



S.F. 197
(Skogen)

H.F. 318
(Nornes)

Executive Summary of Commission Staff Materials

Affected Pension Plan(s): PERA-General
Relevant Provisions of Law: Special law provision
General Nature of Proposal: Full actuarial value prior service credit purchase for uncredited city employment
Date of Summary: March 4, 2009

Specific Proposed Changes

- The proposed legislation would permit an Elizabeth, Minnesota, municipal liquor store employee with an eligible uncredited period of prior employment to purchase allowable service credit for that period, with a substantial mandatory city payment.

Policy Issues Raised by the Proposed Legislation

1. Conformity with Commission policy principles and recent Commission practice.
2. Prior service credit purchase cost and allocation.
3. Appropriateness of the imposition of state aid deductions if the employer fails to make purchase payment.
4. Precedent.

Potential Amendments

There are no technical or substantive amendments suggested by the Commission staff.



TO: Members of the Legislative Commission on Pensions and Retirement
FROM: Lawrence A. Martin, Executive Director *JAM*
RE: S.F. 197 (Skogen); H.F. 318 (Nornes): PERA; Purchase of Service Credit for Period of Past Due Omitted Contributions for Elizabeth, Minnesota, Employee
DATE: March 4, 2009

Summary of S.F. 197 (Skogen); H.F. 318 (Nornes)

S.F. 197 (Skogen); H.F. 318 (Nornes) permits Janet Fuder, described as the likely sole member of a defined class of local government employees rather than named in order to conform with a Minnesota Constitutional restriction, to purchase four months of service credit in the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General). Ms. Fuder's payment obligation would be the amount of her omitted member contributions plus 8.5 percent interest since October 15, 2004, and the City of Elizabeth, Minnesota, would be obligated to pay the balance of the full actuarial value of the benefit Ms. Fuder obtains by virtue of the purchase or the omitted employer contributions plus 8.5 percent interest since October 15, 2004, whichever is the greater amount. The special authority is effective on final enactment and expires on July 1, 2010.

Public Pension Problem of Janet Fuder of Fergus Falls, Minnesota

Janet Fuder, a resident of Fergus Falls, Minnesota, was an employee of the City of Elizabeth municipal liquor store beginning in late July 2004, exceeded the \$425 monthly salary threshold for mandatory coverage by the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) in September 2004, but was not first reported as a PERA-General member until January 2005, leaving a four-month period of eligibility without retirement coverage. Minnesota Statutes, Section 353.01, Subdivision 2a, provides that local government employees who receive at least \$425 in salary in any month are to be covered by PERA-General for that month and for all subsequent months of local government employment, with PERA-General member contributions to be deducted from the employee's compensation and with PERA-General employer contributions to be made by the employer on behalf of the member. Minnesota Statutes, Section 353.27, Subdivision 12, Paragraph (e), sets a three-year statute of limitations on PERA's collection of omitted contributions. Ms. Fuder feels that she is being punished for her employer's error and wishes to have PERA-General service credit for the omitted four-month period.

Background Information

Janet Fuder's public pension problem touches on several aspects of public pension plan coverage, which may be more understandable with some general background information. Relevant background information is attached on the following topics:

- Attachment A: PERA-General membership inclusions and exclusions.
- Attachment B: PERA-General membership eligibility.
- Attachment C: PERA-General membership coverage enforcement responsibilities.
- Attachment D: Recovery of PERA-General and other general retirement plan omitted salary deductions.

Discussion and Analysis

S.F. 197 (Skogen); H.F. 318 (Nornes) permits Janet Fuder to purchase at full actuarial value four months of service credit in the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) representing the period during which her employer, the City of Elizabeth municipal liquor store, neglected to report her as a PERA-General member and deduct required member contributions, with the city obligated to pay a substantial portion of the full actuarial value purchase payment amount.

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

1. Conformity With Commission Policy Principles and Recent Commission Practice. The policy issue is the extent to which Ms. Fuder's proposed solution to her public pension problem conforms with the

Commission's Principles of Pension Policy as they have been recently applied by the Commission. Policy Principle II.C.10., as currently interpreted by the Commission, provides for purchases of public pension plan credit for periods of prior unaccredited service on a case-by-case basis, where the grant of credit accompanied by a payment by the purchaser or from a variety of sources equal to the full actuarial liability to be incurred by the plan for the benefit obtained by the purchase and where the purchase does not violate notions of equity. If Ms. Fuder's loss of service credit is a result of an error by the City of Elizabeth, Minnesota, as Ms. Fuder contends and as it appears from the documentation she supplied, and if there is no other factor associated with Ms. Fuder that would make the purchase an inequitable grant, it appears that her requested solution contained in the proposed legislation conforms with the Commission's Policy Principles. Ms. Fuder and the City of Elizabeth should both be accorded an opportunity to testify before the Commission, where any remaining equitable questions could be resolved.

2. Prior Service Credit Purchase Cost and Allocation. The policy issue is the magnitude of the purchase payment required to accompany the prior service credit purchase and the proposed allocation of that cost between Ms. Fuder and the City of Elizabeth, Minnesota, under Ms. Fuder's requested remedy. The proposed legislation requires that the prior service credit purchase be at least equal to the full actuarial value of the benefit obtained from the additional service credit and allocates that amount between Ms. Fuder, who would pay the amount of her omitted member contributions from 2004 and interest since 2004, and the City of Elizabeth, which would pay the greater of either the balance of the full actuarial value cost or the unpaid 2004 employer and employer additional contributions plus interest since 2004. While the service credit period to be purchased is short, depending on Ms. Fuder's age and the length of any prior Minnesota public pension plan coverage, the full actuarial value payment amount could exceed the unpaid contributions plus interest. The proposed legislation mandates an employer payment rather than the permissive employer payment normally utilized in prior service credit purchases (see Minnesota Statutes, Section 356.551, Subdivision 2, Paragraph (e)) because it appears that the loss of PERA General Employees Retirement Plan service credit was a result of an employer mistake and because the Commission recently has routinely mandated employer participation in the purchase when the employer's error or omission causes the service credit loss. Because of the manner in which Minnesota funds its pension cost, with a level contribution requirement that overpays during the early portion of each member's career to offset an underpayment during the later portion of each member's career, if Ms. Fuder is currently very young and if this service credit is her initial Minnesota public pension plan coverage, it is possible that her equivalent member contribution payment, plus interest, may exceed the full actuarial value of the benefit obtained, which is why the employer has an alternative payment obligation of the unpaid employer contributions plus interest.
3. Appropriateness of the Imposition of State Aid Deductions if the Employer Fails to Make Purchase Payment. The policy issue is the appropriateness of the provision included in the proposed legislation to resolve Ms. Fuder's public pension problem that would deduct the payment obligation of the City of Elizabeth, Minnesota, from its future state aid if the city fails to make its payment in a timely manner. The provision is routinely included by the Commission in prior service credit purchase legislation whenever a mandatory employer payment is included in the legislation and it insures that the pension fund is protected financially when it extends service credit for previously uncovered prior employment. The provision provides a guarantee that the employer causing a pension coverage loss previously cannot compound the problem by failing to fund the remedy. Public employers frequently are not aware of the cost of resolving public pension problems after the fact and balk at the eventual cost even if the employer admits its role in causing the pension service credit loss problem.
4. Precedent. The policy issue is whether or not there exists previously enacted legislation that serves as a precedent for the proposed legislation and whether or not the enactment of this proposed legislation could become an adverse precedent for future special legislative requests. There are numerous recent precedents for special legislation substantially identical to Ms. Fuder's requested solution where the public employer was responsible for the public pension coverage loss, including:
 - First Special Session Laws 2003, Chapter 12, Article 14, Section 2 (derived from 2003 HF 1343-Powell/SF 1235-Belanger)
 - Laws 2004, Chapter 267, Article 16, Section 1 (derived from 2004 HF 1586 (Nelson, P.)/SF 1579-Nienow)
 - Laws 2006, Chapter 271, Article 14, Section 16 (derived from 2006 HF 3616 (Atkins)/SF 3264-Metzen)
 - Laws 2006, Chapter 271, Article 14, Section 17 (derived from a Commission amendment)
 - Laws 2006, Chapter 271, Article 14, Section 11 (derived from 2006 HF 2523-Ozment)

- Laws 2006, Chapter 271, Article 14, Section 6 (derived from 2006 HF 2968-Abeler; 2006 HF 2799-Abeler, by request)/SF 2626-Jungbauer)
- Laws 2007, Chapter 134, Article 12, Section 5 (derived from 2007 HF 1878-Welti/SF 1853-Senjem)
- Laws 2007, Chapter 134, Article 12, Section 1 (derived from 2007 HF 876-Swails/SF 2016-Saltzman)
- Laws 2008, Chapter 349, Article 16, Section 8 (derived from 2008 HF 3508-Hausman/SF 3188-Anderson)

There is one precedent for even more favorable treatment of the constituent, where the employer was obligated to pay the entire prior service credit purchase payment amount where the employer failed to properly report a public employee for pension coverage in First Special Session Laws 2001, Chapter 10, Article 17, Section 3 (derived from 2001 HF 1326-Mares/SF 1327-Bachman). If the proposed legislation would be included in the 2009 Omnibus Retirement Bill as currently constituted, the solution to Ms. Fuder's public pension problem would not constitute an adverse precedent for a future legislative request for a similar circumstance.

Attachment A
Background Information on
PERA-General Membership Inclusions and Exclusions

When the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) was established in 1931, plan membership was optional for governmental subdivisions and, if the governmental subdivision elected to be a participating employer, was optional for employees employed before April 24, 1931, and was mandatory for employees employed after April 23, 1931. All counties, all first (except Minneapolis), second, and third class cities, including home rule cities, all public schools (except the Minneapolis Public Schools), and all villages with a population of at least 7,000 were eligible to be participating employers. Employees of a participating employer who were not paid in whole or in part from public funds, or who were covered by another public pension plan, or who were temporary employees, or who had an average length of employment annually of less than six months were excluded from PERA membership.

By 1941, the specification in law of PERA membership had become somewhat more complex. School districts were specified as eligible participating employers, reflecting the authorization of independent school districts. The 1941 exceptions from membership were:

- (1) employees of governmental subdivisions that had not elected to be participating employers;
- (2) employees hired before the governmental subdivisions became a participating employer and did not elect PERA membership;
- (3) employees of a participating employer who were not paid in whole or in part from public funds;
- (4) temporary employees of participating employers (defined as a person who is employed for less than six months within a 12 month period, or who is employed as a substitute for another employee who is on leave, or who is employed in a position that is not seasonal but is of an essentially temporary character, or who is employed part-time with total annual compensation of less than \$300 unless the person was in a government classified civil service position);
- (5) a member of another Minnesota public employee pension plan; or
- (6) a person who by virtue of past employment is entitled to a pension from another Minnesota public employee pension plan or who has been designated as a future beneficiary of a benefit from another Minnesota public employee pension plan.

In 1951, towns and boroughs were added as eligible participating employers. In 1951 and 1955, PERA membership was made mandatory for local government employees who were not eligible for other Minnesota public pension plan coverage. This resulted in a rapid growth in the PERA membership, from 8,246 members in 1946 to 36,470 members in 1956.

By 1957, more changes in the PERA membership specification had occurred. The League of Minnesota Municipalities and PERA itself were made eligible participating employers. PERA coverage was made mandatory for all employees of all governmental subdivisions unless the employee was specifically excluded or the employee was over age 60 on June 30, 1957, and had less than six years of service as of that date. Legislators, the secretary of the Minnesota Senate, and the chief clerk of the Minnesota House of Representatives were specifically included in PERA membership. The PERA membership exclusions were revised, with the major exclusions as follows:

- (1) person employed for professional services incidental to the person's regular profession and compensated on a per diem basis;
- (2) election officers;
- (3) employees of independent contractors performing public services;
- (4) patient or inmate help in local government charitable, penal, or correctional facilities;
- (5) members of boards, commissions, volunteer fire departments, bands, and other intermittent employees paid on a per diem, per meeting, or per fire basis;
- (6) temporary, emergency, or seasonal employees as defined by PERA rules; and
- (7) employees required to contribute to another Minnesota public pension plan on account of that employment.

In 1961, the PERA membership specification provisions continued to change. Local elected officials were given the option to be members of PERA and employees of local elected officials were included in PERA membership, as were district court reporters and port authority employees. An exclusion for police matrons employed by a city police department and transferred to a joint city-county detentions and corrections authority was also added to PERA law.

After 1961 and until 1974, public employees who had a salary of less than \$75 per month were excluded from PERA membership. In 1963, an exclusion for persons who elected to be excluded from PERA membership for religious reasons was added. In 1965, probate, municipal and special municipal judges were included in PERA membership and students who were occasionally employed part-time by governmental subdivisions were excluded from PERA membership. In 1967, the student exclusion was modified to apply to full-time students employed part-time as governmental employees. In 1971, the specific exclusion for volunteer firefighters was deleted from PERA law. In 1973, school district employees with separate salaries for driving their own buses were included in PERA coverage and exclusions were added for resident physicians, medical interns, pharmacist interns in public hospitals and for appointed or elected officials compensated entirely on a fee basis if not members in 1971.

In 1974, until 1977, the minimum salary threshold for PERA membership was increased to \$150 in any month during a year, or \$1,800 annually. The minimum salary threshold for PERA membership was increased in 1977 to \$250 in any month during a year or \$3,000 annually in 1977. In 1981, the minimum salary threshold for PERA membership increased to \$325 in any month during the year, or \$3,900 annually. Also, in 1981, city managers were granted the authority to elect an exclusion from PERA coverage in favor of separate individual deferred compensation program coverage. The current minimum salary threshold for PERA membership was set at \$425 in any month during the year, or \$5,100 annually, in 1988. In 1997, St. Paul school district pipefitters were excluded from PERA membership and, in 2000, other St. Paul city and school district trades personnel were also excluded from PERA membership. The 1997 legislation was considered and recommended by the Legislative Commission on Pensions and Retirement. The 2000 legislation was not reviewed or recommended by the Commission, but was added by the Senate Governmental Operations Committee to the 2000 omnibus pension bill.

Attachment B
Background Information on
PERA-General Membership Eligibility

When the Public Employees Retirement Association (PERA) was established in 1931, modeled heavily on the law governing the State Employees Retirement Association (SERA), renamed in 1969 the Minnesota State Retirement System (MSRS), the plan was optional for governmental subdivisions and, if the governmental subdivision elected to be a participating employer, was optional for employees employed before April 24, 1931, and was mandatory for employees employed after April 23, 1931. All counties, all first, second, and third class cities, including home rule cities, all public schools, and all villages with a population of at least 7,000 were eligible to be a participating employer. Employees of a participating employer who were not paid in whole or in part from public funds, or who were covered by another public pension plan, or who were temporary employees, or who had an average length of employment annually of less than six months.

By 1941, the specification of PERA membership had become somewhat more complex. School districts were specified as eligible participating employers, reflecting the authorization of independent school districts.

Exceptions from membership were:

- (1) employees of governmental subdivisions that had not elected to be participating employers;
- (2) employees hired before the governmental subdivisions became a participating employer and did not elect PERA membership;
- (3) employees of a participating employer who were not paid in whole or in part from public funds;
- (4) temporary employees of participating employers (defined as a person who is employed for less than six months within a 12-month period, or who is employed as a substitute for another employee who is on leave, or who is employed in a position that is not seasonal but is of an essentially temporary character, or who is employed part-time with total annual compensation of less than \$300 unless the person was in a government classified civil service position);
- (5) a member of another Minnesota public employee pension plan; or
- (6) a person who by virtue of past employment is entitled to a pension from another Minnesota public employee pension plan or who has been designated as a future beneficiary of a benefit from another Minnesota public employee pension plan.

In 1951, towns and boroughs were added as eligible participating employers.

By 1957, more changes in the PERA membership specification had occurred. The League of Minnesota Municipalities and PERA were made eligible participating employers. PERA coverage was made mandatory for all employees of all governmental subdivisions unless the employee was specifically excluded or the employee was over age 60 on June 30, 1957, and had less than six years of service as of that date. Legislators, the secretary of the Minnesota Senate, and the chief clerk of the Minnesota House of Representatives were specifically included in PERA membership. The PERA membership exclusions were:

- (1) person employed for professional services incidental to the person's regular profession and compensated on a per diem basis;
- (2) election officers;
- (3) employees of independent contractors performing public services;
- (4) patient or inmate help in local government charitable, penal, or correctional facilities;
- (5) members of boards, commissions, volunteer fire departments, bands, and other intermittent employees paid on a per diem, per meeting, or per fire basis;
- (6) temporary, emergency or seasonal employees as defined by PERA rules; and
- (7) employees required to contribute to another Minnesota public pension plan on account of that employment.

By 1961, the PERA membership specification provisions continued to change. Local elected officials and employees of local elected officials were included in PERA membership, as were district court reporters and port authority employees. An exclusion for police matrons employed by a city police department and transferred to a joint city-county detentions and corrections authority was also added to PERA law.

After 1961 and until 1974, public employees who had a salary of less than \$75 per month were excluded from PERA membership. In 1963, an exclusion for persons who elected to be excluded from PERA membership for religious reasons was added. In 1965, probate, municipal and special municipal judges were included in PERA membership and students who were occasionally employed part-time by governmental subdivisions were excluded from PERA membership. In 1967, the student exclusion was modified to apply to full-time students employed part-time as governmental employees. In 1971, the specific exclusion for volunteer firefighters was deleted from PERA law. In 1973, school district employees with separate salaries for driving their own buses were included in PERA coverage and exclusions were added for resident physicians, medical interns, pharmacist interns in public hospitals and for appointed or elected officials compensated entirely on a fee basis if not members in 1971.

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Attachment C

Background Information on PERA-General Membership Coverage Enforcement Responsibilities

Membership in the General Employee Retirement Plan of the Public Employees Retirement Association (PERA-General) is largely mandatory for employees of most governmental subdivisions and related local governmental entities, with 24 exclusions from coverage and with seven optional memberships. The membership provisions are largely contained in Minnesota Statutes, Section 353.01, Subdivisions 2, 2a, 2b, and 2d.

The PERA-General membership exclusions include local government employees who consistently receive compensation less than \$425 per month, elected officials other than county sheriffs, election officers and judges, patient or inmate workers, temporary employees, employees hired for a specific emergency, employees required to be covered by another Minnesota public pension plan, certain religious order members, full-time students under age 23, medical residents in a degree program, foreign citizens with a short-term visa, certain volunteer ambulance service and volunteer fire service personnel, certain St. Paul city and school district trades personnel, certain Metropolitan Airports Commission trades personnel, seasonal personnel hired after 2002 for not more than 185 consecutive days per year, work study employees, independent contractors, and reemployed annuitants.

PERA-General optional memberships, by election of the person, are labor organization employees, appointees to some non-local government elected positions, State department heads appointed by the Governor, city managers, and St. Paul Port Authority employees, and by election of the employing unit, are Minnesota Association of Townships employees and county historical society employees.

As a mechanism to ensure that all local government employees who should be covered by PERA-General are covered by PERA-General, Minnesota Statutes, Section 353.27, Subdivision 10, requires that all PERA-covered employing units file an exclusion report with PERA annually. The exclusion report is required to list those employees in potentially PERA-eligible employment positions who were not reported as members and must be certified by the employer as to accuracy and completeness. PERA has authority to conduct field audits to review governmental subdivision payroll records. Additionally, under Minnesota Statutes, Section 353.27, Subdivision 11, participating employing units are required to provide prompt responses to PERA upon request about the status of employees or former employees. PERA also is empowered to request payroll abstracts and salary schedules.

Under Minnesota Statutes, Section 353.27, Subdivision 12, if PERA member deductions were omitted, the employing unit is required to inform PERA upon the discovery and correct the omission, with deductions omitted for longer than 60 days becoming the liability of the employer. PERA is permitted to pursue the recovery of omitted member contributions up to the expiration of the third calendar year after the calendar year in which the omitted deductions occurred and if an action for recovery has been initiated within the time period, PERA is permitted to continue recovery efforts.

