the uniqueness of Mr. Thomas's situation exists partly because changes in the law allowed individuals to vest more easily in pension benefits. Mr. Thomas's right to pension benefits slipped through the breadth of these changes. Consider the following: days after Mr. Thomas left the department, individuals with only five years of service could vest in the Relief Association Pension Plan. If Mr. Thomas were a PERA member, he could have left the department as of July 1, 1989 with only *three* years of service and been vested in PERA. Clearly these examples indicate an intent to allow more individuals, especially those with ten years of service, attain eligibility to vest in the pension plan.

Enclosures: Employee Service History; and St. Paul Fire Department Relief Association application for membership; CE-90-147; Relief Association By-Laws Art. I, sec. 2, 3, Art IX, sec. 3; Letter from PERA executive director (July 9, 2004).

ID: 15701
CLYDE M THOMAS
767 LAUREL
ST PAUL, MN 55104

A7-INACTIVE - DISCHARGED
B1-FULL TIME
C1-PERMANENT
D1-CERTIFIED

Dept: 05001-FIRE

P Occupation		Bargaining Unit		Grade/Step/Rate		Base Pay
Y 185	FIRE FIGHTER	03	FIRE	031 06 B		1,355.1300

Department	BU	Occupation	Transaction Type	Start (MM-DD-YY)	End (MM-DD-YY)	Hours	Report#	Salary	Step	Comments
05001 FIRE	03	185 FIRE FIGHTER	APP CERTIFIED APPOINTMENT	06-13-80			80-94428	633.61		
05001 FIRE	03	185 FIRE FIGHTER	EMP EMPLOYMENT	06-30-80			80-94428	633.61		
05001 FIRE	03	185 FIRE FIGHTER	SUSP SUSPENSION	07-28-80		8.00	80-95335			
05001 FIRE	03	185 FIRE FIGHTER	SUSP SUSPENSION	08-11-80		24.00	80-95593			
05001 FIRE	03	185 FIRE FIGHTER	LVPNP LEAVE NO PAY PERSONAL	10-12-80		1.00	80-98457			
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	12-27-80			80-97039	677.96		
05001 FIRE	03	185 FIRE FIGHTER	SUSP SUSPENSION	07-13-81		17.00	81-415			
05001 FIRE	03	185 FIRE FIGHTER	SALAD SALARY ADVANCEMENT	10-03-81			81-1357	711.85		
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	12-26-81			81-1995	765.24		
05001 FIRE	03	185 FIRE FIGHTER	SALAD SALARY ADVANCEMENT	02-06-82			82-3036	803.51		
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	03-19-83			83-7808	863.77		
05001 FIRE	03	185 FIRE FIGHTER	SALAD SALARY ADVANCEMENT	10-29-83			83-11023	898.64		
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	01-07-84			84-11718	952.56		
05001 FIRE	03	185 FIRE FIGHTER	SALAD SALARY ADVANCEMENT	11-24-84			84-16341	1,001.27		
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	01-05-85			85-16669	1,048.83		
05001 FIRE	03	185 FIRE FIGHTER	LOADV LONGEVITY INCREASE	07-20-85			85-18885	1,091.34		
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	01-04-86			86-21051	1,140.45		
05001 FIRE	03	185 FIRE FIGHTER	LVPNP LEAVE NO PAY PERSONAL	09-04-87		34.00	87-27759			
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	05-07-88			88-30244	1,239.44		
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	05-07-88			88-30244	1,296.77		
05001 FIRE	03	185 FIRE FIGHTER	SUSP SUSPENSION	08-22-88		17.00	88-31365			
05001 FIRE	03	185 FIRE FIGHTER	LVPNP LEAVE NO PAY PERSONAL	12-03-88		9.00	88-32634			
05001 FIRE	03	185 FIRE FIGHTER	SALAJ SALARY ADJUSTMENT	12-31-88			88-32800	1,355.13		
05001 FIRE	03	185 FIRE FIGHTER	LVPNP LEAVE NO PAY PERSONAL	02-26-89		17.00	89-33433			
05001 FIRE	03	185 FIRE FIGHTER	SUSP SUSPENSION	05-02-89		200.00	89-34200			
05001 FIRE	03	185 FIRE FIGHTER	REIN REINSTATEMENT	06-01-89			89-34229			
05001 FIRE	03	185 FIRE FIGHTER	DISCH DISCHARGE	07-07-89			89-36499	1,355.13		PAID THRU 1-3-90 ON
05001 FIRE	03	185 FIRE FIGHTER	CC CUTOVER TO COMPUTER	12-07-89			89-			

ORIGINAL

Council File # 90-147Green Sheet # 1054RESOLUTION
CITY OF SAINT PAUL, MINNESOTA

(7)

Presented By James R. Wilson

Referred To _____

Committee: Date _____

WHEREAS, The Saint Paul Fire Department Relief Association is a pension fund created by statute and to which certain fire department personnel and the City contribute sums of money to maintain the fulfillment of its objectives, and

WHEREAS, The Association changed its by-laws in November 1989 and Minnesota Statute 69.77 requires approval by the City of the by-laws or amendments thereto, before they become effective, if the City contributes to the pension fund, and

WHEREAS, the effect of the by-law change will reduce the period of time for vesting from twenty years of service to five years of service.

WHEREAS, an actuarial valuation has been obtained indicating a minimal financial impact to the Saint Paul Fire Department Relief Association, and

WHEREAS, the amendments to the by-laws are attached hereto, now therefore, be it

RESOLVED, that the Council of the City of Saint Paul hereby approves of the association by-laws as amended, which are attached hereto and incorporated by reference.

	Yea	Nay	Absent
Almond			
Conley			
Long			
Maccabee			
Holtman			
Thune			
Wilson			

Adopted by Council: Date JAN 30 1990

Adoption Certified by Council Secretary

By: James R. WilsonApproved by Mayor: Date JAN 31 1990By: James R. Wilson

Requested by Department of:

Finance and Management Services

By: James R. Wilson

Form Approved by City Attorney

By: James R. Wilson

Approved by Mayor for Submission to Council

By: James R. Wilson

PUBLISHED FEB 10 1990

AL JOHN, PRESIDENT

DONALD A. FISCHER, VICE PRESIDENT

EDWARD A. PIERRE, TREASURER

JAMES F. THOENKE, SECRETARY

CF 90-147

St. Paul Fire Department Relief Ass'n.

METRO SQUARE BUILDING
SUITE 203
SEVENTH AND ROBERT
ST. PAUL, MINNESOTA 55101
(612) 223-1187

AMENDMENTS TO THE SAINT PAUL FIRE DEPARTMENT RELIEF ASSOCIATION BY-LAWS,
APPROVED BY THE MEMBERSHIP IN NOVEMBER 1989.

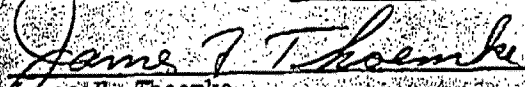
Page 45
Article IX
Section 3:

Notwithstanding previous provisions, and in accordance with enabling statutes (Minnesota Statutes 423A .19); Each member having not less than Five (5) years service, and having no more than 20 years service will be entitled to 1 unit for each year of service within the St. Paul Fire Department Relief Association through such members nineteenth (19) year. In the Twentieth (20) year, such member will be vested in previous fashion, allowing him to collect Thirty one (31) units. No payment is collectable until separated member's fiftieth (50) birthday.

Page 43
Article VIII
Section 2
Subsection e)
add:

1) A Widow of a separated member through early vesting will be entitled to 0.7 of a unit for each year of service earned.

Certified Correct: January 5, 1990


James F. Thoemke
Secretary

BY-LAWS OF THE ST. PAUL FIRE DEPARTMENT RELIEF ASSOCIATION

JANUARY 1, 1993



regularly entered on the payroll thereof, or within Ten (10) days of such date, such persons shall make and file with the Secretary of the Association a written application for Admission to Membership, on such forms as shall be prescribed by the Board of Examiners by the Secretary for consideration, investigation and recommendation.

- a) Any person may rejoin the Association upon re-entry to the payroll of the St. Paul Fire Department, without regard to his age, if due application therefor be made in writing upon the forms prescribed by the Board of Examiners, filed with the Secretary of the Association within Thirty (30) days of such re-entry onto the payroll of said Department, such application for reinstatement shall be considered and investigated by the Board of Examiners as in the case of an initial application for Admission to Membership.

Section 3: Upon acceptance of an Application for Membership as hereinafter set forth by the Board of Trustees, such Membership of the accepted applicant shall commence as at the date of entry upon the payroll of the Fire Department of the City of St. Paul and taking of the oath, and the President and Secretary shall issue a Certificate of Membership so dated in the name of the accepted applicant.

- a) All accepted applicants shall file with the Secretary, or such form as shall be prescribed by the Board of Examiners, a beneficiary designation.
- b) A member may change his designated beneficiary at any time by filing the said prescribed beneficiary designation form with the Secretary, all designation hereunder must be in writing, filed with the Secretary before they shall be effective.

Section 4: Every member except those receiving Sick Relief Service or Disability Pensions, or on the Deferred Pension

BY-LAWS OF THE ST. PAUL FIRE DEPARTMENT RELIEF ASSOCIATION

ARTICLE I *Membership*

Section 1: Membership in this Association shall be open only to those persons regularly entered on the payroll of the Fire Department of the City of St. Paul serving on active duty with a designated fire company thereof or having charge of one or more of its companies or divisions, including the Fire Prevention Bureau, the Training Division, the Fire Alarm Dispatchers who must be sworn fire fighting personnel of the Fire Department of the City of St. Paul.

- a) Members receiving Sick Relief, Service, Disability Pensions, or on the Deferred Pension roll shall retain all rights and privileges of Membership.
- b) Irregularly employed persons shall not be eligible for Membership.
- c) No person may receive the benefits provided by this association unless Membership has been maintained by such persons for the periods specified herein.
- d) Pursuant to Chapter 607, Minnesota Laws of 1980, membership in this Association shall be limited to those persons hired prior to June 15, 1980.

Section 2: Upon the date that a person is sworn as a fire fighting Member of the Fire Department of the City of St. Paul and

ARTICLE IX *Unit Defined - Vesting*

Section 1: For the purpose of these By-Laws, and the benefits provided hereby, a "Unit" is defined as One-eightieth of the maximum monthly salary of a First Grade Fire Fighter.

- a) Pensions and benefits hereunder shall automatically adjust for any changes in the said salary.

Section 2: The benefits provided herein shall vest in each member in accordance with the Laws of the State of Minnesota and the laws, rules and regulations of the Internal Revenue Code of 1954, as amended, for purposes of determining qualification as an exempt employee benefit plan and as an exempt corporation for purposes of those taxes levied on income or with respect thereto.

Section 3: Notwithstanding previous provisions, and in accordance with enabling statutes (Minnesota Statutes 423A .19); Each member having not less than Five (5) years service, and having no more than 20 years service will be entitled to 1 unit for each year of service within the St. Paul Fire Department Relief Association through such members nineteenth (19) year. In the Twentieth (20) year, such member will be vested in previous fashion, allowing him to collect Thirty one (31) units. No payment is collectable until separated member's fiftieth (50) birthday.

- a) A widow of a separated member through early vesting will be entitled to 0.7 of a unit for each year of service earned.

Public Employees Retirement Association of Minnesota
60 Empire Drive, Suite 200
Saint Paul, Minnesota 55103-2088
Member Information Services: 651-296-7460 or 1-800-652-9026
Employer Response Lines: 651-296-3636 or 1-888-892-7372
PERA Fax Number: 651-297-2547
PERA Website: www.mnpera.org



July 9, 2004

Ms. Tara Makinen
Upper Midwest Pension Rights Project
IRIS PARK PLACE
1885 UNIVERSITY AVE W STE 190
ST PAUL MN 55104

Dear Ms. Makinen:

Your specific questions in your letter of June 23 regarding former St. Paul firefighter, Clyde Thomas, were:

1. Would PERA support a legislative initiative on behalf of Clyde Thomas to secure pension benefits for him?
2. What were the requirements necessary for St. Paul firefighters to vest and attain eligibility to receive PERA benefits in 1990?
3. Would Mr. Thomas have vested in the plan had he been a PERA member when he left the department in 1990?

The first question that has to be answered is whether Mr. Thomas should have been enrolled in PERA when the City of St. Paul hired him as a firefighter in 1980. According to the service history record you included with your earlier letter and verification by the City of St. Paul, Mr. Thomas was not eligible to be enrolled in the PERA Police and Fire Fund when he was hired, because his date of hire was June 13, 1980. According to Minnesota Statutes, Section 423A.01, persons first employed by any municipality *after* June 15, 1980, *must* be enrolled in PERA Police and Fire.

The City of St. Paul was one of a number of cities in the State of Minnesota that had established an independent relief association for its salaried firefighters (as well as a separate relief association for its police officers) to provide retirement, disability and survivor benefits to the firefighters and their families. These separate relief associations were established before the PERA Police and Fire Fund existed. Our fund was established in 1959. Due to funding concerns, the Legislature chose to close those independent relief associations in 1980 and required all future newly hired firefighters to be enrolled in the PERA Police and Fire Fund. Specifically, the law states that all those hired after June 15, 1980, were to be enrolled in PERA, which means anyone hired before June 16, was to have been enrolled in the existing relief association.

Ms. Tara Makinen

Page 2

July 9, 2004

Vesting for PERA Police and Fire benefits changed significantly between 1980 and 1990. The vesting was reduced from 10 years of service at age 55 in 1980 (first enacted in 1971) to 3 years of service at age 50, effective July 1, 1989. Had Mr. Thomas been an eligible member of the PERA Police and Fire Plan in 1990, he would have been entitled to receive a reduced pension as early as age 50 as long as he had at least 3 years of credited service.

If you pursue legislation to enable Mr. Thomas to be granted credit in the PERA Police and Fire Fund for his years as a participant in the St. Paul Fire Department Relief Association and as an employee of the St. Paul Fire Department, I will recommend to the Board of Trustees that we oppose the legislation. Mr. Thomas was correctly enrolled in the relief association for his pension coverage while employed with the St. Paul Fire Department. When he left the department, he did not have sufficient years of service to qualify for a pension under the vesting requirement of the relief association then in effect. He has no legal basis on which to claim a right to benefits from PERA.

If you have any additional questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Mary Most Vanek".

Mary Most Vanek
Executive Director

- 1 M moves to amend S.F. No. 2104; H.F. No.
- 2 2311, as follows:
- 3 Page 4, line 16, after "Service" insert "credit"

M moves to amend S.F. No. 2104; H.F. No. 2311, as follows:

Delete everything after the enacting clause and insert:

"Section 1. [PROVIDING A ST. PAUL FIRE DEPARTMENT RELIEF ASSOCIATION ANNUITY DESPITE FAILURE TO VEST.]

Subdivision 1. [ELIGIBILITY.] (a) An eligible individual under paragraph (b) is authorized to receive the benefit specified in subdivision 2, upon satisfying all requirements specified in this section.

(b) An eligible individual is an individual who:

(1) was born on April 24, 1951;

(2) was hired as a St. Paul firefighter with a certified appointment date of June 13, 1980;

(3) became an active member of the St. Paul Fire Department Relief Association due to that employment; and

(4) terminated from St. Paul Fire Department employment on January 3, 1990, which was 27 days before a reduction in the vesting requirement from 20 years to five years became effective.

Subd. 2. [BENEFIT AMOUNT.] The eligible individual is authorized to receive a retirement annuity computed under the benefit provisions of the St. Paul Fire Department Relief Association plan in effect on the eligible individual's termination date, based on the individual's service credit in that plan, notwithstanding the plan's vesting requirement.

Subd. 3. [CALCULATION OF RESERVES; PAYMENT BY CITY OF ST. PAUL.] Following receipt of an application under subdivision 4, the executive director of the Public Employees Retirement Association shall compute the full required reserves for the annuity determined under subdivision 2. This amount is to be paid to the executive director of the Public Employees Retirement Association in a lump sum by the city of St. Paul. The executive director shall notify the chief administrative officer of the city of St. Paul in writing of the payment amount required under this subdivision. This notification shall be made by the executive director within one month following the receipt by the executive director of an application under

1 subdivision 4. The city of St. Paul must pay the amount
2 required under this subdivision within 30 days after receipt of
3 the executive director's notification.

4 Subd. 4. [ANNUITY APPLICATION.] An eligible individual
5 described in subdivision 1 shall apply in writing on forms
6 provided by the Public Employees Retirement Association for the
7 annuity provided by this section. The application must be made
8 before January 1, 2007, and must include all necessary
9 documentation of the applicability of this section, and any
10 other relevant information which the executive director may
11 require.

12 Sec. 2. [EFFECTIVE DATE.]

13 Section 1 is effective on the day after the St. Paul city
14 council and the chief clerical officer of the city complete in a
15 timely manner their compliance with Minnesota Statutes, section
16 645.021, subdivisions 2 and 3."

17 Amend the title accordingly

1 subdivision 4. The city of St. Paul must pay the amount
2 required under this subdivision within 30 days after receipt of
3 the executive director's notification.

4 Subd. 4. [ANNUITY APPLICATION.] An eligible individual
5 described in subdivision 1 shall apply in writing on forms
6 provided by the Public Employees Retirement Association for the
7 annuity provided by this section. The application must be made
8 before January 1, 2007, and must include all necessary
9 documentation of the applicability of this section, and any
10 other relevant information which the executive director may
11 require.

12 Subd. 5. [ACTIONS UPON FAILURE TO PAY.] If the city of St.
13 Paul fails to transmit the amount required under subdivision 3
14 in a timely manner, the executive director of the Public
15 Employees Retirement Association shall notify the commissioner
16 of finance of this nonpayment and the commissioner of finance
17 shall deduct the applicable amount from any state aid otherwise
18 payable to the city and transmit the amount required to the
19 executive director for deposit in the public employees police
20 and fire fund.

21 Sec. 2. [EFFECTIVE DATE.]

22 Section 1 is effective on the day following final
23 enactment."

24 Amend the title accordingly

M moves to amend S.F. No. 2104; H.F. No. 2311, as follows:

Delete everything after the enacting clause and insert:

"Section 1. [PROVIDING A ST. PAUL FIRE DEPARTMENT RELIEF ASSOCIATION ANNUITY DESPITE FAILURE TO VEST.]

Subdivision 1. [ELIGIBILITY.] (a) An eligible individual under paragraph (b) is authorized to receive the benefit specified in subdivision 2, upon satisfying all requirements specified in this section.

(b) An eligible individual is an individual who:

(1) was born on April 24, 1951;

(2) was hired as a St. Paul firefighter with a certified appointment date of June 13, 1980;

(3) became an active member of the St. Paul Fire Department Relief Association due to that employment; and

(4) terminated from St. Paul Fire Department employment on January 3, 1990, which was 27 days before a reduction in the vesting requirement from 20 years to five years became effective.

Subd. 2. [BENEFIT AMOUNT.] The eligible individual is authorized to receive a retirement annuity computed under the benefit provisions of the St. Paul Fire Department Relief Association plan in effect on the eligible individual's termination date, based on the individual's service credit in that plan, notwithstanding the plan's vesting requirement.

Subd. 3. [CALCULATION OF RESERVES; PAYMENT BY CITY OF ST. PAUL.] Following receipt of an application under subdivision 4, the executive director of the Public Employees Retirement Association shall compute the full required reserves for the annuity determined under subdivision 2. This amount is to be paid to the executive director of the Public Employees Retirement Association in a lump sum by the city of St. Paul. The executive director shall notify the chief administrative officer of the city of St. Paul in writing of the payment amount required under this subdivision. This notification shall be made by the executive director within one month following the receipt by the executive director of an application under

Senator Foley introduced--

S.F. No. 2104: Referred to the Committee on State and Local Government Operations.

1 A bill for an act

2 relating to retirement; public employees police and
3 fire retirement plan; providing an annuity for a
4 former St. Paul firefighter to correct an error in
5 coverage.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

7 Section 1. [CORRECTING PLAN COVERAGE ERROR BY PROVIDING A
8 PUBLIC EMPLOYEES POLICE AND FIRE RETIREMENT PLAN ANNUITY.]

9 Subdivision 1. [PURPOSE.] The annuity provided under this
10 section is intended to compensate for an error in pension
11 coverage. Due to the employment specified in subdivision 2, an
12 eligible individual specified in subdivision 2 should have
13 become a member of the public employees police and fire
14 retirement plan but was incorrectly placed in the St. Paul Fire
15 Department Relief Association retirement plan.

16 Subd. 2. [ELIGIBILITY.] (a) An eligible individual under
17 paragraph (b) is authorized to receive the benefit specified in
18 subdivision 4, upon satisfying all requirements specified in
19 this section.

20 (b) An eligible individual is an individual who:

21 (1) was born on April 24, 1951;

22 (2) was hired as a St. Paul firefighter with a certified
23 appointment date of June 13, 1980, but first earned salary as a
24 St. Paul firefighter on June 30, 1980;

25 (3) was erroneously placed in the St. Paul Fire Department

1 Relief Association retirement plan due to that employment; and
2 (4) terminated from the St. Paul Fire Department employment
3 on January 3, 1990.

4 Subd. 3. [ADDITIONAL EMPLOYEE CONTRIBUTION OR REFUND
5 AMOUNT.] (a) If a valid annuity application is made under
6 subdivision 7, the executive director of the Public Employees
7 Retirement Association shall determine the employee
8 contributions that an eligible individual under subdivision 2
9 would have made to the public employees police and fire
10 retirement plan fund, if coverage had been provided by that plan
11 for the employment period specified in subdivision 2, and from
12 each of these contribution amounts the employee contribution
13 actually made by the eligible individual to the St. Paul Fire
14 Department Relief Association for the same payroll period shall
15 be subtracted. These differences, plus 8.5 percent annual
16 compound interest from the date the public employees police and
17 fire retirement plan contribution would have been made until the
18 first of the month after a valid annuity application has been
19 received, shall be aggregated.

20 (b) If the aggregate amount under paragraph (a) is a
21 positive number, the total amount shall be paid in a lump sum to
22 the executive director of the Public Employees Retirement
23 Association. The executive director shall notify the eligible
24 individual in writing of the required amount. To be eligible
25 for the current or deferred annuity specified in subdivision 4,
26 the eligible individual must pay the amount required under this
27 paragraph, if applicable, within three months of the executive
28 director's notification.

29 (c) If the aggregate amount computed under paragraph (a) is
30 a negative amount, the value of the contributions that the
31 eligible employee made to the local relief association exceeded
32 the value of employee contributions that would have been made to
33 the public employees police and fire fund. This aggregate
34 negative amount shall be multiplied by minus one and the
35 resulting amount shall be refunded to the eligible individual by
36 the city of St. Paul. The executive director shall inform the

1 eligible individual of the refund amount in writing, and shall
2 notify the city of St. Paul. The city of St. Paul shall pay
3 this amount to the eligible individual within 30 days of
4 notification.

5 Subd. 4. [BENEFIT AMOUNT.] The eligible individual is
6 entitled to apply for an annuity, as further specified in
7 subdivision 7, and to receive a public employees police and fire
8 retirement plan retirement annuity computed based on the version
9 of Minnesota Statutes, chapter 353, in effect on the date that
10 the eligible individual terminated from St. Paul Fire Department
11 Relief Association employment.

12 Subd. 5. [CALCULATION OF RESERVES; PAYMENT BY CITY OF ST.
13 PAUL.] The executive director of the Public Employees Retirement
14 Association shall compute the full required reserves for the
15 annuity determined under subdivision 4 using all applicable
16 actuarial assumptions for the public employees police and fire
17 retirement plan. This amount, after deducting the amount
18 received by the Public Employees Retirement Association under
19 subdivision 3, paragraph (b), if applicable, is to be paid to
20 the executive director of the Public Employees Retirement
21 Association in a lump sum by the city of St. Paul. The
22 executive director shall notify the chief administrative officer
23 of the city of St. Paul in writing of the payment amount
24 required under this subdivision. This notification shall be
25 made by the executive director within one month following the
26 receipt by the executive director of any amount required under
27 subdivision 3, paragraph (b), if applicable. The city of St.
28 Paul must pay the amount required under this subdivision within
29 30 days after receipt of the executive director's notification.

30 Subd. 6. [ACTIONS UPON FAILURE TO PAY.] If the city of St.
31 Paul fails to transmit the amount required under subdivision 5
32 in a timely manner, or fails to make a timely refund under
33 subdivision 3, paragraph (c), if applicable, the executive
34 director of the Public Employees Retirement Association shall
35 notify the commissioner of finance of this nonpayment or
36 nonpayments, and the commissioner of finance shall deduct the

1 applicable amount or amounts from any state aid otherwise
2 payable to the city and transmit the amount required under
3 subdivision 5 to the executive director for deposit in the
4 public employees police and fire fund. If the city of St. Paul
5 fails to make a payment required under subdivision 3, paragraph
6 (c), if applicable, the commissioner of finance will make any
7 necessary refund, with reimbursement through the withholding of
8 aid, as stated in this subdivision.

9 Subd. 7. [ANNUITY APPLICATION.] An eligible individual
10 described in subdivision 2 shall apply in writing on forms
11 provided by the Public Employees Retirement Association for the
12 annuity provided by this section. The application must be made
13 before January 1, 2007, and must include all necessary
14 documentation of the applicability of this section and any other
15 relevant information which the executive director may require.

16 Subd. 8. [SERVICE CREDIT GRANT.] Service in the public
17 employees police and fire retirement plan for the eligible
18 individual's employment period as a St. Paul firefighter shall
19 be granted following the filing of a valid application for an
20 annuity under subdivision 7 and receipt by the executive
21 director of any amount applicable under subdivision 3, paragraph
22 (b).

23 Sec. 2. [EFFECTIVE DATE.]

24 Section 1 is effective the day following final enactment.