



H.F. 1627
(Murphy, M.)

S.F. 1475
(Stumpf)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-General
Relevant Provisions of Law: Special law provision
General Nature of Proposal: Service credit purchase of prior Crookston Township employment
Date of Summary: February 23, 2012

Specific Proposed Changes

- Permits Gerald Reitmeier to obtain 17 years of additional allowable service credit from PERA-General, with his payment of the equivalent member contributions plus 8.5% compound interest, and with Crookston Township obligated to pay the balance of the full actuarial cost of the benefits obtained by the additional service credit, with PERA permitted to collect the employer obligation by certifying a property tax levy on Crookston Township to the Polk County auditor if the township declines to make the payment voluntarily.

Policy Issues Raised by the Proposed Legislation

1. Conformity with Commission pension policy principles.
2. Question of public employment or independent contract service.
3. Cost of prior service credit purchase for the member.
4. Appropriateness of the member's payment of equivalent member contributions.
5. Equitable considerations.

Potential Amendments

Technical Amendment:

H1627-1A corrects a typographical error.

Substantive Amendments:

H1627-2A makes Crookston Township wholly responsible for paying the prior service credit purchase payment obligation.

H1627-3A makes Mr. Reitmeier responsible for one-half of the equivalent member contribution amount, plus interest, increasing Crookston Township's share to roughly three-quarters of the total.

H1627-4A provides that Crookston Township and PERA split the total prior service credit purchase payment obligation.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *LAM*
RE: H.F. 1627 (Murphy, M.); S.F. 1475 (Stumpf): PERA-General; Service Credit Purchase of Crookston Township Road Grader Employment
DATE: February 20, 2012

Summary of H.F. 1627 (Murphy, M.); S.F. 1475 (Stumpf)

H.F. 1627 (Murphy, M.); S.F. 1475 (Stumpf) permits Gerald Arnold Reitmeier to obtain 17 years of additional allowable service credit from the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General), with his payment of the equivalent member contributions he would have paid from July 1, 1990, until December 31, 2006, plus 8.5% compound interest for the period of unpaid contributions, and with Crookston Township obligated to pay the balance of the full actuarial cost of the benefits Mr. Reitmeier would obtain by the additional service credit, with PERA permitted to collect the employer obligation by certifying a property tax levy on Crookston Township to the Polk County auditor if the township declines to make the payment voluntarily.

Public Pension Problem of Gerald Reitmeier

Gerald Arnold Reitmeier is a 62-year-old road grader/snowplow driver for Crookston Township, Minnesota, and has been employed as such since July 1, 1990, but was not reported as a public employee to the General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) until September 1, 2010. Under Minnesota Statutes, Section 353.27, Subdivision 12, Mr. Reitmeier qualified for retroactive PERA-General coverage to January 1, 2007, but currently does not have retirement coverage for the balance of his 20 years of Crookston Township employment. Mr. Reitmeier desires to obtain PERA-General allowable service credit for his Crookston Township employment for the period July 1, 1990, to December 31, 2006, which can only be accomplished through special legislation under current Minnesota law. Mr. Reitmeier indicates that he believes that his lack of PERA-General coverage was due to a misunderstanding by or a miscommunication from PERA to the Crookston Township clerk in the past, that he has been a public employee since July 1, 1990, and that he has met the minimum salary threshold for PERA-General coverage since his initial month of employment in 1990.

Discussion and Analysis

H.F. 1627 (Murphy, M.); S.F. 1475 (Stumpf) permits Gerald Arnold Reitmeier to obtain the remaining 16+ years of General Employees Retirement Plan of the Public Employees Retirement Association (PERA-General) service credit for his employment career with Crookston Township, with the largest portion of the resulting full actuarial cost payable by Crookston Township.

The proposed legislation raises a number of pension and related public policy issues for consideration by and possible discussion by the Commission, as follows:

1. Conformity with Commission Pension Policy Principles. The potential proposed legislation raises the issue of the extent to which it conforms with the longstanding Principles of Pension Policy of the Legislative Commission on Pensions and Retirement. The applicable pension policy principle is II.C.10., which provides that:

II.C.10. Purchases of Prior Service Credit

- Purchases of public pension plan credit for periods of prior service should be permitted only if it is determined by the Commission:
- that the period to be purchased is public employment or relates substantially to the public employee's career,
- that the purchase payment amount from the member or from a combination of the member and the current or former employer must equal the actuarial liability to be incurred by the pension plan for the benefit associated with the purchase, appropriately calculated, without the provision of a subsidy from the pension plan unless an error or an omission by the pension plan was responsible for the loss of service credit,
- that the purchase payment amount must include a minimum payment by the member of the equivalent member contributions, plus compound interest from the purchase period to the date of payment unless the employer committed a particularly egregious error,

- that the purchase payment is the responsibility of the member, with the current or former employer authorized to pay some or all of the portion of the payment amount in excess of the minimum member payment amount, unless the employer has some culpability in the circumstances giving rise to the purchase and then a mandatory employer contribution may be imposed, and
- that the purchase must not violate notions of equity.

The purchase proposed for Mr. Reitmeier arguably conforms with the elements, with the applicability of elements one, two, and five specifically discussed in issues two, four, and five.

2. Question of Public Employment or Independent Contract Service. The policy issue is whether Mr. Reitmeier's service was public employment and entitled to be purchasable from PERA-General, or was independent contractor service. In September 2010, when PERA was informed that or discovered that Mr. Reitmeier was not covered by PERA-General and contacted Crookston Township, it determined that Mr. Reitmeier was eligible for current PERA-General and retroactive coverage to January 1, 2007, the statute of limitations for the collection of omitted member contribution deductions under PERA law. Mr. Reitmeier reports that his current duties working for Crookston Township are the same as they were in his initial month of service, strongly suggesting that Mr. Reitmeier was an employee for his 20-year public career rather than an independent contractor. If Crookston Township believes that Mr. Reitmeier was an independent contractor rather than an employee, it should present its argument and evidence. PERA generally utilizes the federal Internal Revenue Service standards for determining independent contractor status.
3. Cost of Prior Service Credit Purchase for Mr. Reitmeier. The policy issue is the cost related to Mr. Reitmeier for the prior service credit purchase that the proposed legislation would authorize. Because PERA-General is a defined benefit plan, the value of the retirement coverage and the actuarial cost of the coverage to be borne by PERA-General is a function of Mr. Reitmeier's age at retirement, his total service credit at the conclusion of his public employment, and his final average salary at retirement rather than the member and employer contributions that should have been made or are made on his behalf. Akin to insurance premiums and any other cost/benefit pooling arrangements, the actuarial liability associated with a period of uncovered service can be either greater or lesser than the member and employer contributions that would have been payable at the time, plus interest over the lag period. PERA informed the Commission staff that it could not calculate the prior service credit purchase payment obligation under Minnesota Statutes, Section 356.551, with the information on Mr. Reitmeier it had in 2010, but likely would have the calculations shortly after January 1, 2011. Mr. Reitmeier provided much of the required documentation, but PERA needs to obtain additional information from Crookston Township and also needs to check with Independent School District No. 593 (Crookston) regarding some substitute and long distance trip bus driving service that Mr. Reitmeier reports that he rendered, which could affect the calculations. Because 16+ years of service credit are involved and because Mr. Reitmeier is approaching his retirement age, the full actuarial value cost of the purchase is likely to be relatively substantial.

On February 16, 2012, PERA provided the Commission staff with some sense of the purchase payment obligation associated with the special legislation. PERA has calculated that the equivalent contribution and interest, the minimum purchase payment obligation under Minnesota Statutes, Section 356.551, is greater than the full actuarial value of the benefit to be obtained by the purchase. The equivalent contributions plus interest is \$55,930 if paid by June 02, 2012, or \$57,091 if paid by September 30, 2012. PERA did not indicate the full actuarial value prior service credit purchase amount. The monthly annuity increase calculated by PERA attributable to the purchase is \$411.

4. Appropriateness of Mr. Reitmeier's Payment of Equivalent Member Contributions. The policy issue is the appropriateness of the obligation that the proposed pension legislation places on Mr. Reitmeier to pay the 16+ years of equivalent member contributions and 8.5 percent compound interest. The applicable policy principle indicates that, if the employer committed a particularly egregious error, the employer would appropriately be made responsible for the equivalent member contribution and interest amount also. If Mr. Reitmeier believes that Crookston Township was particularly egregious in its failure to report him to PERA for membership in PERA-General, the basis for that belief and any evidence for egregious behavior should be considered by the Commission. Minnesota Statutes 1990, Section 353.27, Subdivision 19, required each employing unit covered by PERA to provide PERA with a copy of its payroll abstracts for the last pay period each year. Since 1990, Minnesota Statutes, 353.27, Subdivision 10, has been simplified in amendments, but employing units covered by PERA are required to provide annually an exclusion report listing all employees potentially eligible for PERA-General coverage who were not reported as PERA members. If Crookston Township failed to comply with Minnesota Statutes, Section 353.27, Subdivision 10, in 1990 and subsequent years, that failure could constitute the egregious behavior that could trigger a reduction in or the elimination

of Mr. Reitmeier's member contribution equivalent payment. If PERA did not properly review any Crookston Township payroll abstracts or exclusion reports under Minnesota Statutes, Section 353.27, Subdivision 10, or failed to collect the required employer reporting, an argument could be made that PERA should bear some financial responsibility for the employer portion of the service credit purchase payment for Mr. Reitmeier. Both Crookston Township and PERA should provide information about how payroll abstracts in 1990 and exclusion reports after 1990 for Crookston Township were provided and processed.

If the Commission determines that Crookston Township was egregious in its behavior (or inaction) that resulted in the loss of service credit, **Amendment H1627-2A** makes Crookston Township wholly responsible for paying the prior service credit purchase payment obligation.

If the Commission determines that Crookston Township should be financially responsible for a greater share of the prior service credit purchase payment obligation based on its action or inaction, but that wholly shifting responsibility to Crookston Township is too great a shift or raises a potentially adverse precedent, **Amendment H1627-3A** makes Mr. Reitmeier responsible for one-half of the equivalent member contribution amount, plus interest, increasing Crookston Township's share to roughly three-quarters of the total.

If the Commission determines that PERA was jointly responsible with Crookston Township for the loss of allowable service credit, **Amendment H1627-4A** provides that Crookston Township and PERA split the total prior service credit purchase payment obligation.

5. Equitable Considerations. Legal equitable maxims include the requirement that one who seeks equity must do equity. That equitable maxim raises the issue here whether or not there is any failure by Mr. Reitmeier that could be considered as his having failed to do equity. The primary equitable failure that could arise here would be the situation if Mr. Reitmeier knew that he should have been a PERA-General member substantially before September 2010, and neglected to raise the issue with the Crookston Township clerk or with PERA in hopes that he would eventually obtain his full 20 years of service credit with little or no member contribution payments on his part. There is nothing in the information available to the Commission staff from Mr. Reitmeier or from PERA to indicate that Mr. Reitmeier delayed acting on knowledge that he should have been a PERA-General member from July 1, 1990, on. If Crookston Township disputes this conclusion, it should provide any available information that would be the basis for determining that Mr. Reitmeier knowingly failed to raise questions about his retirement coverage to his financial advantage and the township's financial disadvantage.

Technical Amendment

Amendment H1627-1A corrects a typographical error in the legislation, substituting the correct word "notified" for the incorrect word "ratified" in the Crookston Township service credit payment obligation portion.

Lisa Diesslin

From: Mary Vanek (PERA) [mary.most.vanek@mnpera.org]
Sent: Thursday, February 16, 2012 8:17 AM
To: Ed Burek
Subject: HF 1627

I don't know who is doing the memo for this bill, but the updated cost calculation shows that contributions plus interest are greater than the actuarial present value. The employee contribution and interest total, if paid by June 30, 2012, is \$26,957. The employer contribution and interest total is \$28,973. If not paid until September 30, 2012, the costs are \$27,517 and \$29,574 respectively. The pension difference, assuming retirement at age 66, would be about \$411 a month. We offered a couple projections given it may take some time to come up with this kind of money.

Staff has contacted the member with the costs and suggested he speak to Crookston Township folks about it. I've provided the numbers to Representative Mary Murphy.

If you need anything else, please let me know.

*Mary Most Vanek, Executive Director
Public Employees Retirement Association
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St. Paul, MN 55103
(651) 296-8358*

Please take note of my new PERA email address: mary.most.vanek@mnpera.org

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Public Employees Retirement Association of Minnesota

- 1.1 moves to amend H.F. No. 1627; S.F. No. 1475, as follows:
- 1.2 Page 2, line 18, delete "ratified" and insert "notified"
- 1.3 Page 2, line 25, delete "2012" and insert "2013"

- 1.1 moves to amend H.F. No. 1627; S.F. No. 1475, as follows:
- 1.2 Page 2, line 8, delete "Of the"
- 1.3 Page 2, delete lines 9 to 14
- 1.4 Page 2, line 15, delete "the eligible person makes the payment," and delete "the
- 1.5 balance of"
- 1.6 Page 2, line 18, delete "ratified" and insert "notified" and delete "that"
- 1.7 Page 2, line 25, delete "2012" and insert "2013"
- 1.8 Page 2, line 19, delete everything before the period and insert "of the prior service
- 1.9 credit purchase payment amount"

- 1.1 moves to amend H.F. No. 1627; S.F. No. 1475, as follows:
- 1.2 Page 2, line 10, after "to" insert "one-half of"
- 1.3 Page 2, line 25, delete "2012" and insert "2014"

1.1 moves to amend H.F. No. 1627; S.F. No. 1475, as follows:

1.2 Page 2, line 10, delete everything after "356.551, "

1.3 Page 2, delete lines 11 to 14

1.4 Page 2, line 15, delete everything before "Crookston" and delete "the balance"

1.5 and insert "one-half"

1.6 Page 2, line 18, delete "ratified" and insert "notified" and delete "that"

1.7 Page 2, line 19, delete everything before the period and insert "of the municipality's
1.8 obligation"

1.9 Page 2, line 23, after "(a)." insert "The other half of the total prior service credit
1.10 purchase payment under Minnesota Statutes, section 356.551, is the obligation of the
1.11 Public Employees Retirement Association based on its failure to enforce Minnesota
1.12 Statutes, section 353.27, subdivision 10, and must be charged as a administrative expense
1.13 of the general employees retirement fund and of the association in the annual financial
1.14 report for fiscal year 2012."

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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. **1627**

May 2, 2011

Authored by Murphy, M.

The bill was read for the first time and referred to the Committee on Government Operations and Elections

1.1 A bill for an act
1.2 relating to retirement; general employees retirement plan of the Public
1.3 Employees Retirement Association; authorizing the purchase of prior service
1.4 credit for uncredited public employment by Crookston Township.

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

1.6 Section 1. SERVICE CREDIT PURCHASE AUTHORIZATION FOR
1.7 UNCREDITED PRIOR PUBLIC EMPLOYMENT.

1.8 (a) An eligible person described in paragraph (b) is entitled to purchase allowable
1.9 service in the general employees retirement plan of the Public Employees Retirement
1.10 Association under Minnesota Statutes, section 353.01, subdivision 16, for the period
1.11 described in paragraph (c) upon the payment of the purchase requirement specified in
1.12 paragraph (e).

1.13 (b) An eligible person is a person who:

1.14 (1) was born on September 10, 1949;

1.15 (2) was first employed by Crookston Township on July 1, 1990;

1.16 (3) was enrolled in the general employees retirement plan of the Public Employees
1.17 Retirement Association on September 15, 2010; and

1.18 (4) had omitted deductions paid for allowable service for Crookston Township
1.19 back to January 1, 2007.

1.20 (c) The period of prior service credit available for purchase is the period of
1.21 Crookston Township employment from July 1, 1990, to December 31, 2006, if the service
1.22 was not that of an independent contractor and the compensation for the service met or
1.23 exceeded the applicable minimum monthly salary threshold amount for plan coverage.

2.1 (d) The eligible person must apply with the executive director of the Public
2.2 Employees Retirement Association to make the service credit purchase under this section.
2.3 The application must be in writing and must include all necessary relevant documentation
2.4 that the executive director may require.

2.5 (e) Allowable service credit under Minnesota Statutes, section 353.01, subdivision
2.6 16, must be granted by the general employees retirement plan of the Public Employees
2.7 Retirement Association to the eligible person upon the receipt of the prior service credit
2.8 purchase payment amount required under Minnesota Statutes, section 356.551. Of the
2.9 total prior service credit purchase payment amount under Minnesota Statutes, section
2.10 356.551, the eligible person must pay an amount equal to the employee contribution rates
2.11 in effect during the uncredited employment period applied to the actual salary rates of the
2.12 eligible person during the period, plus annual compound interest at the rate of 8.5 percent
2.13 from the date on which the member contribution payment should have been made if made
2.14 in a timely fashion until the date on which the equivalent contribution is actually made. If
2.15 the eligible person makes the payment, Crookston Township shall pay the balance of the
2.16 total prior service credit purchase payment amount calculated under Minnesota Statutes,
2.17 section 356.551, within 60 days of the date on which the treasurer of Crookston Township
2.18 is ratified by the executive director of the Public Employees Retirement Association that
2.19 the member contribution payment had been received by the association. If Crookston
2.20 Township fails to pay its portion of the prior service credit purchase payment amount
2.21 under this section, the executive director of the Public Employees Retirement Association
2.22 shall collect the unpaid amount under Minnesota Statutes, section 353.28, subdivision 6,
2.23 paragraph (a).

2.24 (f) Authority for an eligible person to make a prior service credit purchase under this
2.25 section expires on June 30, 2012, or upon the eligible person's termination of employment
2.26 covered by the Public Employees Retirement Association.

2.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.